

University of Wollongong - Research Online

Thesis Collection

Title: Legislative implementation by Vietnam of its obligations under the United Nations Drug Control Conventions

Author: Hoa Phuong Thi Nguyen

Year: 2008

Repository DOI:

Copyright Warning

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site.

You are reminded of the following: This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part of this work may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the author. Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material.

Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

Unless otherwise indicated, the views expressed in this thesis are those of the author and do not necessarily represent the views of the University of Wollongong.

Research Online is the open access repository for the University of Wollongong. For further information contact the UOW Library: research-pubs@uow.edu.au

University of Wollongong Theses Collection

University of Wollongong Theses Collection

University of Wollongong

Year 2008

Legislative implementation by Vietnam
of its obligations under the United
Nations Drug Control Conventions

Hoa Phuong Thi Nguyen
University of Wollongong

Nguyen, Hoa Phuong Thi, Legislative implementation by Vietnam of its obligations under the United Nations Drug Control Conventions, PhD thesis, Faculty of Law, University of Wollongong, 2008. <http://ro.uow.edu.au/theses/30>

This paper is posted at Research Online.

<http://ro.uow.edu.au/theses/30>

NOTE

This online version of the thesis may have different page formatting and pagination from the paper copy held in the University of Wollongong Library.

UNIVERSITY OF WOLLONGONG

COPYRIGHT WARNING

You may print or download ONE copy of this document for the purpose of your own research or study. The University does not authorise you to copy, communicate or otherwise make available electronically to any other person any copyright material contained on this site. You are reminded of the following:

Copyright owners are entitled to take legal action against persons who infringe their copyright. A reproduction of material that is protected by copyright may be a copyright infringement. A court may impose penalties and award damages in relation to offences and infringements relating to copyright material. Higher penalties may apply, and higher damages may be awarded, for offences and infringements involving the conversion of material into digital or electronic form.

Faculty of Law

**Legislative Implementation by Vietnam of Its Obligations under the
United Nations Drug Control Conventions**

Hoa Phuong Thi Nguyen

**This thesis is presented as full requirements for the award of a
PhD
at the University of Wollongong**

March 2008

CERTIFICATION

I, Hoa Phuong Thi Nguyen, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Hoa Phuong Thi Nguyen

31 July 2007

ABSTRACT

Lying across many important traffic routes in South-East Asia and located within the proximity of the Golden Triangle, Vietnam has become an international transit point for illicit drugs. The availability of drugs smuggled from its neighbouring countries has brought about an alarming increase in drug abuse in the whole country, and especially among the youth. Having a tropical monsoon climate, it has also traditionally faced the problems of opium poppy cultivation and opium smoking among the ethnic populations in its mountainous and upland areas. In 1997, with the ratification of the three UN Drug Control Conventions,¹ Vietnam officially stepped into the international battle against illicit drugs. Becoming a Party to the Conventions, it came under obligations to bring domestic legislation into line with international standards. This Thesis examines, in-depth, the legal framework for drug control in Vietnam adopted in the years since it became a Party to the UN Drug Control Conventions. The Thesis first defines the obligations of Parties under these Conventions and then compares and analyzes strengths and weaknesses of Vietnamese legislation implementing the obligations.

The contributions made by this Thesis to the field of drug control research are two-fold. First, it contributes a new understanding of Vietnamese successes and shortcomings in drug control laws that implement international obligations and identifies opportunities for improvement of the national drug control legal framework. Secondly, the success of international drug control mechanisms depends heavily on implementation by the individual contracting Parties. Yet state implementation in accordance with national legislation and institution capabilities varies considerably. This case study of Vietnamese implementation is useful for furthering understanding of the transformation of drug control international standards into national law, especially in developing countries having similar legal, social and economic features, such as are found in Indo-China.

¹ I.e. *Single Convention on Narcotic Drugs*, opened for signature 30 March 1961 (entered into force 13 December 1964); *Convention on Psychotropic Substances*, opened for signature 21 February 1971 (entered into force 16 August 1976) and *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988 (entered into force 11 November 1990).

ACKNOWLEDGEMENTS

Leaving behind a beloved family to travel abroad for fulltime PhD research is truly a very hard undertaking. I could not have departed on this journey if my husband had not given me strong encouragement, originating from his profound understanding of my desire for further study. Therefore, I am deeply in debt to his love.

During the completion of necessary procedures for this travel, I was greatly supported by a teacher whom I much respect, Mr. Xuan Te, and my kind-hearted managers, Mr. Quang De and Mrs. Hoang Hoa. Deeply in my heart, I would like them to know that without their support I could not have continued this further study.

Doing research in Australia – a completely new academic environment – has not been easy, but everything seemed to be much simpler working with Professor Gregory Rose who is my principal supervisor. Since our first meeting, I have much admired him for his critical and logical views. His comments and clear guidelines have led me to stronger arguments on the subjects studied. From the bottom of my heart, I profoundly appreciate the supervision of Prof. Rose of my research project.

I am also grateful to have been under the co-supervision of Associate Professor Doug McKinnon who is a director of the Centre for Transnational Crime Prevention. Although not focusing in detail upon each issue raised, his overall comments helpfully widened my views. I am especially grateful for his support in the form of arrangements for various social activities during the time I studied in Wollongong.

In addition, I greatly appreciate the help of Mr. Peter Moore with editing my Thesis. As English is not my mother language, I unavoidably made a number of grammatical mistakes and, in certain cases, did not express my views as well as I might. The edition of Mr. Moore meaningfully helps me to have a well-written Thesis in English.

Personally, I could not have spent my time fully on my research but for my dear sisters. While I was away from home, my older and younger sisters kindly looked after our father so that I was able to concentrate on the research. They have also insistently encouraged me to keep going with the work. Their selfless devotion to me is always in my heart. And finally, special thanks are given to some of my friends in Australia: Tracy Wood, Aladine Magareih, Ong Tom and Ba Francie. Their friendship has been truly meaningful to me personally.

TABLE OF CONTENTS

ABSTRACT	ii
ACKNOWLEDGEMENTS	iii
TABLE OF CONTENTS	iv
LIST OF FIGURES	x
1. INTRODUCTION	1
1. 1 Background	1
1. 2 Statement of the Problem	2
1. 3 Research Questions	8
1. 4 Scope and Methodology	10
1. 5 Contributions of the Thesis	13
1. 6 Synopsis of the Thesis	14
2 VIETNAMESE CONTEXT FOR DRUG CONTROL	18
2. 1 General Data	19
2.1.1 Location and Territory	19
2.1.2 Climate	22
2.1.3 Population	23
2. 2 Political System	27
2.2.1 Communist Party	27
2.2.2 Mass Organizations	29
2. 3 State System	30
2.3.1 National Assembly	30
2.3.2 President	31
2.3.3 Government	32
2.3.4 Prime Minister	33
2.3.5 People's Council and People's Committee	34
2.3.6 People's Courts	35
2.3.7 People's Procuracy	36
2. 4 Vietnamese Legal System	36
2.4.1 Overview	36
2.4.2 The 1992 Constitution, amended in 2001	39
2.4.3 Sources of Law	39

2. 5	Economic and Social Changes over the Country	41
2.5.1	Doi Moi Policy - A Turn in the Country's Development	42
2.5.2	Remaining Difficulties and Problems	46
2. 6	Conclusion	47
3	DRUG PROBLEMS IN VIETNAM AND VIETNAM'S RATIFICATION OF THE UN DRUG CONTROL CONVENTIONS	49
3. 1	Drug Problems in Vietnam	50
3.1.1	Historical Overview	50
3.1.2	Drug Cultivation	52
3.1.3	Drug Trafficking	58
3.1.4	Drug Abuse	66
3. 2	Ratification of the Three United Nations Drug Control Conventions	72
4	CONTROLLED SUBSTANCES	79
4. 1	Controlled Substances under the UN Drug Control Conventions	80
4.1.1	Defining the Controlled Substances: Enumerative Method.....	80
4.1.2	Narcotic Drugs under the 1961 Convention.....	83
4.1.3	Psychotropic Substances under the 1971 Convention	86
4.1.4	Substances Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances under the 1988 Convention.....	91
4. 2	Controlled Substances under Vietnamese Legislation.....	95
4.2.1	Defining Controlled Substances: A Combination of Enumerative and Descriptive Methods	96
4.2.2	Definition and Schedules of Narcotic Substances	101
4.2.3	Definition and Schedule of Precursors.....	108
4. 3	Conclusion	110
5	CONTROLS ON LICIT DRUG ACTIVITIES	113
5. 1	Restrictions on the Cultivation of Drug-Producing Plants.....	115
5.1.1	Restrictions on the Cultivation of Drug-Producing Plants under the 1961 Convention	115
5.1.2	Prohibition on the Cultivation of Drug-Producing Plants under Vietnamese Legislation.....	117
5. 2	Quantitative Restrictions in Licit Drug Activities	118

5.2.1	Quantitative Restrictions under the Drug Control Conventions	118
5.2.2	Quantitative Restrictions in Licit Drug Activities under Vietnamese Legislation.....	123
5.3	Control of International Trade in Drugs: Import and Export Authorizations	128
5.3.1	Control of International Trade in Drugs under the Drug Control Conventions	128
5.3.2	Control of International Trade in Drugs under Vietnamese Legislation	131
5.4	Licensing of Licit Drug Activities and Premises	134
5.4.1	Licensing under the Drug Control Conventions	134
5.4.2	Licensing under Vietnamese Legislation	137
5.5	Control on Persons Involved in Licit Drug Activities	140
5.5.1	Control on Persons under the Drug Control Conventions	140
5.5.2	Control on Persons Involved in Licit Drug Activities under Vietnamese Legislation.....	142
5.6	Medical Prescriptions.....	144
5.6.1	Medical Prescriptions under the Drug Control Conventions	144
5.6.2	Medical Prescriptions under Vietnamese Legislation.....	146
5.7	Label Warning.....	147
5.7.1	Label Warning under the Drug Control Conventions.....	147
5.7.2	Label Warning under Vietnamese Legislation.....	148
5.8	Advertisement Limitation	149
5.8.1	Advertisement Limitation under the Drug Control Conventions.....	149
5.8.2	Advertisement Limitation under Vietnamese Legislation	150
5.9	Record Keeping.....	150
5.9.1	Record Keeping under the Drug Control Conventions.....	150
5.9.2	Record Keeping under Vietnamese Legislation.....	152
5.10	Conclusion	154
6	CRIMINALIZATION OF DRUG-RELATED OFFENSES	161
6.1	Drug-Related Offenses.....	162
6.1.1	Overview	162

6.1.2	Supply-Related Offenses.....	165
6.1.3	Consumption-Related Offenses	183
6.1.4	Inchoate and Accessory Offenses	189
6.2	Penalties	193
6.2.1	Penalties under the UN Drug Control Conventions.....	193
6.2.2	Penalties under Vietnamese Legislation	199
6.3	Conclusion	207
7	JURISDICTION AND EXTRADITION.....	216
7.1	Jurisdiction over Drug-Related Offenses.....	217
7.1.1	Jurisdiction over Drug-Related Offenses under the UN Drug Control Conventions	217
7.1.2	Jurisdiction over Drug-Related Offenses under Vietnamese Legislation.....	224
7.2	Extradition of Drug-Related Offenders.....	228
7.2.1	Extradition under the UN Drug Control Conventions	228
7.2.2	Extradition under Vietnamese Legislation.....	235
7.3	Conclusion	242
8	LAW ENFORCEMENT COOPERATION.....	245
8.1	General Obligations	246
8.1.1	General Convention Requirements for Law Enforcement Cooperation 246	
8.1.2	General Commitments of Vietnam	248
8.2	Mutual Legal Assistance.....	249
8.2.1	Mutual Legal Assistance in Accordance with Article 7 of the 1988 Convention.....	249
8.2.2	Confiscation	258
8.2.3	Transfer of Proceedings	268
8.3	Cooperation in Specific Law Enforcement Measures.....	269
8.3.1	Controlled Delivery.....	269
8.3.2	Prevention of the Use of Mail for Illicit Drug Traffic	273
8.4	Conclusion	276
9	SPECIAL ADMINISTRATION FOR DRUG CONTROL.....	278

9.1	Special Administrative Arrangements under the UN Drug Control Conventions	279
9.1.1	Obligations of Parties under the 1961 Convention	279
9.1.2	Obligations of Parties under the 1971 Convention	283
9.1.3	Obligations of Parties under the 1988 Convention	284
9.2	Administrative Arrangements for Drug Control in Vietnam	287
9.2.1	National Authorities Engaged in Drug Control	287
9.2.2	Special Administration for Drug Control.....	303
9.3	Conclusion	309
10	OBLIGATIONS TO FURNISH INFORMATION	315
10.1	Overview	316
10.2	Estimates and Statistics on Quantities of Drugs for Medical and Scientific Purposes.....	324
10.2.1	Estimates and Statistics on Quantities under the UN Drug Control Conventions	324
10.2.2	Estimates and Statistics under Vietnamese Legislation	330
10.3	Furnishing of Other Drug Control Information	333
10.3.1	Annual Report Questionnaire.....	333
10.3.2	Responses by Vietnam to the ARQ and Its Legislation on Drug Statistics	334
10.4	Conclusion	341
11	CONCLUSION	344
11.1	Controlled Substances.....	344
11.2	Controls on Licit Drug Activities.....	345
11.3	Criminalization of Drug-Related Offenses	349
11.3.1	Drug-Related Offenses.....	349
11.3.2	Penalties	352
11.4	Jurisdiction and Extradition	353
11.4.1	Jurisdiction	353
11.4.2	Extradition.....	354
11.5	Law Enforcement Cooperation	355
11.5.1	Mutual Legal Assistance	355

11.5.2	Confiscation	356
11.5.3	Transfer of Proceedings	357
11.5.4	Controlled Delivery.....	358
11.5.5	Prevention of the Use of Mail for Illicit Drug Trafficking	358
11. 6	Special Administration for Drug Control.....	359
11. 7	Submission of Drug Control Information	362
11. 8	Epilogue	364
LIST OF PUBLICATIONS		366
BIBLIOGRAPHY		367

LIST OF FIGURES

<u>Figure 2.1</u> Vietnam's Location	20
<u>Figure 2.2</u> Vietnam's Population Statistics (million persons)	23
<u>Figure 2.3</u> Vietnam's Population Forecast in Fifteen-Year Period 2005-2020	24
<u>Figure 2.4</u> Gross Domestic Product and Gross Domestic Product per Capita from 1995 to 2005 (at present prices).....	43
<u>Figure 3.1</u> Highest Opium Poppy Cultivation Areas in the Years 1985, 1990 and 1992.....	54
<u>Figure 3.2</u> Estimated Cultivation and Production of Opium Poppies in Vietnam (1993-2006).....	57
<u>Figure 3.3</u> Drug-Related Cases and Arrests in Vietnam (1995-2006).....	59
<u>Figure 3.5</u> Registered Drug Abusers in Vietnam (1995 - 2006).....	67
<u>Figure 4.1</u> Controlled Substances under the 1961 Convention.....	85
<u>Figure 4.2</u> Controlled Substances under the 1971 Convention.....	90
<u>Figure 4.3</u> Controlled Substances under the 1988 Convention.....	93
<u>Figure 4.4</u> The List of Vietnamese Legislations Providing Definitions and Schedules of the Nationally Controlled Substances.....	100
<u>Figure 4.5</u> Schedules of Narcotic Substances under Vietnamese Control	104
<u>Figure 4.6</u> Inconsistency between the Definition and Schedules of Narcotic Substances	107
<u>Figure 4.7</u> Substances under the Vietnamese National Control.....	111
<u>Figure 5.1</u> A Brief Summary of the National Controls of Licit Drug Activities	156
<u>Figure 6.1</u> Supply-Related Offenses under the 1988 Convention.....	168
<u>Figure 6.2</u> Drug-Related Crimes and Punishments under the Criminal Code of Vietnam 1999	201
<u>Figure 6.3</u> Penalties Applicable to Drug-Related Offenses in Relation to the Quantities of Drugs	204
<u>Figure 6.4</u> Summary of Drug-Related Offenses under the UN Drug Control Conventions and Responses by the Criminal Code of Vietnam 1999	209
<u>Figure 9.1</u> Organizational Structure of the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution	304

<u>Figure 9.2</u> Coordination authority structure.....	307
<u>Figure 9.3</u> Overall Structure of Vietnam’s Drug Control Administration.....	311
<u>Figure 10.1</u> A Summary of Information to Be Furnished under the UN Drug Control Conventions	317

1. INTRODUCTION

1.1 Background

1.2 Statement of the Problem

1.3 Research Questions

1.4 Scope and Methodology

1.5 Contributions of the Thesis

1.6 Synopsis of the Thesis

1.1 Background

Vietnam lies on the eastern seaboard of the Indochina Peninsula, with a total landmass of 329,297 square kilometres and coastline of 3260 kilometres. It is bordered by China to the north, Laos and Cambodia to the west and the South China Sea to the south. Mountains and hills make up 75% of its total landmass.¹

Enjoying a humid and tropical monsoon climate, Vietnam has abundant rainfall with the average of 2000 millimetres.² The tropical monsoonal climate provides a favourable natural environment for opium poppy growth at an altitude of over 600 metres above sea level.³ Therefore, Vietnam has long faced a history of opium cultivation among ethnic minorities in the uplands and mountainous areas. The origins of the contemporary drug problem in Vietnam are considered to be intermingled with its history of opium cultivation.⁴ Opium is thought to have arrived

¹ See Tong Cuc Thong Ke, *Nien Giam Thong Ke cua Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 2003* (2003)12 [trans: General Statistics Office, *Statistical Yearbook of the Socialist Republic of Vietnam in 2003* (2003)].

² Ngoc Huy Nguyen and Van Tai Ta, *The Le Code: Law in Traditional Vietnam: A Comparative Sino-Vietnamese Legal Study with Historical-Juridical Analysis and Annotations* (1987), 2; Tu Lap Vu, *Vietnam: Geographical Data* (1979) 51-2 and Duc Ngai Truong and Thang Phan (eds), *Viet Nam Huong Toi The Ky XXI* (2000) 15 [trans: Duc Ngai Truong and Thang Phan (eds), *Vietnam Towards the Twenty-First Century* (2000)].

³ Van Hoa Do, *Xac Dinh Mo Hinh Co Cau Cay Trong Thich Hop Tren Dat Doc Vung Cao Mien Nui Phia Bac Gop Phan Bo Sung Cac Giai Phap cho Chuong Trinh Thay The Cay Thuoc Phien* (D Phil thesis, Vien Khoa Hoc Ky Thuat Nong Nghiep Vietnam, 1996) 47 and 120 [trans: Van Hoa Do, *Finding a Suitable Cultivation Structure for Northern Mountainous and Upland Areas as a Contribution to the Opium Poppy Alternatives Program* (D Phil Thesis, Technical Agriculture Institution, 1996)].

⁴ *Ethnic Minorities, Drug Use & Harm in the Highlands of Northern Viet Nam - A Contextual Analysis of the Situation in Six Communes from Son La, Lai Chau, and Lao Cai, July 2003* (2003) United Nations Office on Drugs and Crime
<http://www.unodc.org:80/pdf/vietnam/vietnam_ethnic_minorities_report.pdf> at 18 August 2004

in Vietnam via Laos in between the years 1600 and 1665.⁵ The ethnic populations use opium as an effective medicine against pains and illness, a stimulant in their folk festivals and as a substance to alleviate hunger.⁶ The tradition of opium poppy cultivation and opium smoking has led to a very high rate of abuse in the ethnic communes.⁷

1.2 Statement of the Problem

Located in close proximity to the Golden Triangle (Myanmar, Laos, Thailand) that is one of the major opium sources of the world, and being a neighbour of Cambodia which has become an important source of cannabis for global illicit markets,⁸ Vietnam has been reported as an important drug transit country.⁹ Its common border with Laos, which stretches 2067 kilometres with many small roads and tracks running through low hills, has been used as an important gateway for illicit drugs smuggled into the country.¹⁰ Heroin from the Golden Triangle and other synthetic

and United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, *Excerpt from: International Narcotics Control Strategy Report, March 2004, Vietnam* United Department of State International Information Programs <<http://usinfo.state.gov/regional/ea/vietnam/narc2004/html>> at 17 August 2004.

⁵ Phong Hoa Nguyen and Ngoc Hung Dang, *Ma Tuy va nhung Van De ve Cong Tac Kiem Soat Ma Tuy* (1994) 90 [trans: Phong Hoa Nguyen and Ngoc Hung Dang, *Narcotics and Matters Concerning Narcotics Control* (1994)].

⁶ Thi Mai Nga Nguyen and Quoc Huynh Pham, *Nhung Van De Co Ban trong Cong Tac Kiem Sat Dieu Tra va Kiem Sat Xet Xu cac Toi Pham ve Ma Tuy o Viet Nam* (2003) 37 [trans: Thi Mai Nga Nguyen and Quoc Huynh Pham, *Basic Issues on Supervision of Investigations and Trials for Drug-Related Crimes* (2003)] and Hung Vuong Vu, 'Luc Luong Canh Sat voi Cong Tac Phong, Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Vietnam va Phap, Hanoi, Vietnam, 1998) 46 [trans: Hung Vuong Vu, 'Police Force in the Combat against Narcotic Substances in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

⁷ See Van Du Nguyen, 'Mot So Van De ve Phong Chong Ma Tuy trong Vung Thuoc Nhiem Vu cua Bo Doi Bien Phong' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy giua Viet Nam va Phap, Hanoi, Vietnam, June 1998) 37 [trans: Van Du Nguyen, 'Some Issues on the Prevention and Suppression of Narcotics in Areas Supervised by Border Guards' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

⁸ International Narcotics Control Board, *Report of the International Narcotics Control Board for 1998* (1999) [para 315] <http://www.incb.org/incb/en/annual_report_1998_chapter3.html#IIC1> at 18 August 2005.

⁹ See Richard Clutterbuck, *Drugs, Crime and Corruption* (1995) 86, Mandy Bentham, *The Politics of Drug Control* (1998) 40 and United Nations Office on Drugs and Crime Vietnam, *Vietnam: Country Profile, 2003* (2003) United Nations Office on Drugs and Crime [9] <http://www.unodc.org/pdf/vietnam/country_profile_vietnam.pdf> at 18 December 2004.

¹⁰ See, eg, United Nations Offices on Drugs and Crime Vietnam, above n 9, 24; United States Department of Justice, *Drug Intelligence Brief - the Drug Situation in Vietnam, November 2001* United States Department of Justice <<http://www.usdoj.gov/dea/pubs/intel/02001/02001p.html>> at 13 November 2004 and Hoang Tran, 'Bo Doi Bien Phong Ngan Chan "Dong Chay" Ma Tuy qua Bien

drugs are also brought to Vietnam overland through different points along its weakly controlled borders with China and Cambodia¹¹ and can be further shipped to America, Australia and other European countries.¹² Drug trafficking has significantly increased in Vietnam since it applied an 'Open Door' policy, with a greater international and regional economic integration.¹³

The growing availability of drugs smuggled from its neighbours has brought about an alarming increase in drug abuse in the whole country, and especially among its youth. Drug abusers under thirty make up 70% of the total, and in some cases drug abusers are even below the age of ten.¹⁴ According to the 2006 statistics, Vietnam has 160,226 registered drug addicts.¹⁵ The proportion of young people using drugs in

Gioi' (2004) 12 *Ban Tin Phong Chong Ma Tuy* 19, 19 [trans: Hoang Tran, 'Border Guards in the Combat against "Drug Flows" across National Borders' (2004) 12 *Bulletin on Narcotics Prevention and Suppression* 19].

¹¹ Quang Vinh Vu, 'Tinh Hinh Chung ve Cong Tac Kiem Soat Ma Tuy va Van De Phong Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 3 [trans: Quang Vinh Vu, 'General Situation on Narcotics Control and the Issue of Narcotics Prevention and Suppression in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]; Xuan Yem Nguyen, *Luat Phong Chong Ma Tuy va Phong Chong Ma Tuy trong Nha Truong* (2004) 781 [trans: Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions* (2004)]; Van Luyen Tran, 'Dac Tinh Hinh Su cua Cac Toi Tang Tru, Van Chuyen, Mua Ban Trai Phep cac Chat Ma Tuy' (1998) 9 *Toa An Nhan Dan* 5, 8 [trans: Van Luyen Tran, 'Criminal Characteristics of the Offense of Illegal Stockpiling, Transporting and Trading of Narcotic Substances' (1998) 9 *People's Court* 5] and United Nations Offices on Drugs and Crime Vietnam, above n 9, 24-5.

¹² See, e.g., International Narcotics Control Board, *Report of the International Narcotics Control Board for 2005* (2006) [para 473] <http://www.incb.org/pdf/e/ar/2005/incb_report_2005_full.pdf> at 20 March 2006 and International Narcotics Control Board, *Report of the International Narcotics Control Board for 2001* (2002) [para 391] <http://www.incb.org/incb/annual_report_2001.html> at 18 August 2005.

¹³ The more detailed picture is provided in Section 3.1.3 of Chapter 3. See also Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 6, 38 and Cong Son Nguyen, 'Tinh Hinh va Ket Qua Cong Tac Phong Chong Ma Tuy 6 Thang Dau Nam 2006 va Mot So Nhiem Vu Trong Tam trong Thoi Gian Toi' (2006) 8 *Ban Tin Phong Chong Ma Tuy* 2, 5-6 [trans: Cong Son Nguyen, 'The Situation and Results of the Work on Drug Prevention and Suppression in the First Six Months of 2006 and Main Tasks in the Coming Year' (2006) 8 *Bulletin on Narcotics Prevention and Suppression* 2].

¹⁴ See Huu Lam Nguyen, 'Tinh Trang Nghien Ma Tuy va cac Bien Phap Cai Nghien Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 98 [trans: Huu Lam Nguyen, 'The Situation of Drug Abuse and Measures for Drug Abuse Treatment in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

¹⁵ Co Quan Thuong Truc Phong Chong Ma Tuy Cua Uy Ban Quoc Gia Phong Chong AIDS, Phong Chong Ma Tuy va Mai Dam, 'Bao Cao Tinh Hinh va Ket Qua 5 Nam Thi Hanh Luat Phong, Chong Ma Tuy' (304/2006/BCA(VPU), 2006) 3 [trans: Standing Office for Drug Control of the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution, 'Report on the Five-Year Implementation of the Law on Narcotics Prevention and Suppression' (35/2006/BCA(VPU), 2006)].

urban areas has increased significantly.¹⁶ Thus, drug abuse that was mainly a rural phenomenon relating to opium smoking habits has now spread to urban areas and poses serious risks to Vietnam's younger generation.

Drug cultivation, trafficking and abuse have adverse affects on the country. These include corruption, damage to social values, threats to the happiness of families and youth degeneracy.¹⁷ The Government of Vietnam is deeply aware of these impacts and of the need for international cooperative action to combat illicit drugs.¹⁸ In 1997, it ratified and became a Party to the three United Nations Drug Control Conventions (DCCs) that are currently in force, namely the *Single Convention on Narcotic Drugs* (amended by the 1972 Protocol), opened for signature 30 March 1961, entered into force 13 December 1964 (hereinafter cited as '1961 Convention'); *Convention on Psychotropic Substances*, opened for signature 21 February 1971, entered into force 16 August 1976 (hereinafter cited as '1971 Convention'), and *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988, entered into force 11 November 1990 (hereinafter cited as '1988 Convention'). Stepping into the international frontline against illicit drugs, Vietnam has benefited from various types of support, such as training, technical assistance and other law enforcement cooperation. However, on becoming a Party to the Conventions, it also undertook numerous international obligations.

The 1981 and 1982 DCC Working Groups reported that developing countries are sometimes unable to meet their treaty obligations because they have insufficient

¹⁶ United Nations Offices on Drugs and Crime Vietnam, above n 9, 28.

¹⁷ See the preamble of the *Nghi quyết 06/CP về tăng cường chỉ đạo công tác phòng, chống và kiểm soát ma túy 1993* (Chính Phủ) [trans: *Directive 06/BCT-TW on Enhancing Directions on Drug Prevention and Suppression 1996* (Political Bureau, Communist Party)] and Xuan Yem Nguyen and Quang Vinh Vu, *Nhung Van De Co Ban ve Cong Tac Phong Chong Ma Tuy* (2002) 22 and 26-7 [trans: Xuan Yem Nguyen and Quang Vinh Vu, *Basic Issues on the Prevention of Drug-Related Crimes* (2002)].

¹⁸ In the year 1999, the Prime Minister Phan Van Khai elevated counter-narcotics to Vietnam's second highest domestic priority, after poverty reduction. See Minh Huong Le, 'Ket Qua Thuc Hien Chuong Trinh Hanh Dong Phong Chong Ma Tuy Giai Doan 1998 - 2000 va Phuong Huong Trien Khai Chuong Trinh Hanh Dong Phong Chong Ma Tuy Giai Doan 2001 - 2005' (2001) 4 *Ban Tin Phong Chong Ma Tuy* 6, 6 [trans: Minh Huong Le, 'Results of the Action Plans on Narcotics Prevention and Suppression in the Three-Year Period from 1998 to 2000, and Orientation on the Deployment of the Action Plan in the Next Five-Year Period from 2001 to 2005' (2001) 4 *Bulletin on Narcotics Prevention and Suppression* 6].

financial resources and few trained personnel.¹⁹ The international drug control system is apparently predicated on State cooperation and its effectiveness depends greatly upon the enactment and enforcement of corresponding national legislation. Thus, the International Narcotic Control Board stated in its report:

It is particularly important for national drug control legislation to be continuously reviewed and evaluated in a systematic manner in order to determine whether the provisions of the international drug control treaties are being implemented by Government.²⁰

After suffering a long war and since gaining reunification in 1975, Vietnam has in recent decades rebuilt its legal system. Like other developing countries, it continues to confront shortages in financial and human resources in implementing its national drug control regime.²¹ In addition, being a new-comer to the DCCs, it lacks experience with DCC provisions. Against such circumstances, an investigation of how well Vietnamese legislation complies with DCC provisions and how Vietnam can improve its compliance is important. These questions, however, have not been previously addressed. There exists a gap in domestic literature studying national drug control legislation, as none of the Vietnamese literature in this field has explored the compliance of national legislation with the DCC standards, and a gap exists also in the international literature.

Existing Literature on Vietnamese Drug Control Regime

Many Vietnamese scholars have made efforts to study different issues of national drug control. For example, Professor Xuan Yem Nguyen, a leading researcher in this field, has examined the trends in drug trafficking and abuse in the country over recent times and has analyzed successes as well as shortcomings in the operation of different law enforcement authorities involved in combating illicit drugs. He has also

¹⁹ See International Working Group on the Single Convention on Narcotic Drugs, *Report of the International Working Group on the Single Convention on Narcotic Drugs, 1961 - September 20 - 24, 1982* (1983), 10 and International Working Group on the Convention on Psychotropic Substances, *Report of the "International Working Group on the Convention on Psychotropic Substances, 1971" - September 8 -12, 1980* (1981), 16.

²⁰ International Narcotics Control Board, *Effectiveness of the International Drug Control Treaties: Supplement to the Report of the International Narcotics Control Board for 1994* (1995), 21.

²¹ See, eg, National Committee, above n 15, 13 and Standing Office for Drug Control, above n 15, 3.

analyzed certain gaps in national drug control in terms of legislative and law enforcement actions. His related publications include ‘Organized Crimes, the Mafia and Globalization of Crimes’ (2003), ‘Prostitution, Narcotics and Gambling: Crimes at the Present Time’ (2003), ‘Basic Issues on the Prevention of Drug-Related Crimes’ (2002),²² and ‘Narcotics in Vietnam at the Present Time: The Current State, Reasons and Solutions’ (2002). As a criminologist, in the books entitled ‘Modern Criminology and Crime Prevention’ (2001) and ‘Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions’ (2004), he has focused on the characteristics of organized drug-related crimes, and on drug prevention in general and, especially, in public education units.

Many other scholars, for instance Minh Duc Nguyen, Van Luyen Tran, Van Hien Nguyen, Minh Tuyen Pham and Phong Hoa Nguyen, have studied in depth the physical elements (*actus reus*) and mental elements (*mens rea*) of drug-related offenses under Vietnamese criminal law. They have pointed out the existing shortcomings in the law and provided several solutions. Publications of Minh Duc Nguyen in this field are ‘Differentiating between Administrative Violations and Drug-Related Crimes’ (2003), ‘Some Recommendations for Guiding the Application of the Provisions of Several Articles on Drug-Related Crimes under the Criminal Code 1999’ (2000) and ‘The Need for a New Joint Circular on the Application of Several Articles in Chapter “Drug-Related Crimes”’ (2000). Particularly, in his PhD research on ‘Improving Criminal Legal Framework Dealing with Drug-Related Crimes’ (2003), Minh Duc Nguyen has analyzed national legislation in relation to drug-related crimes both before and after Vietnam gained its reunification.

Van Luyen Tran has also specialized in drug-related crimes in the book entitled ‘Criminal Liability for Drug-Related Crimes’ (1998) and a paper on ‘Criminal Characteristics of the Offense of Illegal Stockpiling, Transporting and Trading of Narcotic Substances’ (1998). His paper entitled ‘The Issue of Specifying the Quantity of Narcotic Substances Involved in Drug-Related Crimes under the Law Amending Some Articles of the Criminal Code 1985’ (1998) analyzed shortcomings of the *Criminal Code of Vietnam 1985* in defining the quantities of narcotics proportional to

²² Quang Vinh Vu is a co-author of this paper.

sentencing thresholds. Also studying the proportional relationship between the quantity of narcotics involved and punishment, Minh Tuyen Pham has produced two papers, namely 'The Issue of Specifying the Quantity of Narcotic Substances Involved in Drug-Related Crimes under the Criminal Code 1999' (2003) and 'Criminal Liability for Drug-Related Crimes under the Criminal Code 1999' (2003). Relevant publications of Van Hien Nguyen in this field include papers on 'Some Issues on Criminal Liability for Drug-Related Crimes under Vietnamese Law and Regulations since 1945 to the Present' (1998) and 'The Practical Application and the Need for Amendment of Articles 96a and 203 of the Criminal Code 1985' (1995).

In the area of criminal procedure, Phong Hoa Nguyen is known for a book on 'Drug-Related Crimes: Criminal Characteristics, Legal Constituents, Measures to Discover and to Investigate' (1998). Focusing on investigations and prosecutions of drug-related crimes, Thi Nga Mai Nguyen and Quoc Huynh Pham, in their book 'Basic Issues on Supervision over Investigations and Trials for Drug-Related Crimes' (2003), have examined general features of drug-related crimes in the country and have analyzed particular features relating to investigations and prosecutions of drug-related crimes. Another author, Quang Vinh Vu, has also focused on law enforcement against drug-related offenses. His PhD research, which is entitled 'People's Police and Drug-Related Crime Prevention' (2003), analyzes duties of Anti-Narcotics Police in the suppression of drug-related crimes and their contributions to this fight. He has pointed out certain shortcomings in national drug control legislation and weaknesses in the organization of Anti-Narcotics Police and, then, made a number of recommendations for enhancements. Ngoc Hung Dang, in his book on 'Matters Concerning Precursor Control' (2002) and a paper on 'Precursors and Precursor Control in Vietnam' (2004), has studied specific issues relating to national control of precursors.

The papers and publications mentioned, however, focus principally on national drug control from a domestic perspective. Innovations in the national legislation are evident in the attempts of Vietnam to comply with the DCC provisions. However, there is not yet a comprehensive study of Vietnam's compliance of with its convention obligations. No papers or publications undertake a comparative study of

Vietnamese legislation in relation to its DCC obligations. Attempting to cover that gap and aiming to help to bring national drug control legislation in line with international standards, this Thesis makes an original contribution to the literature in this field with an assessment of the ‘Legislative Implementation by Vietnam of its Obligations under the United Nations Drug Control Conventions’.

1.3 Research Questions

The following question is central to this research project:

How does Vietnamese legislation comply with the DCC provisions and how can Vietnam improve its compliance in particular and its domestic legal framework for drug control in general?

Under the DCCs, Parties are required to take appropriate measures to control both licit and illicit drug activities in their countries for the ultimate purpose of limiting the availability of drugs of abuse to medical and scientific needs. With respect to licit drug activities, Parties are obliged first to specify substances to be controlled and, second, to impose various measures upon licit activities relating to them. With respect to illicit drug activities, the DCCs oblige Parties to establish unlawful drug-related conduct as criminal offenses, to enforce their criminal law and to cooperate with others in law enforcement. Additionally, for the purpose of effective coordination of national drug control work as well as international cooperation, Parties are required to establish and to maintain a special administration for drug control and to furnish drug control information and reports to the international drug control bodies, i.e. the Commission on Narcotic Drugs and International Narcotics Control Board.

The DCC obligations can be grouped into seven areas: (1) specifying controlled substances, (2) controlling licit drug activities, (3) criminalizing drug-related offenses, (4) establishing jurisdiction over drug-related offenses and cooperating in extradition, (5) law enforcement cooperation, (6) maintaining special administration for drug control, and (7) furnishing information and reports to international drug control bodies.

With respect to each of the seven drug control areas of DCC obligations, this Thesis addresses a number of sub-questions. They are:

1. *Specifying Controlled Substances:*

How does Vietnamese legislation specify substances prescribed by the DCCs as under control? Does Vietnam make any reservation or exemption concerning the whole territory or in one of its regions? Does Vietnam extend its national control to other substances that are not enumerated under the DCCs? Is any further enhancement to the domestic law of Vietnam in this field needed?

2. *Controls on Licit Drug Activities:*

Does Vietnam apply the DCC-required controls over the cultivation of narcotics plants in its territory? How does Vietnam regulate the operation of its licit drug economy, including drug manufacture and trade, including import and export, distribution and possession? Does it apply control measures specified under the DCCs? Are there any shortcomings in domestic drug control laws and regulations in this area?

3. *Criminalization of Drug-Related Offenses:*

Does Vietnamese law establish unlawful drug-related conduct as criminal offenses? Is the existing national criminalization in line with the convention standards? What types and scales of penalties are applicable to drug-related conduct if they are treated as criminal offenses? Has the domestic law of Vietnam adequately transformed the DCC provisions on offenses, penalties and aggravating factors? Could it be enhanced?

4. *Establishment of Jurisdiction over Drug-Related Offenses and Extradition of Drug-Related Offenders:*

Does the domestic law of Vietnam provide the necessary legal basis for its local authorities to assume jurisdiction over drug-related offenses? Which grounds are invoked for the establishment of its criminal jurisdiction over those offenses? Is Vietnamese criminal law in this field in line with the convention standards? Does Vietnam cooperate in the extradition of drug-

related offenders as required by the DCCs? Which grounds, conditions and processes are applied for granting or refusing extradition? Should any revision of the national legislation be made to implement the DCC provisions?

5. Law Enforcement Cooperation:

Does the domestic law of Vietnam provide for the required cooperation with other countries and international organisations in drug control law enforcement? Is there any specific legislation to implement the convention requirements for law enforcement cooperation? What are the strengths and weakness of the domestic law in this field?

6. Special Drug Control Administration:

How does Vietnamese legislation regulate the national administrative arrangements for drug control? Which national authorities are charged with drug control functions? Is the present legal framework adequate in respect of special administration for drug control as required by the DCCs? Should any amendments be introduced?

7. Furnishing Information and Reports to the International Drug Control Bodies:

Has the national drug control law of Vietnam regulated the gathering of drug control statistics to enable it to perform its DCC obligations to furnish prescribed information? How can the challenges of furnishing information be solved from the point of legislative actions?

The answers to these sub-questions will, cumulatively, provide an answer to the central research question of the Thesis, i.e. ‘How does Vietnamese legislation comply with the DCC provisions and how can Vietnam improve its compliance in particular and its domestic legal framework for drug control in general?’.

1.4 Scope and Methodology

Drug control is multifaceted. Social, political, financial measures and drug abuse treatment are important aspects of the capacity to implement effectively international drug control standards. For example, the DCCs set out certain requirements

concerning medical treatment for drug abusers. This Thesis, however, explores only the legislative implementation by Vietnam of its DCC obligations to establish and maintain a national mechanism for control of licit and illicit drug activities, i.e. it examines Vietnamese drug control legislation to implement the DCC obligations, aiming to limit the availability of drugs of abuse exclusively to medical and scientific purposes. Some of those obligations entail explicit requirements for national legislative measures, such as the obligation to criminalize drug-related offenses or to establish jurisdiction over them. Others, in contrast, do not explicitly require legislative measures and, therefore, Parties may, at their option, undertake legislative action. The transformation of the international obligations into legislative provisions in those cases varies with each different domestic legal culture. Vietnam, with a culture in which legislative instruments are widely used and have a detailed hierarchy, has taken numerous legislative actions to perform its DCC obligations. Therefore, in examining Vietnamese legislative implementation of the DCCs, this Thesis addresses also those DCC provisions that do not explicitly require legislative measures but for which Vietnam has created a domestic legal framework. For example, the DCCs require Parties each to establish a special administration for drug control. In response, many Vietnamese legal instruments specify the drug control duties of national authorities and, particularly, of authorities responsible for coordination duties. Another example is that, in response to the DCC requirement for Parties to furnish certain information on national drug control, a number of Vietnamese legal documents regulate the issue of drug statistics. This research includes the analysis of those national regulations.

Further, while comparing Vietnamese laws with the DCC provisions, this Thesis not only focuses on national compliance with the international standards but, where relevant, also points out and analyzes domestic provisions that go beyond the DCC requirements.

In addition, the DCCs, like a number of other international agreements, contain certain ‘soft law rules’, which aim at encouraging the contracting Parties to take into account the possibility of implementation. For instance, the 1988 Convention encourages its Parties to control under licence licit activities relating to precursors

and essential chemicals that are frequently used in illicit drug activities.²³ These are not strict obligations. Nevertheless, where legislative instruments are used, this Thesis attempts to compare and to analyse Vietnamese responses, otherwise it principally focuses on strict obligations, in relation to which implementation failure definitely affects the achievement of the DCC objectives.

To achieve its objectives, this Thesis first studies the DCC requirements for national drug control and then compares Vietnamese drug control legislation with them. Thus, the international provisions laid down in the DCCs are used as the benchmarks and framework for the examination of Vietnamese legislative implementation. The research, therefore, is composed of two important elements.

First, the Author exhaustively studies the international drug control regime, focusing on the three DCCs that are currently in force. Related literature in this field is reviewed, using the content analysis and comparative methods. This stage of study aims at building a theoretical background, an understanding and critical appreciation of the existing international drug control regime, with especial focus on obligations of the contracting Parties under the DCCs.

Second, building on that theoretical base, the research is used to develop a specific case study of drug control legislation in Vietnam. The following methods are applied:

- (i) Data analysis is used to interpret statistical information to discover the pattern and trend of drug abuse in the country, providing a contextual background for the understanding of legal aspects of drug control. Statistical information is drawn from official data produced by Governmental authorities and the international drug control bodies.
- (ii) Content analysis is employed systematically to examine the particular body of Vietnamese drug control laws and regulations.

²³ See *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988, art 12(8)(b)(ii) (entered into force 11 November 1990).

The comparative method plays a significant role in this Thesis. To contrast Vietnamese domestic legislation with international standards enables the discovery of relative strengths and weaknesses in the Vietnamese legal framework for drug control in implementing those standards. These findings allow the Author to make recommendations for possible improvements of the national drug control legislation.

1.5 Contributions of the Thesis

This Thesis seeks to make a meaningful contribution to the study of national drug control laws of Vietnam and to the international study of drug control as a whole.

At the national level, this study is the first intensive research on Vietnamese laws that implement international drug control obligations. A thorough analysis and comparison of domestic law with the DCCs enriches the literature of this area and provides an in-depth knowledge of the national drug control regime. It contributes to a new understanding of Vietnamese successes and shortcomings in drug control laws and, particularly, in the national compliance with the DCCs. This study also seeks to find opportunities for enhancing Vietnam's compliance with the DCCs. In addition, where Vietnamese legislation on drug control goes beyond the international requirements but shortcomings exist, this Thesis also makes recommendations for improvement with a view to strengthening the national legal framework for drug control as a whole.

At the international level, the success of the international drug control regime depends heavily on DCC implementation by individual Parties. International obligations are carried out by Parties in accordance with their national legislation. This case study, which assesses the transformation of the DCC provisions into national law, provides a model for similar studies concerning the examination of national legislative compliance with the DCC standards. Its analytical structure, which groups into seven topic areas the DCC obligations of Parties to establish and maintain mechanisms for control of licit and illicit drug activities, has been tested and has proved to be useful, in particular, for similar civil law legal systems found in Indo-China.

Further, the research identifies areas in which Vietnam faces its greatest difficulties in the DCC implementation. Those areas, such as mutual legal assistance, are likely to arise also in other countries in the region and, thus, indicate priorities for capacity building. In addition, Vietnamese instances of practice that go beyond the DCC requirements could be instructive in UN Commentaries as a reference for other jurisdictions.

1. 6 Synopsis of the Thesis

This Thesis is structured into eleven Chapters. Following the Introduction, Chapter 2, entitled ‘Vietnamese Context for Drug Control’, introduces a profile of Vietnam, focusing on characteristics relating to drug issues. It describes geographical and climatic features that have facilitated drug cultivation and trafficking in the country. As national drug control systems vary from country to country due to their different geographical, political, legal, economic and social features, this Chapter provides an overview of the political, government and legal systems of Vietnam in relation to drug control. Economic and social changes since *Doi Moi* (‘renovation’) in the country are summarized, providing a contextual background of the new economic life that is considered to have a connection with the current trends of drug abuse and trafficking.

In Chapter 3, drug problems exacerbated in Vietnam since *Doi Moi*, i.e. drug cultivation, trafficking and abuse, come into view. Facing those problems and being deeply aware of the need for international cooperation in the fight against illicit drugs were reasons for Vietnam to ratify the DCCs. Thus, in the second part of this Chapter, the historical context in which Vietnam undertook definite steps towards international cooperation in drug control is described.

Chapters 4 to 10 of the Thesis examine in detail the implementation by Vietnam of its obligations under the DCCs. Each chapter focuses on a specific area of drug control obligations and, as each area includes a number of issues, each chapter is further structured into sections. Within each section, the international provisions under the three DCCs are first analyzed, starting with the 1961 Convention, followed by the 1971 Convention and completed with the 1988 Convention. Then, the

corresponding Vietnamese drug control legislation is examined and compared with the convention provisions. On the whole, this structure is consistently followed. However, some minor differences are found in Chapter 4 on ‘Controlled Substances’ and Chapter 9 on ‘Special Administration for Drug Control’. In these Chapters, issue-based subsections are not used. The whole first section analyzes the DCC provisions, and the entire second section examines corresponding Vietnamese drug control legislation. This structure best suits an analysis of national compliance because, in identifying controlled substances, Vietnamese legislation does not differentiate between narcotic drugs and psychotropic substances but lumps them together according to their level of risk of abuse. Similarly, regarding drug control administration, Vietnam does not maintain separate administrative arrangements for controls of narcotic drugs, psychotropic substances and precursors but, instead employs a single national administrative system for drug control.

The control of licit drug activities commences with the specification of controlled substances. As a consequence, Chapter 4 analyzes and compares the ranges of substances that fall under the international and national controls. The first Section analyzes the international controlled substances, including the enumerative method used in the three DCCs, Schedules of narcotic drugs and psychotropic substances under the *1961* and *1971 Conventions* and Tables of precursors and essential chemicals under the *1988 Convention*. The second Section examines nationally controlled substances. It analyzes a different dual approach, taken by Vietnamese legislation, to the definition of controlled substances. The national law provides the lists of controlled substances together with their conceptual definition, i.e. a combination of enumerative and descriptive methods. It also lumps narcotic drugs together with psychotropic substances to simplify the number of national Schedules and lumps two convention Tables of substances frequently used in illicit drug manufacture into one national Schedule.

After defining substances to be controlled, it is essential that various control measures are applied to them. Chapter 5 analyzes control measures that the DCCs require their Parties to apply in managing their licit drug economy for the purpose of ensuring that controlled drugs are available exclusively for medical and scientific

needs. By analyzing and comparing domestic related laws and regulations with the convention requirements, this Chapter points out strengths and weaknesses in Vietnamese compliance with the DCC standards. Due to the importance of the subject matter, this Chapter is one of the most important parts of the research.

The mechanism for control of illicit drug activities that consolidates the mechanism for control of licit drug activities obliges the convention signatories to establish unlawful drug-related conduct as criminal offenses. Thus, Chapter 6, which is entitled ‘Criminalization of Drug-Related Offenses’, analyzes the penal provisions of the DCCs and responses by Vietnamese criminal law. This Chapter points out strengths in current domestic law in respect of its compliance with international standards as well as its additional criminalization that goes beyond the DCC requirements. It also specifies weaknesses in Vietnamese criminal law and makes recommendations for its enhancement. As the criminalization of drug-related offenses lies at the heart of the mechanism for controlling illicit drug activities, this Chapter is also one of the most important parts of the Thesis.

To ensure that drug traffickers cannot escape punishment, it is necessary that Parties exercise jurisdiction over drug-related offenses. If they do not exercise jurisdiction over an offender, it is important that they provide cooperation in extradition. Chapter 7 focuses on two related issues, i.e. jurisdiction over and extradition of drug-related offenders. First, it examines the DCC provisions on jurisdiction over territorial and extra-territorial drug-related offenses and Vietnamese transformation. Second, it analyzes extradition provisions under the DCCs and reasons relating to legal aspects of Vietnam’s reservation in this field.

Illicit drug trafficking goes beyond national physical boundaries, so that international cooperation in law enforcement is significant. The DCCs require Parties to cooperate closely with each other for effective law enforcement. Chapter 8 exhaustively examines the convention requirements and legislative responses by Vietnam with respect to mutual legal assistance, confiscation, transfer of proceedings, the use of controlled delivery technique and prevention of the use of mail for illicit drug trafficking.

In most countries, many different authorities are involved in drug control. Therefore, to ensure effective coordination among them, the DCCs require Parties to establish and to maintain a special national administration for drug control. Chapter 9 focuses on the Vietnamese legal framework for special administrative arrangements for drug control. In the first Section, the DCC requirements are described and, in the second Section, Vietnamese legislation that specifies the legal duties of various State authorities charged with drug control is examined to achieve a necessary understanding of the national administrative arrangements for drug control. Then, against that background, domestic regulations on the composition and functions of a body responsible for coordination of the drug control work over the whole country are analyzed.

To oversee the compliance of the Parties and to monitor drug administration all over the world, the DCCs oblige their Parties to furnish to the International Narcotics Control Board estimates of and statistics on quantities of drugs needed for medical and scientific purposes, and to submit to the Commission on Narcotic Drugs reports on the implementation of the Conventions as well as other drug control information. Chapter 10 analyzes domestic legislation relating to the implementation by Vietnam of its DCC obligations. The objectives of this Chapter are to identify successes and shortcomings in its compliance and to seek identify possible improvements to the relevant national legislation.

The Thesis concludes with Chapter 11, which provides an overall compliance assessment of the Vietnamese drug control legal framework in relation to the international standards. It also summarizes the strengths and weaknesses in those Vietnamese drug control regulations that go beyond the DCC requirements. Importantly, it concludes with recommendations aimed at consolidating and improving Vietnamese compliance with DCC standards and the national legal framework for drug control as a whole.

2 VIETNAMESE CONTEXT FOR DRUG CONTROL

2.1. General Data

2.1.1. Location and Territory

2.1.2. Climate

2.1.3. Population

2.2. Political System

2.2.1. Communist Party

2.2.2. Mass Organization

2.3. State System

2.3.1. National Assembly

2.3.2. President

2.3.3. Government

2.3.4. Prime Minister

2.3.5. People's Council and People's Committee

2.3.6. People's Procuracy

2.4. Legal System

2.4.1. Overview

2.4.2. The 1992 Constitution, amended in 2001

2.4.3. Sources of Law

2.5. Economic and Social Changes over the Country

2.5.1. Doi Moi Policy – A Turn in the Country's Development

2.5.2. Remaining Difficulties and Problems

2.6. Conclusion

Although drug abuse and trafficking, nowadays, appear to be global issues, drug control mechanisms and measures differ considerably from country to country due to varying geographical, political, legal, economic and social features. The problem of drug cultivation, trafficking and abuse in Vietnam is influenced by its geographical features, and interrelates with other national socio-economic issues. Drug control in general, and Vietnam's implementation of United Nations Drug Control Conventions (DCCs) in particular, depend upon government policies, regulations and law

enforcement. In this Chapter a profile of Vietnam, focusing on characteristics relating to drug issues in the country, is described. Geographical and climatic data that relate to drug cultivation and trafficking, and a brief outline of Vietnam's political, State and legal systems in relation to drug control are analysed. Finally, economic and social changes in the country since *Doi Moi* 'Renovation'¹ are summarized to provide a background for the new life that is considered as having a connection to the current trend towards drug abuse and trafficking in the country.

2.1 General Data

2.1.1 Location and Territory

Vietnam is an S-shaped country, with two large ends and a narrow middle, with a north-to-south distance of 1650 kilometers. The widest place is approximately 500 kilometers, while the narrowest is about 50 kilometers.²

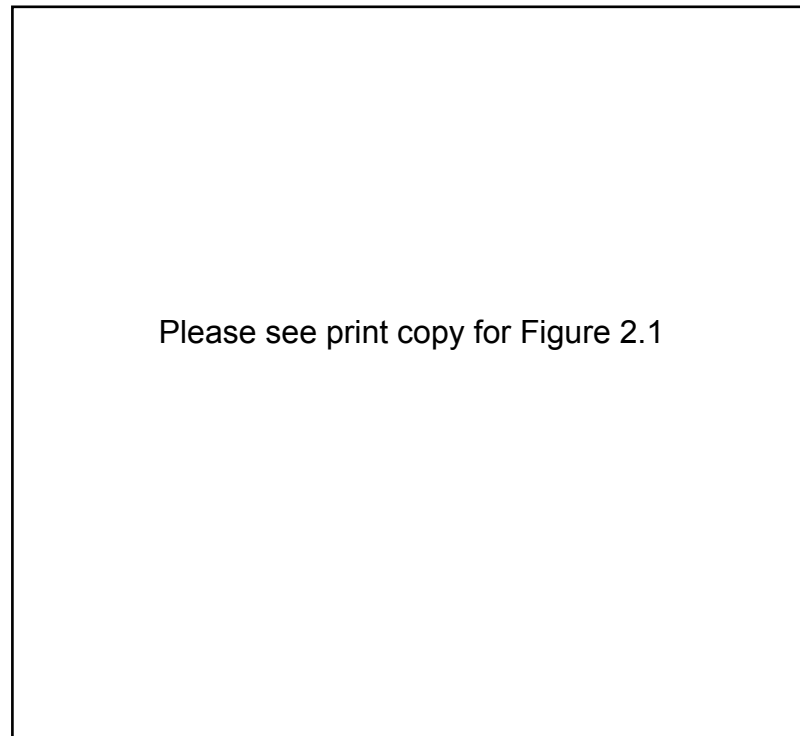
The northern boundary between Vietnam and China, with a length of 1400 kilometers, is principally based on natural mountains and rivers. Its common border with Laos is 2067 kilometers in length, defined by the Truong Son mountain range (or Phuluong in the Laotian language). The mountainous areas between the two countries are naturally divided into many parts by relatively low hills. Employing these geographical features, several important traffic routes have developed to connect the Mekong Valley located inside Laos with some of Vietnam's population centers. Its southwest border with Cambodia is 1080 kilometers long, stretching from the south-west of Cambodia to the middle of Vietnam.³

¹ These are the reforms initiated by the Communist Party in 1986 to transform Vietnam's centrally-planned economy to a market economy under socialist directions.

² See Van Dan Tran et al, *Vietnam: My Homeland* (1989) 8.

³ See Thong Le, Van Phu Nguyen and Minh Tue Nguyen, *Dia Ly Kinh Te Xa Hoi Viet Nam* (2004) 10 [trans: Thong Le, Van Phu Nguyen and Minh Tue Nguyen, *Vietnam's Economic and Social Geography* (2004)].

Figure 2.1 Vietnam's Location



Due to its elongated shape, the inland borders between Vietnam and its neighbours are relatively long. The north and northeast borders are mainly based on formidable mountains and rivers, which bring about difficulties in cross-border control. Moreover, thousands of cross-border roads and tracks via thick jungles and high mountains, used by local people inhabiting in the borderline areas, lead to complications for border surveillance in general and control of illicit drugs movement in particular.⁴

⁴ See, eg, Xuan Yem Nguyen, *Luat Phong Chong Ma Tuy va Phong Chong Ma Tuy trong Nha Truong* (2004) 781-2 and 792 [trans: Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions* (2004)]; Quang Vinh Vu, 'Tinh Hinh Chung ve Cong Tac Kiem Soat Ma Tuy va Van De Phong Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 3-4 [trans: Quang Vinh Vu, 'General Situation on Narcotics Control and the Issue of Narcotics Prevention and Suppression in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

To the east and south of Vietnam is the South China Sea. The national coastline, which is 3260 kilometers⁵ in length (excluding islands), is very long compared to the country's surface area. Vietnam claims twelve nautical miles as the limit of its territorial waters, an additional twelve nautical miles as a contiguous customs and security zone, and a further of 200 nautical miles as an exclusive economic zone.⁶ A big number of seaports and harbours, such as Cam Ranh, Da Nang, Hai Phong, Hochiminh, Quy Nhon, Nha Trang and Vung Tau, facilitate Vietnam's trade and cultural exchanges. On the other hand, a long, weakly controlled coastline and vast sea area raise major concerns about national defence and illicit drug smuggling.⁷

Mountains and hills make up 75% of the total land mass of the country.⁸ The altitude of the mountains and highlands in the north (over 600 meters above sea level) is found very suitable for opium poppy growing.⁹

Vietnam has long been a connection between the mainland ASEAN countries, such as Laos, Cambodia, Thailand and Myanmar, to regional island states, for example the Philippines and Indonesia. In addition, this S-shaped country is also mentioned as a contiguous boundary between differing continents and oceans, which are Asia and Oceania, and the Pacific and Indian Oceans.¹⁰ The distance from Hanoi to Yangon is 1120 kilometers, from Hochiminh City to Singapore and Jakarta is 1100 kilometers and 1800 kilometers, respectively. Distances between Hanoi, Hochiminh City and other capitals, for instance Bangkok, Phnompenh and Vientian are even shorter.¹¹ Lying in such a position, Vietnam is on routes for much important aviation and maritime traffic. These natural geographical features benefit its economic and social

⁵ See Tong Cuc Thong Ke, *Nien Giam Thong Ke cua Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 2003* (2003) 12 [trans: State General Statistics Office, *Statistical Yearbook of the Socialist Republic of Vietnam in 2003* (2003)].

⁶ *Luat so 06/2003/QH11 ve Bien Gioi Quoc Gia 2003* (Quoc Hoi) arts 4(2) and 4(3) [trans: *Law 06/2003/QH11 on National Borders 2003* (National Assembly)].

⁷ See Xuan Yem Nguyen, above n 4, 781-2 and United Nations Office on Drugs and Crime Vietnam, *Vietnam: Country Profile, 2003* (2003) United Nations Office on Drugs and Crime [9] <http://www.unodc.org/pdf/vietnam/country_profile_vietnam.pdf> at 18 December 2004.

⁸ See Van Dan Tran et al, above n 2, 29.

⁹ See Van Hoa Do, *Xac Dinh Mo Hinh Co Cau Cay Trong Thich Hop Tren Dat Doc Vung Cao Mien Nui Phia Bac Gop Phan Bo Sung Cac Giai Phap cho Chuong Trinh Thay The Cay Thuoc Phien* (D Phil thesis, Vien Khoa Hoc Ky Thuat Nong Nghiep Vietnam, 1996) 47 [trans: Van Hoa Do, *Finding a Suitable Cultivation Structure for Northern Mountainous and Upland Areas as a Contribution to the Opium Poppy Alternatives Program* (D Phil Thesis, Technical Agriculture Institution, 1996)].

¹⁰ See Thong Le, Van Phu Nguyen and Minh Tue, above n 3, 12.

development. Nonetheless, located in the proximity of the Golden Triangle (Myanmar, Laos, Thailand), one of the world's major opium sources,¹² and being close to Cambodia, which has become a major source of cannabis for illicit markets globally,¹³ there are reliable indications that Vietnam's territory is used as a transit point and storage place for illicit drugs smuggled into Australia, Canada, European countries and the United States.¹⁴

2.1.2 Climate

Vietnam has a tropical monsoon climate, with humidity averaging 84% throughout the year. Over the whole territory sunshine is plentiful and, thus, hot weather is the rule.¹⁵ Temperatures generally fall with increasing altitude. The average annual temperature is above 20°C, generally higher in the plains than in the mountains and plateaus. The lowest temperature is under 15°C in December and January.¹⁶

Annual rainfall is substantial in all regions of the country and torrential in some, ranging from 1600 millimeters to 3000 millimeters, with the average of 2000 millimeters.¹⁷ An abundant rainfall, moderate temperature and suitable altitude in the northern mountains and highlands of the country provide a favourable natural environment for opium poppy growth. Historical records show that the opium poppy

¹¹ Ibid.

¹² Myanmar is the world's second largest producer of illicit opium and heroin, see International Narcotics Control Board, *Report of the International Narcotics Control Board for 2003* (2004) [para 382] <http://www.incb.org/pdf/e/ar/2003/incb_report_2003_3.pdf> at 18 August 2005. The Lao People's Democratic Republic was the third largest producer of illicit opium in the world (see Ibid). However, the areas of opium cultivation in Laos have significantly declined in recent years and Laos is no longer a significant source of illicit opium for the world. See International Narcotics Control Board, *Report of the International Narcotics Control Board for 2005* (2006) [para 435] <http://www.incb.org/pdf/e/ar/2005/incb_report_2005_full.pdf> at 20 March 2006.

¹³ See International Narcotics Control Board, *Report of the International Narcotics Control Board for 1998* (1999) [para 315] <http://www.incb.org/incb/en/annual_report_1998_Chapter3.html#IIIC1> at 18 August 2005.

¹⁴ See International Narcotics Control Board, *Report of the International Narcotics Control Board for 2002* (2003) [para 375] <http://www.incb.org/pdf/e/ar/2002/incb_report_2002_3_asia.pdf>; *Report of the International Narcotics Control Board for 2000* (2001) [328] <http://www.incb.org/pdf/e/ar/2000/incb_report_2000_3_asia.pdf> and *Report of the International Narcotics Control Board for 1998* (1999) [316] <http://www.incb.org/incb/en/annual_report_1998_Chapter3.html#IIIC1> at 18 August 2005.

¹⁵ Tu Lap Vu, *Vietnam: Geographical Data* (1979) 14-5 and Thong Le, Van Phu Nguyen and Minh Tue, above n 3, 14.

¹⁶ Thong Le, Van Phu Nguyen and Minh Tue, above n 3, 14-5.

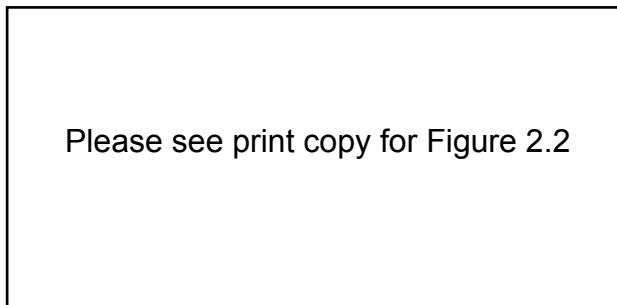
has been cultivated in mountainous and upland areas in the north of Vietnam since the middle of the seventeenth century.¹⁸

2.1.3 Population

Vietnam is one of the most densely-populated countries in Southeast Asia, and in the world, contributing 1.3% of the global population.¹⁹ Population density has always been a major concern in Vietnam. Over the last decade, national population density increased by 37 people per square kilometre.²⁰

Although the Government has applied a population control policy, in 1999 the population of Vietnam stood at over 76 million, making it the fourteenth most populous country in the world.²¹ Its current population is estimated 83,119,976.²² According to expert forecasts, its population may reach up to 88.7 millions in 2010 and 99.5 in 2020. Details of Vietnam's population in the past and forecasts for the future are listed in Figures 2.2 and 2.3.

Figure 2.2 Vietnam's Population Statistics (million persons)



¹⁷ Tu Lap Vu, above n 15, 51-2 and Duc Ngai Truong and Thang Phan (eds), *Viet Nam Huong Toi The Ky XXI* (2000) 15 [trans: Duc Ngai Truong and Thang Phan (eds), *Vietnam Towards the Twenty-First Century* (2000)].

¹⁸ Phong Hoa Nguyen and Ngoc Hung Dang, *Ma Tuy va nhung Van De ve Cong Tac Kiem Soat Ma Tuy* (1994) 90 [trans: Phong Hoa Nguyen and Ngoc Hung Dang, *Narcotics and Matters Concerning Narcotics Control* (1994)].

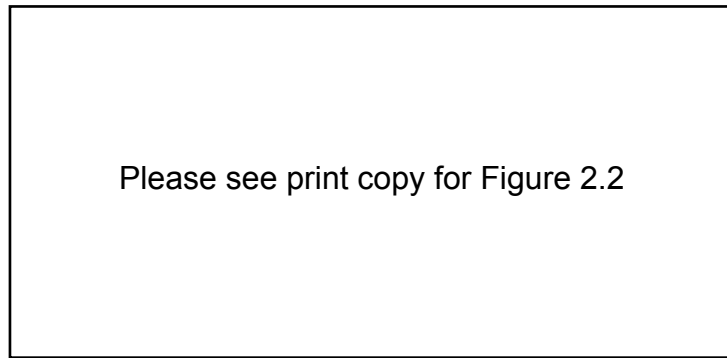
¹⁹ Thong Le, Van Phu Nguyen and Minh Tue, above n 3, 40.

²⁰ Carl Haub and Phuong Thi Thu Huong, *An Overview of Population and Development in Vietnam* (2005) Reference Bureau

<<http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=8230>> at 01 June 2005.

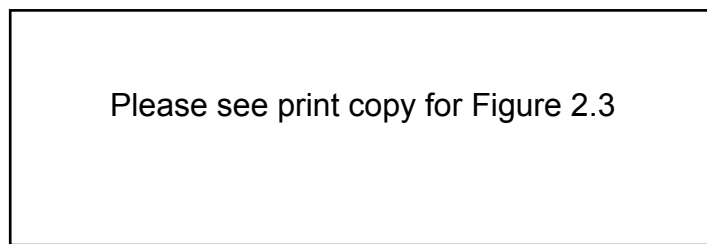
²¹ See Thong Le, Van Phu Nguyen and Minh Tue, above n 3, 40.

²² See Tong Cuc Thong Ke, *Nien Giam Thong Ke cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 2005* (2006) 29 [trans: State General Statistics Office, *Statistical Yearbook of the Socialist Republic of Vietnam in 2005* (2006)].



Source: Thong Le, Van Phu Nguyen and Minh Tue Nguyen, *Vietnam's Economic and Social Geography* (2004) at 40 (data from *Population Strategy of Vietnam to 2010 and Directions to 2020*) and *Statistical Year Book 2005*, 49.

Figure 2.3



Source: Thong Le, Van Phu Nguyen and Minh Tue Nguyen, *Vietnam's Economic and Social Geography* (2004) at 40 (data from *Population Strategy of Vietnam to 2010 and Directions to 2020*).

The rapid growth in population has become a major pressure on the Government and the whole of society. The labour force increases by 3% each year, equivalent to approximately one million persons.²³ According to official statistics, there are around three million fulltime unemployed in Vietnam.²⁴ In addition, the number of labourers

²³ See The Tiem Le, *Thuc Hien Chuong Trinh Quoc Gia Phong, Chong Toi Pham trong Thoi Ky Day Manh Cong Nghiep Hoa va Hien Dai Hoa Dat Nuoc* (2002) 122 [trans: The Tiem Le, *Implementation of the National Crime Prevention Strategy in the Period of Enhancing Industrialization and Modernization in the Country* (2002)].

²⁴ Ibid.

having seasonal or occasional jobs is high.²⁵ The high rate of unemployment has caused a lot of obstacles to social development, it is considered to interrelate with illegal drug use and crime in general, drug-related crime in particular.²⁶ It is observed that the unemployed make up 47.2% of the total drug abusers in the country.²⁷ Moreover, with about 100 million people forecast for 2020, Vietnam appears to be a big consumption market for illicit drugs.

The population varies greatly across Vietnam's sixty-four provincial administrative units. Ho Chi Minh City has the highest population at around eight millions, followed by Thanh Hoa and Hanoi, each over three millions. A majority of provinces have populations of one to three millions, while, only five provinces have less than five hundred thousand.²⁸ Ho Chi Minh and Hanoi, partly due to the population explosion, have become arrival points for various inland drug trafficking routes, and emergent points for a large number of drug abusers.²⁹

Since market economy reforms altered the centrally planned economy, greater differences between regions have been recognized and, spontaneously, mass population movements have become an emerging phenomenon. Normally, people move out from the lower to the faster developing areas, especially towards industrial regions, where a greater chance of employment is found. The General Statistics Office emphasizes the high rate of unemployment in rural areas. Agricultural work in villages and counties provides jobs for only about 69% of the rural labour force,

²⁵ For example in the agriculture area, there are about one billion surplus workdays that can convert to around five million unemployed. See The Tiem Le, above n 23, 113.

²⁶ Ibid 114. The correlation between unemployment and illegal drug use is also observed in other studies. See also Marianne E Cinat et al, 'Significant Correlation of Trauma Epidemiology with the Economic Conditions of a Community: Discussion' (2004) 139 *Archives of Surgery* 1350 and David F Peck and Martin a Plan, 'Unemployment and Illegal Drug Use: Concordant Evidence from a Prospective Study and National Trends' in Nigel South (ed), *Drugs, Crime and Criminal Justice* (1995) vol 1, 179.

²⁷ See Thi Mai Nga Nguyen and Quoc Huynh Pham, *Nhung Van De Co Ban trong Cong Tac Kiem Sat Dieu Tra va Kiem Sat Xet Xu cac Toi Pham ve Ma Tuy o Viet Nam* (2003) 38 [trans: Thi Mai Nga Nguyen and Quoc Huynh Pham, *Basic Issues on Supervision of Investigations and Trials for Drug-Related Crimes* (2003)].

²⁸ Thong Le, Van Phu Nguyen and Minh Tue, above n 3, 41.

²⁹ See Phong Hoa Nguyen, *Cac Toi Pham ve Ma Tuy: Dac Diem Hinh Su, Dau Hieu Phap Ly, cac Bien Phap Phat Hien Dieu Tra* (1998) 27 [trans: Phong Hoa Nguyen, *Drug-Related Crimes: Criminal Characteristics, Legal Constituents, Measures to Discover and to Investigate* (1998)] and The Tiem Le, 'Tinh Hinh, Ket Qua Cong Tac Phong, Chong Ma Tuy nam 2002 va nhung Nhiem Vu Trong Tam Phong, Chong Ma Tuy nam 2003' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 13, 13 [trans: The Tiem Le,

therefore, just over 30% of them need to find jobs in other industries.³⁰ Hanoi Capital and Hochiminh City are typical examples of the destinations taken. Each year more than 55,000 people arrive in Hanoi; the number is much higher in Hochiminh City, where 50% of the population growth is due to emigrants from other provinces.³¹

The spontaneous movement of population has resulted in increasing imbalances in population distribution and, as a consequence, threats to social organization, living environments and regional infrastructure. Moving to big cities and centers, emigrants possibly confront a number of difficulties, such as living accommodation, labour skills, jobs, industrialized lifestyles and so on. An official survey has shown that one of the reasons for using drugs in urban areas is a desire to be released from the high pressure of the industrialized lifestyle or from life impediments.³²

Regarding minority population, the 1979 census listed a total of fifty-four minorities living together within Vietnam's territory. Kinh is the dominant ethnicity of the Vietnamese, which makes up 86.2% of the total population. The fifty-three ethnic minorities account for only 13.8% of the population.³³ The Tay, Thai and Khme are considered large ethnic groups that have over one million people each. Then follow Muong, Nung, H'mong and Dao groups with populations of 500,000 up to one million. Other ethnic communities' populations are ranked from several hundreds to several thousands.³⁴

Ethnic populations mainly live in mountainous and upland areas, and certain groups still maintain the old lifestyle of nomads³⁵ and a tradition of opium cultivation.³⁶ The

'Situation and Results of Drug Control in 2002 and Main Tasks of Drug Control in 2003' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 13].

³⁰ Thong Le, Van Phu Nguyen and Minh Tue, above n 3, 54-5.

³¹ See, eg, Thong Le, Van Phu Nguyen and Minh Tue, above n 3, 57 and Tong Cuc Thong Ke, *So Lieu Thong Ke ve Tinh Hinh Kinh Te Xa Hoi Vietnam tu nam 1975 den 2001* (2002) 92 [trans: General Statistics Office, *Statistical Data on Vietnam's Economy and Society from 1975 to 2001* (2002)].

³² See Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 27, 38 and Xuan Yem Nguyen, above n 4, 787.

³³ Tong Cuc Thong Ke, *So Lieu Thong Ke ve Tinh Hinh Kinh Te Xa Hoi Vietnam tu nam 1975 den 2001* (2002) 13-5 [trans: State General Statistics Office, *Statistical Data on Vietnam's Economy and Society from 1975 to 2001* (2002)].

³⁴ Ibid.

³⁵ Van Hoa Do, above n 9, 2 and 65.

³⁶ See, eg, United Nations Offices on Drugs and Crime, *Ethnic Minorities, Drug Use & Harm in the Highlands of Northern Viet Nam - A Contextual Analysis of the Situation in Six Communes from Son*

population density in these mountainous and highlands areas is very low. For example, in Muong Te and Lai Chau there are less than ten persons per square kilometre.³⁷ Transportation is under-developed, and to go on foot is the only means of transport. Therefore, government services as well as drug control in such regions are very limited.³⁸

2. 2 *Political System*

2.2.1 *Communist Party*

At the top of Vietnam's political system sits the Communist Party (the Party). Article 4 of the *Constitution 1992* stipulates its role as follows:

‘The Communist Party of Vietnam, the vanguard of the Vietnamese working class, the faithful representative of the rights and interests of the working class, the toiling people, and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh's thought, is the force leading the State and society.’

The Vietnamese political system is dominated by the Communist Party, which is the only party in the country. In fact, since its establishment in 1930,³⁹ it has organised and led the nation in every conflict faced by Vietnam, such as the August Revolution in 1945 to establish the Democratic Republic of Vietnam (the Socialist Republic of Vietnam today) and the struggle against United States aggression to reunify the country in 1975.⁴⁰ Because of its historical role, the dominance of the Party was firmly described in the first Vietnamese *Constitution 1946*, the next *Constitutions 1959* and *1980*, and the current *Constitution 1992*.⁴¹

La, Lai Chau, and Lao Cai, July 2003 (2003) United Nations Offices on Drugs and Crime <http://www.unodc.org:80/pdf/vietnam/vietnam_ethnic_minorities_report.pdf> at 18 August 2004 and United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, *Excerpt from: International Narcotics Control Strategy Report, March 2004, Vietnam* United Department of State International Information Programs <<http://usinfo.state.gov/regional/ea/vietnam/narc2004/html>> at 17 August 2004.

³⁷ See Van Hoa Do, above n 9, 2

³⁸ Ibid.

³⁹ See Hoi Dong Trung Uong Chi Dao Bien Soan Giao Trinh Quoc Gia Cac Bo Mon Khoa Hoc Mac-Lenin Va Tu Tuong Ho Chi Minh, *Giao Trinh Lich Su Dang Cong San Viet Nam* (2004) 45 [trans: Central Council for Directing the Editing of National Textbooks on Subjects concerning the Theory of Marx and Lenin and Ideology of President Hochiminh, *Textbook on the History of the Communist Party of Vietnam* (2004)].

⁴⁰ Ibid 106-10.

⁴¹ *Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1980* (Quoc Hoi) art 4 [trans: *Constitution of Vietnam 1980* (National Assembly)] and *Hien Phap Nuoc Cong Hoa Xa Hoi Chu*

As the dominant political force in the country, resolutions, policies and decisions made by the Party are very important to the State. Laws and regulations must institutionalise its decisions and policies.⁴² According to the Preamble of the *Constitution 1992* of Vietnam, the Constitution institutionalises the relationship between the Party as leader, the people as master and the State as administrator. Conclusions of the National Party Congress, decisions issued by the Political Bureau and ordinances of the Party's Secretariat are adopted in practice by state authorities.⁴³

Drug issues, due to their impacts on the development of society, have always been a concern of the Party.⁴⁴ In 1996, the Political Bureau of the Party issued *Directive 06/BCT-TW* to enhance drug prevention and suppression. This directive required Party members and Party organizations at all levels to become involved in the combat against drugs. It encouraged members who hold decision-making positions in state authorities to take reasonable action to reinforce drug controls within their sphere of work.⁴⁵

Nghia Viet Nam nam 1992, sua doi bo sung nam 2001 theo Nghi Quyet 51/2001/QH10 art 4 [trans: *Constitution of Vietnam 1992, amended by Resolution 51/2001/QH10 2001* (National Assembly)] (hereinafter *Constitution of Vietnam 1992*). Democratic centralism is the principle governing the organization and activity of the Party. The National Party Congress (or National Congress of Party Delegates), which meets every five years, is the Party's highest organ with policy-making power. The National Party Congress elects the Central Committee that meets at least twice a year. In contrast to the National Party Congress, the Central Committee usually acts to confirm rather than establish policy. The Central Committee elects the General Secretary and the Political Bureau, which is composed of the most important members of the Party. The Political Bureau manages the implementation of resolutions and conclusions made by the National Party Congress and the Central Committee. See *Dieu Le Dang Cong San Viet Nam* arts 15-17 [trans: *Statute of the Communist Party of Vietnam*].

⁴² See Truong Dai Hoc Luat Ha Noi, *Giao Trinh Ly Luan ve Nha Nuoc va Phap Luat* (1996) 257 [trans: Law University of Hanoi, *Textbook on Theories of State and Law* (1996)]; Vien Nghien Cuu Nha Nuoc Va Phap Luat, *Nhung Van De Ly Luan Co Ban ve Nha Nuoc va Phap Luat* (1995) 61 [trans: Research Institution of State and Law, *Basic Issues on Theories of State and Law* (1995)] and Tri Uc Dao, *Nha Nuoc va Phap Luat cua Chung Ta trong Su Nghiep Doi Moi* (1997) 64 [trans: Dao, Tri Uc, *Our State and Law in the Renovation Period* (1997)].

⁴³ See Tri Uc Dao, above n 42, 97.

⁴⁴ See, eg, Hung Vuong Vu, 'Luc Luong Canh Sat voi Cong Tac Phong, Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Vietnam va Phap, Hanoi, Vietnam, 1998) 45 [trans: Hung Vuong Vu, 'Police Force in the Combat against Narcotic Substances in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

⁴⁵ *Nghi Quyet so 06/CP ve Tang Cuong Chi Dao Cong Tac Phong, Chong Ma Tuy 1996* (Chinh Phu) [Trans: *Directive 06/BCT-TW on Enhancing Directions on Drug Prevention and Suppression 1996* (Communist Party)].

In the *National Strategies for Socio-Economic Development from 2001 to 2010*,⁴⁶ drug issues are mentioned as a social evil and the Party emphasizes the need to enhance drug control via various measures. Laws and regulations must be stringently enforced to facilitate efficient drug control, and different remedies, such as education campaigns, treatment, training and job creation must be harmonised in curbing drug issues.⁴⁷

2.2.2 Mass Organizations

The *Constitution 1992* of Vietnam stipulates:

‘The Vietnam Fatherland Front and its member organizations constitute the political base of people's power. The Front ... works together with the State for the care and protection of the people's legitimate interests, encourages the people to exercise their right to mastery, ensures the strict observance of the Constitution and the law, and supervises the activity of state organs, elected representatives, and state officials and employees.’⁴⁸

The Fatherland Front (Front) has played an important role in the Vietnamese political system since wartime. Various socio-political organizations, such as the Communist Party, Women's Association and Hochiminh Communist Youth League combine to make the Front the largest mass alliance.⁴⁹ The Front mobilizes the strengths of the people's unity in national matters, and works together with the State to ensure strict adherence to the Constitution and laws.⁵⁰

The dangers of illicit drug cultivation, manufacture, traffic, and use affect all sectors of society. As drug abuse is a serious and complex community problem, which requires community response, the Government cannot be the sole agency to solve the problem. To take full advantage of the strengths of the mass alliance in the front line against illicit drugs, a representative of the Fatherland Front is appointed as one of

⁴⁶ At the ninth National Congress of Party's Delegates, held in Hanoi from 19 to 22 April 2001, the Strategies for Socio-Economic Developments of the country were adopted for a ten-year period, from 2001 to 2010, rather than a five-year period.

⁴⁷ Dang Cong San Viet Nam, *Chien Luoc Phat Trien Kinh Te Xa Hoi 2001 - 2010* (2001), pt VI(6) [trans: *Strategies for Socio-Economic developments of the Country from 2001 to 2010, 2001* (Communist Party)].

⁴⁸ Constitution of Vietnam 1992, above n 41, art 9.

⁴⁹ See Law University of Hanoi, above n 42, 251.

⁵⁰ Constitution of Vietnam 1992, above n 41, art 9.

the four vice chairmen of the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution.⁵¹

2.3 State System

2.3.1 National Assembly

The National Assembly (NA) is the highest representative organ of the people, the highest organ of state power. It exercises supreme control over all State activities.⁵² Other state institutions are principally derivative from the NA,⁵³ therefore, to be supervised by and report back to the NA. Its major obligations and powers are stated in Article 84 of the *Constitution 1992*.⁵⁴

The NA is the only organ with constitutional and legislative powers. It passes legislation but can also provide direction to the Government through the passing of resolutions. It exercises supreme control over conformity with the Constitution, and its own laws and resolutions.⁵⁵

Concerning drug control, from the reunification of the country in 1975 up to the time of writing, the NA has enacted only one law on narcotic drugs prevention and suppression in 2000, which came into force on 1 June 2001.

⁵¹ *Quyết Định số 61/2000/QĐ-TTg của Thủ Tướng Chính Phủ về việc Thành Lập Ủy Ban Quốc Gia Phòng, Chống AIDS và Phòng Chống Tệ Nạn Ma Túy, Mai Dăm năm 2000* art 3 [trans: *Decision 61/2000/QĐ-TTg to Establish the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution 2000* (Prime Minister)] (hereinafter Decision to Establish the National Committee).

⁵² Constitution of Vietnam 1992, above n 41, art 83.

⁵³ See Xuan Duc Bui, 'Về Vấn Đề Hoàn Thiện Cấu Trúc Nhà Nước Việt Nam Hiện Tại' (2000) 4 *Luat Hoc* 13, 17 [trans: Xuan Duc Bui, 'The Issue of Improving Vietnam's State Structure at the Present Time', (2000) 4 *State and Law* 13].

⁵⁴ Among these obligations and rights, the National Assembly is empowered to decide fundamental domestic and foreign policies, socio-economic tasks, national defence and security policies, essential principles governing the organization and activity of state machinery and acceptable social relations and activities of the citizenry.

⁵⁵ The National Assembly exercises its supreme control through examining reports submitted by the President, the Standing Committee, the Government, the Supreme People's Court and the Supreme People's Procuracy; making inquiries into relevant matters (concerned bodies must provide full answers within an ongoing session of the National Assembly or submit reports in writing in the subsequent session) or set up an interim committee to inquire into specific matters. See Constitution of Vietnam 1992, above n 41, arts 84(1)(2) and 98 and *Luật số 05/2003/QH11 về Hoạt Động Giám Sát của Quốc Hội năm 2003* art 7 [trans: *Law 05/2003/QH11 on the Control of the National Assembly 2003* (National Assembly)].

The tenure of the NA is five years and it meets biannually.⁵⁶ The NA Standing Committee is the permanent organ between its sessions. This body has the right to exercise supervision and control over the implementation of the Constitution, laws and resolutions of the NA, its own ordinances and resolutions, the activities of the Government, the Supreme People's Court and the Supreme People's Procuracy.⁵⁷ It specializes in enacting ordinances and explaining the Constitution and laws.⁵⁸

2.3.2 *President*

The President is the Head of the State representing the Socialist Republic of Vietnam in internal and foreign affairs.⁵⁹ The President is elected by the NA from among its members, and is responsible to this body for his work.⁶⁰

The rights of the President are laid down in Article 102 of the *Constitution 1992*.⁶¹ The President is entitled to promulgate the Constitution, laws and ordinances adopted by the NA or its Standing Committee.⁶² The President is authorized to negotiate and sign international agreements with the heads of other States.⁶³ In actuality, the President normally takes action in close consultation with the Government.

In 1997, based on the proposal of the Government, the President made a decision (798/QD-CTN) to ratify the three United Nations Drug Control Conventions, including the *Single Convention on Narcotic Drugs 1961 amended by the 1972*

⁵⁶ Constitution of Vietnam 1992, above n 41, arts 85 and 86.

⁵⁷ Constitution of Vietnam 1992, above n 41, art 91(5).

⁵⁸ Constitution of Vietnam 1992, above n 41, art 91(3) and (4).

⁵⁹ Constitution of Vietnam 1992, above n 41, art 101.

⁶⁰ Constitution of Vietnam 1992, above n 41, art 102.

⁶¹ Among these rights, the most important are: to be the commander-in-chief of the people's armed forces and Chairman of the National Defence and Security Council; to propose that the National Assembly elects or dismisses the Vice Presidents of the Country, the Prime Minister, the Tribunal President of the Supreme People's Court, or the Head of the Supreme People's Procuracy.

⁶² Constitution of Vietnam 1992, above n 41, art 103(1).

⁶³ In Vietnam, international agreements can be concluded in the name of the Socialist Republic of Vietnam, the Government, the Supreme People's Court, the Supreme People's Procuracy, or the Ministers and the Heads of ministerial-level Bodies. The President signs and ratifies international agreements on behalf of the Socialist Republic of Vietnam. International agreements signed by the President normally relate to the following issues: (i) state sovereignty, (ii) the country's territorial boundaries, (iii) fundamental rights and duties of citizens, (iv) cooperation in judicial matters, or (v) setting up international or regional organizations. See *Phap Lenh so 07/1998/PL-UBTVQH10 ve Ky Ket va Thuc Hien Dieu Uoc Quoc Te nam 1998* (Uy Ban Thuong Vu Quoc Hoi) art 1(2), 4(2), art 10(1)(2) [trans: *Ordinance 07/1998/PL-UBTVQH10 on Signing and Implementing International Agreements 1998*] (hereinafter *Ordinance on Signing and Implementing International Agreements 1998*).

*Protocol, the Convention on Psychotropic Substances 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.*⁶⁴

2.3.3 Government

The Government is the executive organ of the NA, the highest organ of State administration,⁶⁵ composed of the Prime Minister, Deputy Prime Ministers, Cabinet Ministers and other members.⁶⁶ Its major duties and powers are stated in Article 112 of the *Constitution 1992*.⁶⁷ It is accountable and reports to the NA, its Standing Committee and the President.⁶⁸

The Government can present draft laws and ordinances to the NA and its Standing Committee,⁶⁹ and ensure the implementation of the Constitution and laws.⁷⁰ It is authorised to sign⁷¹ and approve international agreements and to direct the implementation of international agreements subscribed to or joined by Vietnam.⁷²

⁶⁴ *Quyết Định số 798/QĐ-CTN ngày 01/09/1997 của Chủ tịch Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam Tham Gia 3 Công Ước của Liên Hiệp Quốc về Kiểm Soát Ma Túy năm 1997* art 1 [trans: *Decision 798/QĐ-CTN to Ratify the Three United Nations Drug Control Conventions 1997* (President)].

⁶⁵ Constitution of Vietnam 1992, above n 41, art 109.

⁶⁶ Constitution of Vietnam 1992, above n 41, art 110.

⁶⁷ As the highest organ of state administration, the Government is responsible for building and consolidating a unified system of state administrative apparatus from the center to the grassroots; directing the work of the ministries, the Ministerial-Rank Organs and the organs of the Government and the People's Committees at all levels; ensuring the implementation of the Constitution and laws in the state organs, other economic and social units as well as among citizens. The Government must also take measures to protect the rights and legitimate interests of the citizen inside the country as well as in foreign states, to create conditions for the implementation of citizens' rights and duties. The Government is accountable for overall management of the national economy development; and for carrying into effect national financial and monetary policies and implementing social and religious policies.

⁶⁸ Constitution of Vietnam 1992, above n 41, art 109.

⁶⁹ Constitution of Vietnam 1992, above n 41, art 112(4).

⁷⁰ Constitution of Vietnam 1992, above n 41, art 112(2).

⁷¹ According to Article 4(3) of the *Ordinance on Signing and Implementing International Agreements 1998*, the Government is entitled to sign international agreements in order (i) to implement conventions or treaties, which are concluded in the name of the Socialist Republic of Vietnam, or (ii) to deal with matters other than those under the sphere of the President (the rights of the President to conclude international agreements are explained in footnote 65). International agreements signed by the Government have to be ratified in the following cases: agreements (i) relating to peace, national security and sovereignty, and the fundamental rights and duties of citizens, (ii) containing provisions

Regarding drug matters, since the country's unification, it has enacted many decrees providing a legal framework for the control of drug cultivation, trafficking and abuse. Recently, to guide the implementation of the *Law on Narcotics Prevention and Suppression 2000*, it issued a number of decrees. A detailed analysis of these documents will be made throughout this thesis.

2.3.4 Prime Minister

The Prime Minister is the head of the Government and manages government work. Besides the collective responsibility for the Government as a whole, the Prime Minister has individual duties, powers and responsibilities.⁷³

The Prime Minister can suspend or annul decisions, directives and circulars of Cabinet Ministers and other government members, decisions and directives of People's Councils and Chairmen of People's Committees of provinces and cities that contravene the Constitution, laws and other normative documents of superior state organs. The Prime Minister can also suspend the execution of resolutions of People's Councils of provinces and cities, and at the same time, propose to the Standing Committee of the NA to annul them.⁷⁴

In terms of combating illicit drugs, the Prime Minister has issued several important documents that speed up drug control in the country. Among them, the most noteworthy are *Decision 138/1998/QĐ-TTg to Adopt the First National Plan on Drug Control for the Three Year Period from 1998 to 2001* and *Decision 150/2000/QĐ-TTg to Adopt National Action Plan on Drug Control from 2001 to 2005*.⁷⁵ More recently he has promulgated the *Master Plan on Drug Control towards*

that contravene or are not yet regulated by laws or ordinances, (iii) relating to the national budget, or (iv) having requirements for ratification. See Ordinance on Signing and Implementing International Agreements 1998, above n 63, art 10(1).

⁷² Constitution of Vietnam 1992, above n 41, art 112(8).

⁷³ The Prime Minister has the right to propose that the National Assembly sets up or disbands ministries and organs of ministerial rank and appoints or dismisses Deputy Prime Ministers, Ministers and other members of the Government. The Prime Minister is empowered to appoint, release from duty or dismiss Vice Ministers and officials of the same rank. See Constitution of Vietnam 1992, above n 41, art 114.

⁷⁴ Constitution of Vietnam 1992, above n 41, art 114(4) and (5).

⁷⁵ Before 1998, drug control programs in Vietnam were scattered without a strategic vision and, therefore, seemed to be fragmented and uncertain. Gaps, and sometimes overlaps, in the implementation of drug control could be seen in the country. Due to a lack of elaborated regulations

2010⁷⁶ and the *Master Project to Combat Cross-Border Drug Trafficking to 2010*.⁷⁷ In addition, the Prime Minister appointed the Deputy Prime Minister⁷⁸ as Chairman of the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution.⁷⁹

2.3.5 *People's Council and People's Committee*

People's Councils⁸⁰ and People's Committees⁸¹ are constitutionally defined as local organs, which are structured at all levels of the Vietnamese administration: (i) provinces and cities under direct central rule, (ii) districts, cities and towns under provinces, and (iii) wards and communes.⁸² People's Councils pass resolutions to address important issues relating to local socio-economic developments,⁸³ while the People's Committees are responsible for the implementation of the Constitution, laws, regulations and resolutions of their particular People's Councils.⁸⁴

Drug control at local level, in fact, is very much dependent on the policies and support of local organs, which regulate in detail the implementation within local

and a master plan, some local Governments were reluctant to take action and shortcomings existed in cooperation between various bodies in charge of crime control in general. See, eg, The Tiem Le, *Implementation of the National Crime Prevention Strategy in the Period of Enhancing Industrialization and Modernization in the Country*, above n 23, 81.

⁷⁶ *Quyết Định số 49/2005/QĐ-TTg về việc Phê Duyệt Kế Hoạch Tổng Thể Phòng Chống Ma Túy đến năm 2010* (Thu Tuong Chinh Phu) [trans: *Decision 49/2005/QĐ-TTg to Approve the Master Plan on Drug Control to 2010* (Prime Minister)].

⁷⁷ *Quyết Định số 187/2005/QĐ-TTg về việc Phê Duyệt Đề Án Tổng Thể Kiểm Soát Ma Túy qua Biên Giới đến năm 2010* (Thu Tuong Chinh Phu) [trans: *Decision 187/2005/QĐ-TTg to Approve the Master Project to Combat Cross-Border Drug Trafficking to 2010* (Prime Minister)].

⁷⁸ Deputy Prime Ministers are accountable to the Prime Minister for the tasks that the Prime Minister assigns to them. See *Luật số 32/2001/QH10 về Tổ Chức Chính Phủ 2001* (Quoc Hoi) art 4 [trans: *Law 32/2001/QH10 on the Organization of the Government 2001* (National Assembly)].

⁷⁹ See *Decision to Establish the National Committee*, above n 51, art 3(1).

⁸⁰ People's Councils are local organs of state power, which represent the will, aspirations and mastery of local populations. They are elected by local people, accountable to them and to superior organs. The term of People's Councils at all levels is five years. See *Constitution of Vietnam 1992*, above n 41, art 119 and *Luật số 11/2003/QH11 Về Tổ Chức Hội Đồng Nhân Dân và Ủy Ban Nhân Dân 2003* (Quoc Hoi) art 6(1) [trans: *Law 11/2003/QH11 on the Organization of People's Councils and People's Committees 2003* (National Assembly)].

⁸¹ People's Committees are correspondingly elected People's Councils. They are the executive organ of People's Councils, i.e. an organ of state administration. The tenure of People's Committees follows that of People's Councils. See *Constitution of Vietnam 1992*, above n 41, art 123 and *Law 11/2003/QH11 on the Organization of People's Councils and People's Committees*, above n 82, art 6(2).

⁸² *Constitution of Vietnam 1992*, above n 41, art 118.

⁸³ *Constitution of Vietnam 1992*, above n 41, art 120.

⁸⁴ *Constitution of Vietnam 1992*, above n 41, art 123.

areas of centrally-adopted laws and policies.⁸⁵ Close leadership and direction by local governments are considered to be important causes for recent successes in drug prevention and control in a number of provinces.⁸⁶

2.3.6 *People's Courts*

The judicial organs of Vietnam consist of the Supreme People's Court, local People's Courts and Military Tribunals.⁸⁷ Local courts are organized at the provincial and district levels. The Court hearings are held in public and are subordinate to all normative laws.⁸⁸ The Court judges collectively, with the participation of the people's jurors, and decides according to the majority.⁸⁹ In Vietnam, people's jurors are persons who have knowledge of law or experience in relation to cases, of which they attend the hearings. During a trial the juror is on an equal footing with the judges.⁹⁰ The Supreme People's Court is the highest judicial organ of the Socialist Republic of Vietnam. It supervises and directs the judicial work of local People's Courts and Military Tribunals.⁹¹ Sitting in the council, the judges of the Supreme People's Court have made a number of resolutions to guide the application of the *Criminal Code of Vietnam* relating to drug-related offenses.

Provincial Courts and the Supreme Court are composed of several specialized tribunals, such as criminal tribunals, civil tribunals and labour tribunals. Thus, drug-related crimes are tried in criminal tribunals. At district court level, a classification into specialized tribunals is not made.

⁸⁵ The expansion or restriction of centrally-adopted laws and policies are required to obey the principle that normative documents issued by a lower authority must not contradict those of a higher. More details are provided in the next part regarding the Vietnamese legal system.

⁸⁶ See, eg, Hong Anh Le, 'Tinh Hinh va Ket Qua Trien Khai Thuc Hien Luat Phong, Chong Ma Tuy trong 2 nam 2001 - 2002' (2003) 4 *Ban Tin Phong Chong Ma Tuy* 2, 5-7 [trans: Hong Anh Le, 'Current State and Outcomes of the Two-Year Implementation of the Law on Narcotics Prevention and Suppression, from 2001 to 2002' (2003) 4 *Bulletin on Narcotics Prevention and Suppression* 2] and The Tiem Le, Situation and Results of Drug Control in 2002 and Main Tasks of Drug Control in 2003, above n 29, 14-5 and 17.

⁸⁷ Under special circumstances the National Assembly may set up a special tribunal in conformity with the Constitution. See Constitution of Vietnam 1992, above n 41, art 127.

⁸⁸ Constitution of Vietnam 1992, above n 41, art 130.

⁸⁹ Constitution of Vietnam 1992, above n 41, art 131.

⁹⁰ Constitution of Vietnam 1992, above n 41, art 129.

⁹¹ Constitution of Vietnam 1992, above n 41, art 134.

2.3.7 People's Procuracy

People's Procuracies are organised correlatively with the courts at all levels, exercising the right to initiate public prosecution and to supervise the obedience to the Constitution, laws and regulations within judicial areas.⁹²

The People's Procuracy is directed by its Head. The Heads of inferior Procuracies are subject to the leadership of the Heads of superior Procuracies. The Heads of local and of Military Procuracies are subject to the overall leadership of the Head of the Supreme People's Procuracy.⁹³ The People's Procuracies are empowered to prosecute private persons and public officials for drug offenses.

2. 4 Vietnamese Legal System

2.4.1 Overview

A long period of French rule over Vietnam significantly affected the national legal system. Thus, the current Vietnamese legal system, as a whole, is based on the main features of continental law.⁹⁴ All laws and regulations are written and enacted in a formal procedure laid down by the Law on the promulgation of legal documents.⁹⁵ International law, such as provisions of the DCCs, need to be transformed into domestic law in order to be applied in the country.

Developments in the Vietnamese legal system since the country's unification in 1975 are divided into three periods: (1) the transitional period of re-organizing the State after the unification of the North and the South from 1976 to 1979; (2) the period of strengthening centralized planning of the economy from 1980 to 1986; (3) the period of renovation from 1986 to the present time.

After the unification came the time for Vietnam to reorganize the State by unifying two different Governmental systems, which were a socialist government under Ho Chi Minh's leadership in the North and a colonial government in the south. Laws

⁹² Constitution of Vietnam 1992, above n 41, art 137.

⁹³ Constitution of Vietnam 1992, above n 41, art 138.

⁹⁴ Research Institution of State and Law, above n 42, 377-82.

⁹⁵ The *Law on the Promulgation of Normative Documents of the National Assembly* regulates all issues concerning the system of normative documents in Vietnam, jurisdiction of various state authorities over the enactment of normative documents, procedures for lawmaking, etc.

and regulations in this period aimed at overcoming the existing discrepancies between the Northern and the Southern regimes during thirty years of war. Many law-making efforts were made, a relatively large number of laws and regulations were introduced to overcome shortcomings in the legal system.⁹⁶ However, a new constitution was not drafted. The *Constitution 1959* enacted in the north during the war continued to be in force over the entire national territory. In brief, the legal system during this period remained under-developed.⁹⁷

In this period, two important normative documents were enacted to combat drug threats. They are *Decree 76/CP on Combating Opium Trafficking 1977*,⁹⁸ and the *Criminal Code 1985* that provided a tool for law enforcement authorities to suppress drug-related crimes.⁹⁹

The second period of Vietnamese legal development was marked by the enactment of the *Constitution 1980* which institutionalized resolutions of the Fourth National Party Congress regarding the establishment of the socialist regime over the whole country, especially the centrally planned economy. In comparison with the previous period, legislative work in this period was improved thanks to long-term planning. As a result, the legal system was much more elaborate, but the biggest limit was its divorce from reality.¹⁰⁰ In this period, it is a matter of regret that specific laws and regulations dealing with drug control were not developed.¹⁰¹

A new developmental period for the Vietnamese legal system originated from the Sixth National Party Congress in 1986 that encouraged its comprehensive reform.

⁹⁶ Research Institution of State and Law, above n 42, 199 and 386.

⁹⁷ Ibid 200.

⁹⁸ Based on provisions in this Decree, the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Internal Affairs enacted a joint circular guiding the application of laws and regulations to combat opium smuggling over the whole country. See, eg, Xuan Yem Nguyen and Quang Vinh Vu, *Nhung Van De Co Ban ve Cong Tac Phong Chong Ma Tuy* (2002) 84 [trans: Xuan Yem Nguyen and Quang Vinh Vu, *Basic Issues on the Prevention of Drug-Related Crimes* (2002)]; Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 27, 54 and Van Luyen Tran, *Trach Nhiem Hinh Su doi voi cac Toi Pham ve Ma Tuy* (1998) 15 [trans: Van Luyen Tran, *Criminal Liability for Drug-Related Crimes* (1998)].

⁹⁹ The Criminal Code 1985 is the first codified criminal law of Vietnam. This code did not stipulate illicit drug-related conducts as separate offenses, however, illicit dealing in drugs as treated as dealing with banned goods.

¹⁰⁰ Research Institution of State and Law, above n 42, 202.

¹⁰¹ See Xuan Yem Nguyen and Quang Vinh Vu, above n 98, 84 and Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 27, 54.

The first milestone was the *Constitution 1992* that proclaimed Vietnam to be a legitimate state and established a socialist-oriented market economy.¹⁰² Later, the Vietnamese State gradually enacted numerous laws and regulations to create legal bases for national socio-economic changes as well as for the constant expansion of its active international and regional economic integration.¹⁰³ Legal documents in this period demonstrate a most noticeable increase in both quality and quantity.¹⁰⁴ However, on the whole, the Vietnamese legal system remains weak in comparison with modern states under the rule of law. Laws and regulations in certain aspects are incomprehensible, inconsistent and inadequate to meet the requirements of national industrialization and modernization.¹⁰⁵ A number of laws and ordinances are of a framework nature. Consequently, subordinate documents make up a large proportion of the current legal system.¹⁰⁶ The explanation, revision and codification of laws and regulations are not undertaken regularly, and the transformation of international agreements that Vietnam has signed or acceded to remains slow.¹⁰⁷

Concerning drug control, this period achieved considerable progress. A large number of normative documents was enacted to regulate various aspects of drug-related issues, providing a legal framework for anti-drug law enforcement. Among them, the most important instruments are the *Law on Narcotics Prevention and Suppression 2000* and a number of decrees guiding in detail the implementation of this Law,¹⁰⁸ as well as the *Criminal Code 1999*¹⁰⁹ and the *Master Plan on Drug Control towards 2010*.

¹⁰² Constitution of Vietnam 1992, above n 41, art 15.

¹⁰³ Research Institution of State and Law, above n 42, 204.

¹⁰⁴ Ibid 387 and Tri Uc Dao, above n 42, 21.

¹⁰⁵ See Tri Uc Dao, above n 42, 22 and Huyen Minh, 'Mot so Van De ve Nhu Cau Phat Trien He Thong Phap Luat Viet Nam den nam 2010' (2002) 8 *People's Court* 3, 3 [trans: Huyen Minh, 'Some Issues on the Need to Develop the Vietnamese Legal System towards 2010' (2002) 8 *People's Court* 3].

¹⁰⁶ See Van Yeu Nguyen, 'Directions for Perfection on the Legal System in the Coming Time' (2004) 12 *Vietnam Law and Legal Forum* 2, 3. Van Yeu Nguyen is the Vice Chairman of the National Assembly of Vietnam.

¹⁰⁷ Ibid.

¹⁰⁸ For example, *Decree 67/2001/ND-CP Promulgating the Schedules of Narcotic Substances and Precursors*, *Decree 80/2001/ND-CP Guiding the Control of Licit Domestic Activities relating to Narcotic Substances* and *Decree 58/2003/ND-CP Promulgating the Control Regime for Import, Export, Transportation and Transit of Narcotic Substances and Precursors in the Territory of Vietnam*.

¹⁰⁹ The *Criminal Code 1999* continues to strengthen provisions dealing with drug-related crimes in the *Criminal Code 1985* which is amended in 1997.

2.4.2 *The 1992 Constitution, amended in 2001*

In order to lead the country out of an economic crisis caused by the centrally planned economy as laid down in the *Constitution 1980*, economic reforms, followed by political reforms, have been carried out all over the country, and have resulted in praiseworthy practical successes. To strengthen and legalize the ideologies of the renovation, a new constitution was drafted and adopted in 1992.

The *Constitution 1992*, as a law of the highest authority, identifies principles underlying the Vietnamese political and economic regime; social and cultural policies; principal institutions of state, and their powers and relations with other state institutions; as well as citizens' rights and obligations.

It was noteworthy that drug management, for the first time, was stipulated in the *Constitution 1992*, marking the in depth awareness of the Government of the drug problems. Pursuant to Article 61, the unlawful manufacture, transportation, trade in, storage and consumption of opium and other narcotic substances are strictly prohibited. In addition, compulsory treatment is provided to drug abusers. Based on these provisions, since 1992 many legislative and administrative measures have been applied to curb the increase in drug cultivation, trafficking and abuse in the country.¹¹⁰

2.4.3 *Sources of Law*

Legal documents, in Vietnam, are hierarchical in authority to form a harmonious system within which documents of a lower authority must not contravene those of a higher level.¹¹¹ Among them, the Constitution, which forms the backdrop of Government and arranges relations between Government and citizens, is a set of rules of the highest authority.¹¹²

¹¹⁰ See Chung Luu Uong, 'Phap Luat va Chinh Sach Hinh Su trong Dau Tranh Phong Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 31 [trans: Chung Luu Uong, 'Law and Criminal Policy in the Combat against Narcotics in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

¹¹¹ *Luat Ban Hanh Van Ban Quy Pham Phap Luat 1996* (Quoc Hoi) art 2 [trans: *Law on Promulgation of Normative Documents 1996* (National Assembly)] (this Law was amended in 2002).

¹¹² *Law on Promulgation of Normative Documents 1996*, above n 111, art 2.

Detailing the constitutional rules are laws for national implementation adopted by the NA. Ordinances are enacted by its Standing Committee in accordance with the constitution, laws and resolutions of the NA.¹¹³

Implementing legislation is also issued by the Government, People's Councils and People's Committees as well as by several dozen national government Ministries and Ministerial-Rank Organs. Each authority enacts normative regulations in suitable forms as prescribed by law. For example, the Country's President is authorised to enact orders and directives.¹¹⁴ The Government can make resolutions and decrees to regulate in detail the implementation of laws and ordinances,¹¹⁵ whereas, the Prime Minister, as the head of the Government, is empowered to issue decisions and directives concerning particular cases.¹¹⁶ The Ministers and the Head of the Ministerial-Rank Organs are authorised to enact circulars to guide the implementation of decrees.¹¹⁷ The Judicial Council of the Supreme Court can enact resolutions to provide guidance for inferior courts, while the Head of the People's Supreme Court and the Supreme People's Procuracy are authorised to make circulars, decisions and directives.¹¹⁸

Customarily, in Vietnam, laws and ordinances enacted by the NA and its Standing Committee serve as guiding principles. Thus, in order to come into operation, these principal rules need to be regulated in detail by decrees issued by the Government, and again, in further detail, by circulars written by the Ministries within their sphere of work. As a consequence, certain laws and ordinances do not become effective unless subordinate decrees and circulars are enacted.¹¹⁹

¹¹³ *Luat so 02/2002/QH-11 Sua Doi, Bo Sung Mot so Dieu cua Luan Ban Hanh Van Ban Quy Pham Phap Luat nam 1996, 2002* (Quoc Hoi) art 1(1) [trans: *Law 02/2002/QH-11 amending a Number of Articles of the Law on the 1996 Promulgation of Normative Documents 2002* (National Assembly)] (hereinafter Amended Law on Promulgation of Normative Documents 1996).

¹¹⁴ Amended Law on Promulgation of Normative Documents 1996, above n 113, art 1(2)(a).

¹¹⁵ Amended Law on Promulgation of Normative Documents 1996, above n 113, art 1(2)(b).

¹¹⁶ Amended Law on Promulgation of Normative Documents 1996, above n 113, art 1(2)(b).

¹¹⁷ Amended Law on Promulgation of Normative Documents 1996, above n 113, art 1(2)(c).

¹¹⁸ Amended Law on Promulgation of Normative Documents 1996, above n 113, art 1(2)(d).

¹¹⁹ To end the situation that laws and ordinances cannot be implemented without sub-law guiding documents, is defined as one of the aims of reforming the Vietnamese legal system. See Van Yeu Nguyen, above n 106, 6.

2.5 *Economic and Social Changes over the Country*

Due to its significance to drug control, the interrelationship between drug issues and socio-economic changes has been the subject of significant international scholarly attention. Many scholars have studied changes in society that may boost drug trafficking and increase drug abuse,¹²⁰ while others mainly focus on the adverse impacts of drug cultivation, drug trafficking and drug abuse on society, economic development and environment.¹²¹ There are no studies of causal links specifically for Vietnam. However, if we assume that the general interrelationship between drugs and socio-economic changes applies also in Vietnam, it is essential to consider the socio-economic status of the country as a background to understanding trends in drug

¹²⁰ For instance, see Berridge, Virginia, 'The Origins of the English Drug "Scene" 1890-1930' in Nigel South (ed), *Drugs, Crime and Criminal Justice* (1995) vol 1; Joan Hoffman, 'Macroeconomic Indicators and New York City Women's Drug Arrests' (1997) 24 *Social Justice* 82; Khlat, Myriam, Sermet, Catherine and Pape, Annick Le, 'Increased Prevalence of Depression, Smoking, Heavy Drinking and Use of Psycho-Active Drugs among Unemployed Men in France' (2004) 19 *Epidemiology*; Joshua, Laurie, 'Nigeria, Drug Trafficking and Structural Adjustment: Overcoming the Impediments to Dialogue' in Penny Green (ed), *Drug Couriers: A New Perspective* (1996); Yi-Mak, Kam and Harrison, Larry, 'Globalization, Culture Change and the Modern Drug Epidemics: the Case of Hong Kong' (2001) 3 *Health, Risk & Society*; and Williams, J Chambliss, 'Markets, Profits, Labor and Smack' in Nigel South (ed), *Drugs, Crime and Criminal Justice* (1995) vol 1.

¹²¹ For example, *Economic and Social Consequences of Drug Abuse and Illicit Trafficking* (1997) United Nations offices on Drugs and Crime <http://www.unodc.org/pdf/technical_series_1998-01-01_1.pdf> at 20 August 2005; UNDCP, *The Social Impacts of Drug Abuse* (1996) United Nations offices on Drugs and Crime <http://www.unodc.org/pdf/technical_series_1995-03-01_1.pdf> at 20 August 2005; *Drugs and Development*, (1996) United Nations offices on Drugs and Crime <http://www.unodc.org/pdf/technical_series_1994-06-01_1.pdf> at 20 August 2005; World Health Organisation, *Assessment of Public Health and Social Problems associated with the Use of Psychotropic Drugs: Report of the Who Expert Committee on Implementation of the Convention on Psychotropic Substances, 1971* (1981); International Narcotics Control Board, *Illicit Drugs and Economic Development* (2002) <http://www.incb.org/pdf/e/ar/2002/incb_report_2002_1.pdf> at 12 August 2005; Rufencer, Brent L, Rachal, J Valley and Cruze, Alvin M, 'Costs of Drug Abuse to Society' in Irving Leveson (ed), *Quantitative Exploration in Drug Abuse Policy* (1980); and David J. Collins and Helen M. Lapsley, *Counting the Cost: Estimates of the Social Costs of Drug Abuse in Australia in 1998-1999* (2002).

consumption and production at the present time. These are described in the next Chapter.

2.5.1 Doi Moi Policy - A Turn in the Country's Development

The year 1986 has been viewed as the most remarkable turning-point in the history of Vietnam. It opened a new era in the country's economic and social development.

On completing the second five-year socio-economic plan (1980-1985) since the country's unification, besides certain successes and achievements, Vietnam was still faced with a great many difficulties. The country's economy especially was confronted by acute problems. Production had risen slowly, in contrast to the population which had increased quickly. National production was not in a position to meet consumption needs. Consequently, a part of social consumption had to be taken from international loans and assistance, and the economy was unable to create an internal accumulation.¹²²

To lead the country out of crisis, the Sixth National Party Congress initiated economic reforms that sought to replace the centrally-planned economy¹²³ with a socialist-oriented market economy.¹²⁴ The change of economic mechanism required, as an indispensable consequence, a new legal framework and a new administrative management. For these reasons, a comprehensive renovation was carried out over the whole country leading to various economic and social changes. In the Vietnamese language this renovation is called *Doi Moi*.

The renovation has had intense impacts on the Vietnamese economy and society. By introducing business freedom and generating strong motivation for all economic sectors, it has fundamentally influenced the dynamism and behaviour of various

¹²² See Mau Han Le, *Communist Party: National Party Congress and Conferences of the Central Committee* (1998) 142.

¹²³ Article 18 of the *Constitution 1980* stipulated that the State set up and consolidate the national economy principally based on the State and collective economic sectors.

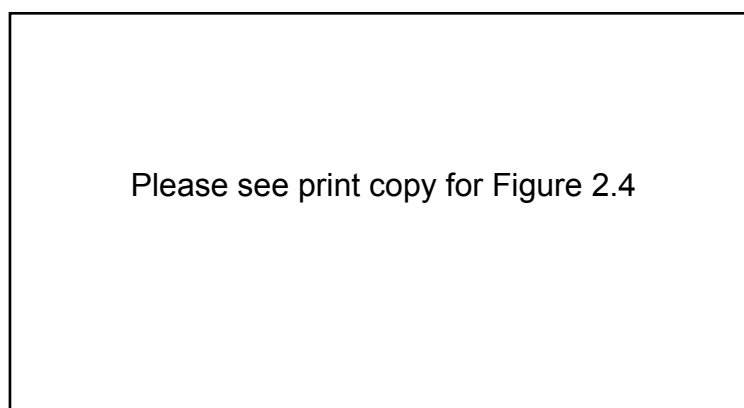
¹²⁴ According to Article 15 of the *Constitution 1992*, the State promotes a multiple-component commodity-based economy functioning in accordance with market mechanisms under the management of the State and following a socialist orientation, stimulating the development of all components of the economy, such as the state sector, the collective sector, the private individual sector, and the private capitalist sector.

businesses and individuals and has positively impacted macro-economic development.

(a) Increase in Growth Rate and Accumulation

In general, the economy has grown fairly well since the economic reforms. Within the first fifteen years, Gross Domestic Product (GDP) has annually increased by 7% on the average.¹²⁵ GDP in the year 2000 was over twice that of 1990 and its average increase in the period 2001-2005 is 7.5%.¹²⁶ The GDP statistics for the ten year period, 1996-2005, are set out in Figure 2.4 below.

Figure 2.4 Gross Domestic Product and Gross Domestic Product per Capita from 1995 to 2005 (at present prices)



**n.a.: not available*

Source: General Statistics Office, *Statistical Yearbook of Vietnam 2005*, 60
(GDP per capita is counted from data on GDP and populations).

¹²⁵ The Communist Party, 'To Promote the Entire Nation's Strength, Continue with the Renewal Process, Step up Industrialisation and Modernization, Build and Safeguard the Socialist Vietnamese Homeland (The Communist Party of Vietnam Central Committee's Political Report presented to the Nineth National Congress)' (2001) 4 *Vietnam Law and Legal Forum* 1, 4.

¹²⁶ See *Dinh Huong Chien Luoc Phat Trien Ben Vung cua Viet Nam ban hanh kem theo Quyét Dinh so 153/2004/QĐ-TTg 2004* (Thu Tuong Chinh Phu) pt 1(I)(1)(a) [trans: *Oriented Strategy for Sustainable Development, issued by Decision 153/2004/QĐ-TTg 2004* (Prime Minister)] (hereinafter *Oriented Strategy for Sustainable Development*); Bo Thuong Mai, *Thuong Mai Viet Nam va APEC* (2006) 97 [trans: Ministry of Trade, *Vietnam and APEC Trade* (2006)] and Dang Cong San Viet Nam, 'Kiem Diem viec Thuc Hien Nghi Quyét Dai Hoi Dang Lan Thu IX ve Phuong Huong Nhiem Vu Phat Trien Kinh Te Xa Hoi nam 2001-2005 va Phuong Huong Nhiem Vu Phat Trien Kinh Te Xa Hoi 5 nam 2006-2010' (2006), pt I(1) [trans: The Communist Party of Vietnam, 'Review of the Implementation of the Party Resolution at the Ninth Party National Congress on Directions and Tasks

Industrial production is gradually adapting to the new management mechanism and achieving noteworthy developments. During the first five-year period since renovation, 1986-1990, industrial production increased by 9.5% per year. In the next five years, 1991-1995, it grew 13.5% per year.¹²⁷ In recent years, 2000-2005, industrial production increased annually by 16.02%.¹²⁸ Public infrastructure, such as post and telecommunications, roads, bridges, ports, airports, electricity, water conservancy and so on, has been enhanced. Services, exports and imports have also markedly developed. The agriculture sector has also developed, especially food production. Aquatic cultivation and exploitation have expanded by 5.4% per year in the period 2000-2005.¹²⁹ Rice production has gained high growth, resulting from the increase of food crop acreage as well as the yield. Chronic food shortages in the 1970s and 1980s were definitely overcome, and Vietnam successfully turned into an exporter of crops.¹³⁰ As a consequence, domestic production managed not only to cover consumer needs, but also the need for savings.¹³¹ Despite the fact that the rate of internal accumulation was still limited, it importantly reflected a deep change in Vietnam's economy, moving from a position that could not sustain itself, to growth in savings from domestic mobilization.

(b) A Shift in the Private Economic Sector

As the renovation aims at setting up in Vietnam a multiple-component commodity-based economy by stimulating the potentialities of all economic sectors, the private economic sector has also grown. Business freedom and equal treatment of state,

to Develop the National Socio-Economy in 2001-2005 and Directions and Tasks to Develop the National Socio-Economy in the Five-Year Period, 2006-2010' (2006)].

¹²⁷ See, eg, Tong Cuc Thong Ke, *Dong Thai va Thuc Trang Kinh Te Xa Hoi Viet Nam sau 10 nam Doi Moi tu 1986 den 1995* (1996) 45 [trans: General Statistics Office, *Impetus and Present Situation of Vietnam's Economy and Society after Ten Years of Renovation from 1986 to 1995* (1996)] and The Communist Party, 'Documents of the Ninth National Party Congress' (The Communist Party, 2001) 4.

¹²⁸ Ministry of Trade, above n 126, 101 and Communist Party, *Review of Socio-Economic Developments*, above n 126, pt I(1).

¹²⁹ Ibid 101.

¹³⁰ State General Statistics Office, *Impetus and Present Situation of Vietnam's Economy and Society*, above n 127, 41-2 and Communist Party, *Review of Socio-Economic Developments*, above n 126, pt I(1).

¹³¹ Within the first ten years of renovation, the internal accumulation of the economy has increased from a negligible amount up to 2.5% of the Gross Domestic Product. The formerly permanent inflation has been curbed and pushed back. See Duc Ngai Truong and Thang Phan, above n 17, 42.

collective and private businesses have provided favourable conditions for a boom in growth of private business units. For example, in the five years between 1991 and 1995, the private sector reached a growth rate of 34.3%, or 6% per annum.¹³² Private businesses have not only played an important role in agriculture, but also in industry, transportation, commerce and services. In 2001-2005, the non-state sector produced around 45.7% of GDP.¹³³

(c) International Economic Integration

Maintaining an open door policy, Vietnam has constantly broadened its external relations, strengthened multifaceted cooperation with traditional friends, regional countries as well as others, and taken an active part in activities promoting mutually beneficial cooperation in the Association of South-East Asian Nations (ASEAN) and the Asia-Pacific Economic Cooperation (APEC). Especially, in early 2007, Vietnam became a member of the World Trade Organization. Many international financial, non-governmental organizations as well as economic associations and coalitions now have bilateral and multilateral relations with Vietnam. This proactively international economic integration has yielded many good results. Vietnam has maintained trade relations with over one hundred and forty countries, and investment relations with nearly seventy countries, attracting considerable foreign investment.¹³⁴

(d) Improving Living Standards

As a result of economic growth, the living standard of Vietnam's population, in both rural and urban areas, has been greatly improved. The proportion of poor households fell from 55% in 1989 to 17.81% in 1994.¹³⁵ According to the census carried out by the State General Statistics Office, the per capita income in 2004 had increased

¹³² Ibid 50.

¹³³ See Communist Party, *Review of Socio-Economic Developments*, above n 126, pt I(2). The non-state sector occupied more than 70% of the total retail sale of consumer goods and services. See Van Chinh Nguyen et al, *Kinh Te Viet Nam Doi Moi: Nhung Phan Tich va Danh Gia Quan Trong* (2002) 34-5 [trans: Nguyen, Van Chinh et al, *Economic Reform in Vietnam: Major Analysis and Comments* (2002)].

¹³⁴ Communist Party, Documents of the Ninth National Party Congress, above n 127, 4.

¹³⁵ State General Statistics Office, *Impetus and Present Situation of Vietnam's Economy and Society*, above n 127, 54.

approximately 64.2% in comparison with the year 1999.¹³⁶ The essential needs of the population regarding food, housing, clothing, health care, clean water, daily use of electricity, education, travel, recreation and so on, have been covered in a much better manner.

2.5.2 Remaining Difficulties and Problems

Despite these achievements, the country still faces various difficulties and social issues. The national economy develops in an unsteady manner, the competitiveness of Vietnamese businesses is relatively low in comparison with other countries in the region. On the whole, per capita income in Vietnam, which reached approximately 638 USD in 2005, is still noticeably lower than other countries in the region.¹³⁷

Smuggling, counterfeit goods and commercial frauds have adversely affected socio-economic development. The financial-banking system has been weak and unhealthy. The State economic sector has not been consolidated commensurate with its leading role.¹³⁸ The existing infrastructure and services are not yet able to satisfy growing needs. Scientific and technological activities have not yet responded properly to the requirements of industrialization, modernization, and national construction and defence.¹³⁹

Solutions to some pressing and acute socio-cultural problems have also been slow in coming. Certain cultural values and social ethics have been on the decline and, in contrast, superstition and backward habits are on the rise. The rates of urban unemployment and rural under-employment have been high, and remain as one of the most outstanding problems.¹⁴⁰

Living standards of the population, especially farmers in certain localities, particularly mountainous areas, have been too low. The rich-poor polarization has

¹³⁶ Ministry of Trade, above n 126, 104.

¹³⁷ In 2004, GDP per capita in Vietnam counted to 53.2%, 46.4%, 43.6%, 21.8% and 12% of that in the Philippines, Indonesia, China, Thailand and Malaysia, respectively. See *ibid* 105.

¹³⁸ See Communist Party, Documents of the Ninth National Party Congress, above n 127, 5.

¹³⁹ Oriented Strategy for Sustainable Development 2004, above n 126, pt 1(I)(2)(a), (b); State General Statistics Office, *Impetus and Present Situation of Vietnam's Economy and Society*, above n 127, 56 and Ministry of Trade, above n 126, 107.

¹⁴⁰ Oriented Strategy for Sustainable Development 2004, above n 126, pt 1(I)(2)(c) and Van Chinh Nguyen et al, above n 133, 30.

increased rapidly between the various regions, between urban and rural areas, and among different sections of the population.¹⁴¹

Mechanisms and policies have not been well-coordinated and have failed to generate a strong driving force for development. Certain mechanisms and policies appear to be inconsistent, detached from life and unfeasible. The authorities, at various levels and sectors, in some cases have evidently failed to replace or revise obsolete regulations. There have been instances in which judicious policies are deformed through many bureaucratic administrative layers. Furthermore, after the promulgation of higher laws, normative documents necessary to guide their implementation have been issued only after long delay.¹⁴²

Social vices, especially drug abuse and prostitution, have been spreading and threatening social order and public safety.¹⁴³ Corruption and degradation in political ideology have been serious. Protracted corruption in the political, governmental systems and economic entities has become a major danger.¹⁴⁴

2.6 Conclusion

In summary, the geographical and climatic features of Vietnam have facilitated drug cultivation and trafficking in the country. The proximity to the world's drug sources, aggravated by the long weakly-controlled inland and coastline borders, are key factors that result in the territory of Vietnam being used as a drug transit point. The high population density and millions of unemployed are regarded as contributors to drug consumption and drug-related crimes in Vietnam. The emerging phenomenon of spontaneous population movements has influenced social organization and living environments. Potential difficulties faced by migrants tend to lead them to the use of

¹⁴¹ Oriented Strategy for Sustainable Development 2004, above n 126, pt 1(I)(2)(c) and General Statistics Office, *Vietnam's Economy and Society in Three Years from 2001 to 2003*, above n 136, 16.

¹⁴² See Tri Uc Dao, 'Co So Khoa Hoc cho viec Hoan Thien Cau Truc Nha Nuoc cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam trong Thoi Ky Cong Nghiep Hoa va Hien Dai Hoa' (2001) 11 *Luat Hoc* 3, 4-5 [trans: Tri Uc Dao, 'Scientific Grounds for Improving Governmental Organization of the Socialist Republic of Vietnam within the Industrialization and Mordenization Period' (2001) 11 *State and Law* 3] and Van Yeu Nguyen, above n 106, 4.

¹⁴³ Communist Party, Documents of the Ninth National Party Congress, above n 127, 6 and Ministry of Trade, above n 126, 108.

¹⁴⁴ Communist Party, Documents of the Ninth National Party Congress, above n 127, 6 and Ministry of Trade, above n 126, 109.

drugs. As a dominant political force in the country, the Communist Party now emphasizes a need to enhance drug control, with the result that drug prevention and suppression have been included in the Vietnam's Development Strategies towards 2010. The mass organizations are widely mobilized in the combat against illicit drugs and the State has enacted a number of laws and regulations providing a legal framework dealing with drug issues. Thanks to the comprehensive renovation under *Doi Moi*, significant changes in Vietnam's socio-economic status have been made, improving the image of Vietnam and the living standards of the population as a whole. With increasing international integration, however, on the other hand, Renovation has also facilitated drug smuggling and consequently escalates drug abuse in the country. In the next Chapter, drug problems in Vietnam's society since renovation come into view.

3 DRUG PROBLEMS IN VIETNAM AND VIETNAM'S RATIFICATION OF THE UN DRUG CONTROL CONVENTIONS

3.1 Drug Problems in Vietnam

3.1.1 Historical Overview

3.1.2 Drug Cultivation

3.1.3 Drug Trafficking

3.1.4 Drug Abuse

3.2 Ratification of the Three UN Drug Control Conventions

Opium poppy has been traditionally cultivated across the northern mountainous and upland areas of Vietnam by the ethnic minorities. They use opium as an effective medicine against pains and illness, a stimulant in their folk festivals as well as a substance to alleviate hunger. This tradition has led to a very high rate of abuse in the ethnic communes. In addition, lying across many important traffic routes in the region and located in the proximity of the Golden Triangle, Vietnam has become an international drug transit country. The availability of drugs smuggled from the neighboring countries has brought about an alarming increase in drug abuse in the whole country, and especially among the youth. The dimensions of drug consumption and production in Vietnam are analyzed in the first part of this Chapter. The Government of Vietnam is deeply aware of the threats that illicit drugs impose upon Vietnam and the rest of the world as a whole. Therefore, it ratified the three United Nations Drug Control Conventions (DCCs) in 1997. The second part of this Chapter describes the reasons and the context in which Vietnam decided to take an official step to become a Party to the DCCs.

3.1 Drug Problems in Vietnam

3.1.1 Historical Overview

The opium poppy was first thought to come to Vietnam from Laos in between the years 1600 and 1660.¹ After it entered Vietnam, opium smoking spread widely and brought about major threats to public security and order. Therefore, in 1665, King Canh Tri III prohibited opium cultivation.² This prohibition is viewed as the first drug control regulation of Vietnam.³ At the beginning of the nineteenth century, smoking abuse was still very serious. In 1820, King Minh Mang instituted severe punishments upon opium consumers, aiming at suppressing its emergence.⁴ In 1824, the King expanded punishments to foreign sellers and soldiers involved in opium distribution and consumption. Despite the government prohibition, illicit opium trafficked into Vietnam by Chinese merchants increased markedly.⁵ Later, in 1840, he imposed the death sentence on ships-owners whose ships were involved in opium transportation. At the same time, he stipulated that opium smoking abusers received compulsory medical treatment to assist in their rehabilitation.⁶

¹ See Phong Hoa Nguyen and Ngoc Hung Dang, *Ma Tuy va nhung Van De ve Cong Tac Kiem Soat Ma Tuy* (1994) 90 [trans: Phong Hoa Nguyen and Ngoc Hung Dang, *Narcotics and Matters Concerning Narcotics Control* (1994)] and Xuan Yem Nguyen, *Mai Dam, Ma Tuy, Co Bac, Toi Pham Thoi Hien Dai* (2003) 567 [trans: Xuan Yem Nguyen, *Prostitution, Narcotics and Gambling: Crimes at the Present Time* (2003)].

² According to the King's regulations, all government officials and residents were strictly banned from opium poppy cultivation, and trade and opium cultivation must be eradicated and opium storage must be destroyed. See, eg, Ngoc Bung Vu, *Phong Chong Ma Tuy trong Nha Truong* (1997) 121 [trans: Ngoc Bung Vu, *Narcotics Prevention in Education Institutions* (1997)]; Phong Hoa Nguyen, *Cac Toi Pham ve Ma Tuy: Dac Diem Hinh Su, Dau Hieu Phap Ly, cac Bien Phap Phat Hien Dieu Tra* (1998) 91 [trans: Phong Hoa Nguyen, *Drug-Related Crimes: Criminal Characteristics, Legal Constituents, Measures to Discover and to Investigate* (1998)]; Quang Vinh Vu, *Hoat Dong Phong Ngua cac Toi Pham ve Ma Tuy cua Luc Luong Canh Sat Nhan Dan* (D Phil thesis, Hoc Vien Canh Sat Nhan Dan, 2003), 16 [trans: Quang Vinh Vu, *People's Police and Drug-Related Crime Prevention* (D Phil Thesis, Police Institution, 2003)]; and Van Luyen Tran, *Trach Nhiem Hinh Su doi voi cac Toi Pham ve Ma Tuy* (1998) 11 [trans: Van Luyen Tran, *Criminal Liability for Drug-Related Crimes* (1998)].

³ Chung Luu Uong, 'Phap Luat va Chinh Sach Hinh Su trong Dau Tranh Phong Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 31 [trans: Chung Luu Uong, 'Law and Criminal Policy in the Combat against Narcotics in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

⁴ According to this law, a government official who was involved in opium storage or smoking, was dismissed from his state position, while a resident conducting the same activities was compulsorily exiled to remote areas. See Ngoc Bung Vu, above n 2, 122.

⁵ Ibid 123 and Phong Hoa Nguyen and Ngoc Hung Dang, above n 1, 92-3.

⁶ See, above n 4, 123-4 and Quang Vinh Vu, *People's Police and Drug-Related Crime Prevention*, above n 2, 17.

A significant change in opium policy was made by French colonizers⁷ in the late nineteenth century. They officially stimulated opium cultivation, trade and use as taxes from the opium business became a major source of profit for the colonial government.⁸ As a consequence, opium use increased dramatically. The opium poppy was cultivated in the northern mountainous areas and opium resin became a popular commodity. In the 1930s, several well-known opium markets were formed, such as Dong Van in Ha Giang province.⁹

After the 1945 revolution, the Socialist Republic of Vietnam was established in the north, while the colonial government continued to rule the southern half of the country. The Northern Government considered opium a toxic drug and encouraged people to stop smoking and cultivating. However, for medical and scientific use, in 1952, the Government issued interim regulations which designated opium cultivation areas, and prescribed general rules on opium sale after payment of taxes.¹⁰ In 1954, the Northern Government initiated a large campaign of opium eradication and opium abuse treatment. Consequently, opium cultivation and smoking declined remarkably.¹¹ Whereas, in South Vietnam,¹² not only opium but also other narcotic drugs were legally distributed, leading to a significant increase in drug abuse.¹³ There

⁷ The French conquest of Vietnam took place in the nineteenth century, in various stages between 1858 and 1884, and French rule over the whole country lasted until the August Revolution in 1945. See Vien Nghien Cuu Nha Nuoc Va Phap Luat, *Nhung Van De Ly Luan Co Ban ve Nha Nuoc va Phap Luat* (1995) 377 [trans: Research Institution of State and Law, *Basic Issues on Theories of State and Law* (1995)].

⁸ Phong Hoa Nguyen and Ngoc Hung Dang, above n 1, 94.

⁹ See Xuan Yem Nguyen and Quang Vinh Vu, *Nhung Van De Co Ban ve Cong Tac Phong Chong Ma Tuy* (2002) 69 [trans: Xuan Yem Nguyen and Quang Vinh Vu, *Basic Issues on the Prevention of Drug-Related Crimes* (2002)].

¹⁰ Pursuant to this interim regime, the tax on opium poppy cultivation equaled a third of the harvested crop, and the rest of the crop had to be sold to State enterprises. To stimulate peasants to sell their crops to the State, by the end of the same year, the Government had reduced the tax on opium cultivation, and increased the reward for discovering illegal opium trafficking. The tax on opium cultivation was reduced to a fourth of the harvested crop, while the reward for opium trafficking discovery increased from 20% up to 40% of the totally discovered quantity. See Ngoc Bung Vu, above n 2, 125.

¹¹ Ibid 126 and Phong Hoa Nguyen and Ngoc Hung Dang, above n 1, 94-5.

¹² The Geneva Conference of 1954 ended France's colonial presence in Vietnam. When France lost its control over Vietnam, the United States started to provide financial and military support to and to take control over the Government of Southern Vietnam. See, eg, Sandra Wittman, *Vietnam: Yesterday and Today* <<http://servercc.oakton.edu/~wittman/chronol.htm>> at 12 September 2005 and *History of Vietnam*, From Wikipedia, The Free Encyclopedia <http://en.wikipedia.org/wiki/History_of_Vietnam> at 12 September 2005.

¹³ Thi Mai Nga Nguyen and Quoc Huynh Pham, *Nhung Van De Co Ban trong Cong Tac Kiem Sat Dieu Tra va Kiem Sat Xet Xu cac Toi Pham ve Ma Tuy o Viet Nam* (2003) 37 [trans: Thi Mai Nga

was evidence that high-ranking officials in South Vietnam's air force, navy, customs, army, port authority, and national police were involved in drug trafficking.¹⁴ According to the statistics of the Southern Government, there were about 150,000 to 300,000 registered drug abusers within its borders before 1975.¹⁵ Since Vietnam gained its reunification in 1975, laws and regulations on drug control have been applied uniformly over the whole national territory.

3.1.2 Drug Cultivation

The opium poppy plantations are found at an altitude of 600 meters to 1500 meters above sea level in the northern highlands of Vietnam,¹⁶ principally in the following provinces: Lai Chau, Son La, Hoa Binh, Lao Cai, Yen Bai, Vinh Phu, Ha Giang, Tuyen Quang, Cao Bang, Bac Thai, Bac Can Lang Son, Quang Ninh, Ha Bac, Thanh Hoa and Nghe An.¹⁷ The opium poppy crop is normally sown in October or November, and harvested in March or April of the next year. The average opium yield in Vietnam is 4 kilograms per hectare (kg/ha),¹⁸ lower than other countries in the region. For example, in Myanmar the yield is 8 kg/ha and in Laos 6.5 kg/ha.¹⁹

The H'mong ethnic population accounts for about 75% of opium poppy cultivation. Other ethnic groups, such as Kho Mu, Thai and Dao also plant opium but they

Nguyen and Quoc Huynh Pham, *Basic Issues on Supervision of Investigations and Trials for Drug-Related Crimes* (2003)].

¹⁴ See, eg, Alfred W McCoy, 'South Vietnam's Heroin Trade' in Alfred W McCoy (ed), *The Politics of Heroin - CIA Complicity in the Global Drug Trade: Afghanistan, Southeast Asia, Central America, Colombia* (2nd ed, 2003) 193, 197.

¹⁵ See Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 13, 37.

¹⁶ Van Hoa Do, *Xac Dinh Mo Hinh Co Cau Cay Trong Thich Hop Tren Dat Doc Vung Cao Mien Nui Phia Bac Gop Phan Bo Sung Cac Giai Phap cho Chuong Trinh Thay The Cay Thuoc Phien* (D Phil thesis, Vien Khoa Hoc Ky Thuat Nong Nghiep Vietnam, 1996) 120 [trans: Van Hoa Do, *Finding a Suitable Cultivation Structure for Northern Mountainous and Upland Areas as a Contribution to the Opium Poppy Alternatives Program* (D Phil Thesis, Technical Agriculture Institution, 1996)].

¹⁷ See Phuong Hoa Hoang, 'Thuc Trang Cong Tac Xoa Bo Cay Thuoc Phien, Thay The Cay Trong - Nhung Thuan Loi, Kho Khan va Kien Nghi Hoan Thien Phap Luat' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Ha Noi, Vietnam, 2002) 21 [trans: Hoang, Phuong Hoa, 'The Reality of Opium Eradication and Development of Alternatives: Advantages, Disadvantages and Recommendations for Further Improvement' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Ha Noi, Vietnam, 2002)] and Van Hoa Do, above n 16, 42.

¹⁸ Van Hoa Do, above n 16, 119.

¹⁹ *World Drug Report 2006* (2007) United Nations Office on Drugs and Crime [at 220 and 228] <http://www.unodc.org/pdf/WDR_2006/wdr2006_chap3_opium.pdf> at 22 March 2007.

account for only 5%. The Tay, Nung, Muong, Hoa and Kinh cultivate further small areas.²⁰

On the whole, the opium poppy cultivation areas are the most impoverished regions in the country, where local people live in extremely poor conditions. In many places, they confront a permanent shortage of food and have to rely on opium smoking as a means to alleviate hunger. The lack of access to medical services has led many ethnic groups to the use of opium as an efficient drug against malaria, goitre and other diseases.²¹ They also use opium as a stimulant in traditional ceremonies, such as weddings, funerals and folk festivals.²² For these reasons, the opium poppy has been cultivated for domestic consumption as well as a medium of exchange for daily necessities. According to the census carried out by the Vietnamese State General Statistics Office in 1992, the average income in the opium cultivation areas was only 62,000 VND per month (equalled to approximately 7 USD/month).²³ A majority of ethnic families relied heavily on profits from opium sales.²⁴ Yields on the opium poppy cultivation accounted for over 30%, and in some places 65% to 70%, of the total family's income.²⁵ Thus, the issue of eradicating opium cultivation is deeply rooted in broader socio-economic concerns.

²⁰ See Van Hoa Do, above n 16, 47.

²¹ See Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 13, 37.

²² See Hung Vuong Vu, 'Luc Luong Canh Sat voi Cong Tac Phong, Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Vietnam va Phap, Hanoi, Vietnam, 1998) 46 [trans: Hung Vuong Vu, 'Police Force in the Combat against Narcotic Substances in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)] and Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 13, 37.

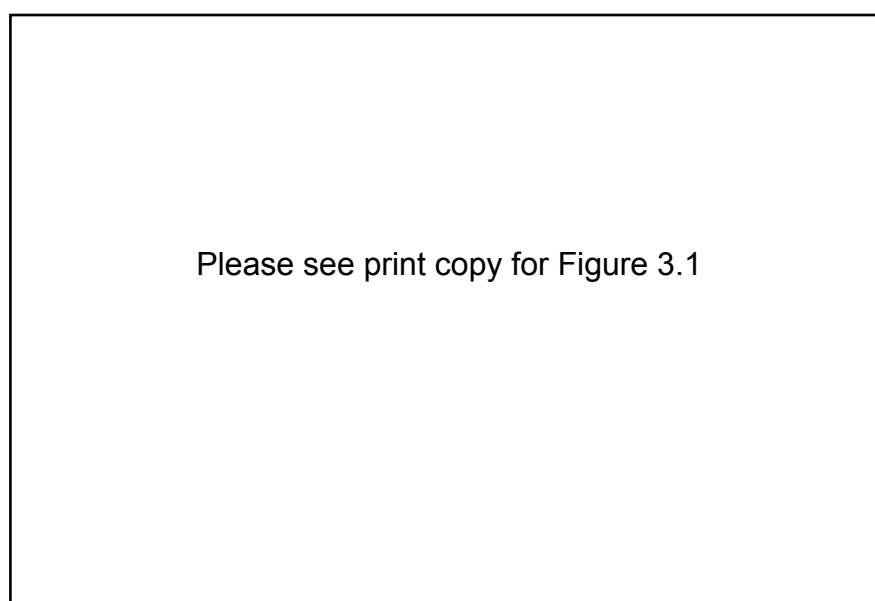
²³ Van Kiet Vo, 'Ket Luan tai cuoc Hoi Thao ve Doi Song cua Dan Toc Thieu So H'Mong o Vung Cao Phia Bac nam 1992' (1994) 1 *Ban Tin Phong Chong Ma Tuy* 19, 63 [trans: Van Kiet Vo, "Conclusions of the 1992 Conference on Hmong Ethnic Groups Living in the Northern Mountainous Areas" (1994) 1 *Bulletin on Narcotics Prevention and Suppression* 19].

²⁴ Xuan Yem Nguyen, *Luat Phong Chong Ma Tuy va Phong Chong Ma Tuy trong Nha Truong* (2004) 787 [trans: Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions* (2004)] and Van Hoa Do, above n 16, 47.

²⁵ See Van Du Nguyen, 'Mot So Van De ve Phong Chong Ma Tuy trong Vung Thuoc Nhiem Vu cua Bo Doi Bien Phong' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy giua Viet Nam va Phap, Hanoi, Vietnam, June 1998) 37 [trans: Van Du Nguyen, 'Some Issues on the Prevention and Suppression of Narcotics in Areas Supervised by Border Guards' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

The opium poppy crop in 1985-1986 was seen as the most productive harvest ever, with 19,000 hectares.²⁶ The increased domestic opium production was one of the factors leading to a remarkable upward trend in both drug trafficking and abuse.²⁷ The ten provinces that had the highest areas of opium plantation in 1985, 1990 and 1992 are listed in Figure 3.1. According to the statistics, in 1985, Ha Giang province had the highest areas of opium cultivation with 4546 hectares, followed by Son La and Nge An provinces with 3553 hectares and 3328 hectares, respectively. However, in 1990, Son La turned to be the highest opium cultivation province, followed by Nghe An province. A survey two years later showed that Son La and Nghe An provinces continued to have the largest acreage of opium poppy plantation, with 3813 hectares and 3183 hectares, respectively.

Figure 3.1 Highest Opium Poppy Cultivation Areas in the Years 1985, 1990 and 1992



(): proportion compared with the whole territory, (n.a**): not available*

²⁶ Phong Hoa Nguyen and Ngoc Hung Dang, above n 1, 97-8.

Source: Do Van Hoa, *Finding a Suitable Cultivation Structure for Northern Mountainous and Upland Areas as a Contribution to the Opium Poppy Alternatives Program* (D Phil Thesis, Technical Agriculture Institution, 1996) 152, synthesized data from the Standing Office for Drug Control.

In 1993, *Resolution 06/CP* of the Government on enhancing drug control streamlined the opium alternatives program.²⁸ Significant funds were provided for eradicating opium poppy cultivation and supporting alternative crops and livestock.²⁹ As a result, opium poppy cultivation declined sharply, from over 14,000 hectares in 1993 to less than 4000 hectares in 1994.³⁰

In 1996, an official review of the implementation of the program of alternatives was made. Opium was found recultivated in various places, especially in remote and isolated areas.³¹ The available evidence showed that the uprooting and burning of opium poppy were not sustainable measures to assist the ethnic communes to eradicate opium cultivation permanently.

The following year, 1997, Vietnam ratified the DCCs. Since then, opium poppy cultivation has been strictly prohibited.³² With international assistance, a variety of

²⁷ Ibid 98.

²⁸ On 29 January 1993, the Government made *Resolution 06/CP* focusing on the enhancement of drug control, especially opium cultivation eradication. Pursuant to section 1(b) of the Resolution, ethnic minorities in the northern mountainous and upland areas were to be persuaded to avoid opium poppy and alternatives plants. To ensure that the income of people involved in the alternatives programs was not lower than for opium cultivation, the State provided certain support, such as food supply, purchase of products of alternative plantations in compensation for losses and loans without interest.

²⁹ A sum of 300 billions Vietnam Dong was expensed on the opium alternatives programs from 1993 to 1997. See Van Luyen Tran, *Criminal Liability for Drug-Related Crimes*, above n 2, 22.

³⁰ See, eg, Tong Cuc Thong Ke, *Bao Cao Phan Tich Ket Qua Dieu Tra Thu Nhap Co Ban Vung Trong Diem Trong Cay Thuoc Phien* (1992), 14 [trans: State General Statistics Office, *Report on Analysis of the Survey Carried out in the Most Vulnerable Areas of the Opium Poppy Cultivation* (1992)] and Van Kiet Vo, above n 23, 19. See also Figure 3.2.

³¹ For example, in Lao Cai, Son La and Lang Son, opium cultivation area increased by 431 hectares, 169.7 hectares and 62 hectares respectively. In Cao Bang, the 1995 opium crop was relatively small with only a few hectares, but went up to 78.3 hectares in 1996. Other provinces, such as Ha Giang, Hoa Binh and Yen Bai, destroyed almost all areas of opium poppy in the previous crop-year, but were confronted with increasing re-plantations in the following crop-years. Nghe An was claimed to be a leading opium re-cultivation province with 1 658 hectares. See Van Hoa Do, above n 16, 50.

³² In 1997, the *Criminal Code 1985* was amended by the Law on amending and supplementing several articles of the *Criminal Code 1985*. A new chapter dealing with drug-related crimes was created. Article 185a of the *Law on Amending and Supplementing Several Articles of the Criminal Code 1985*, made drug cultivation a criminal offense. See following Chapters for cross-references.

rural alternatives programs has been carried out.³³ In addition, in 1998, the first *National Drug Control Action Plan* was implemented, resulting in a considerable reduction in opium plantations. According to the latest estimates, the cultivation area of the crop in 2004-2005 was only 21 hectares.³⁴ The Government reported that opium poppy cultivation has been successfully reduced by 95% during the last decade and has remained insignificant.³⁵ The cultivation area in 2005-2006, however, increased suddenly and considerably, reaching approximately 185 hectares. The loose control by local governments and the poverty faced by populations in remote and mountainous areas are thought to contribute to that increase. (A detailed estimate of the cultivation and production of opium poppies from 1993 to date are provided in Figure 3.2 below.)³⁶ Thus, again, there remain the questions of alternative plants and substituted income for the ethnic minorities.³⁷

³³ An example is the successful pilot project on alternative development in Ky Son (Nghe An province). This pilot project was carried out by UNDCP and Vietnam's Government. The project's function was to develop a replicable methodology for the establishment of opium income substitution and drug demand reduction programs among opium producing ethnic minorities in Vietnam, through the strengthening of the capacity of the national institutions responsible for delivery of the required services. See United Nations Offices on Drugs and Crime, *Alternative Socio-economic Development Programme to Replace Opium Poppy Cultivation - Ky Son Pilot Scheme* United Nations Offices on Drugs and Crime <http://www.unodc.org/unodc/alternative_development_database_17.html> at 18 August 2004.

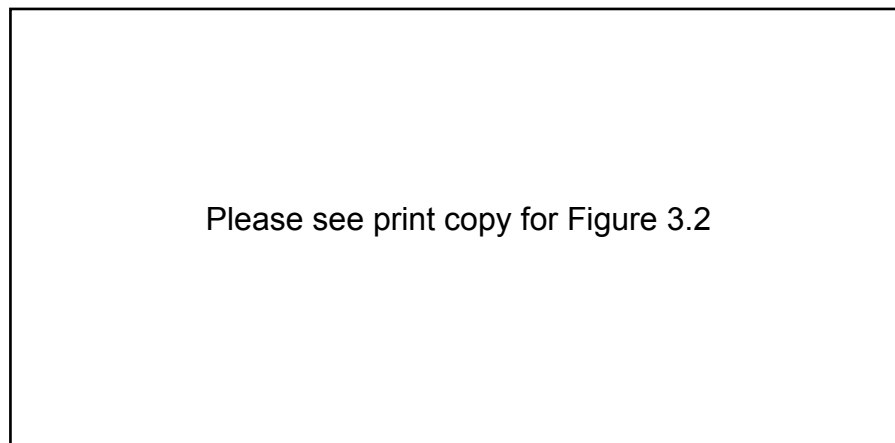
³⁴ See Co Quan Thuong Truc Phong Chong Ma Tuy Cua Uy Ban Quoc Gia Phong Chong Aids Phong Chong Ma Tuy Va Mai Dam, 'Bao Cao Tinh Hinh va Ket Qua 5 Nam Thi Hanh Luat Phong, Chong Ma Tuy' (304/2006/BCA(VPU), 2006) 8 [trans: Standing Office for Drug Control of the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution, 'Report on the Five-Year Implementation of the Law on Narcotics Prevention and Suppression' (35/2006/BCA(VPU), 2006)].

³⁵ See, eg, Hong Anh Le, 'Tinh Hinh va Ket Qua Trien Khai Thuc Hien Luat Phong, Chong Ma Tuy trong 2 nam 2001 - 2002' (2003) 4 *Ban Tin Phong Chong Ma Tuy* 2, 5 [trans: Hong Anh Le, 'The Situation and Results of the Two-Year Implementation of the Law on Narcotics Prevention and Suppression, from 2001 to 2002' (2003) 4 *Bulletin on Narcotics Prevention and Suppression* 2] and International Narcotics Control Board, *Report of the International Narcotics Control Board for 2003* (2004) [para 382] <http://www.incb.org/pdf/e/ar/2003/incb_report_2003_3.pdf> at 18 August 2005. See also United Nations Offices on Drugs and Crime, *World Drug Report 2005* [39] <http://www.unodc.org/pdf/WDR_2005/volume_1_chap1_opium.pdf> at 14 September 2005.

³⁶ Uy Ban Quoc Gia Phong Chong Aids Phong Chong Ma Tuy Va Mai Dam, 'Bao Cao Tinh Hinh Cong Tac Phong Chong Ma Tuy Nam 2006 va Phuong Huong Cong Tac Nam 2007' (35 BC/BCA(VPU), 2007) 12 [trans: National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution, 'The Situation of Drug Control in 2006 and Directions for 2007' (35 BC/BCA(VPU), 2007)].

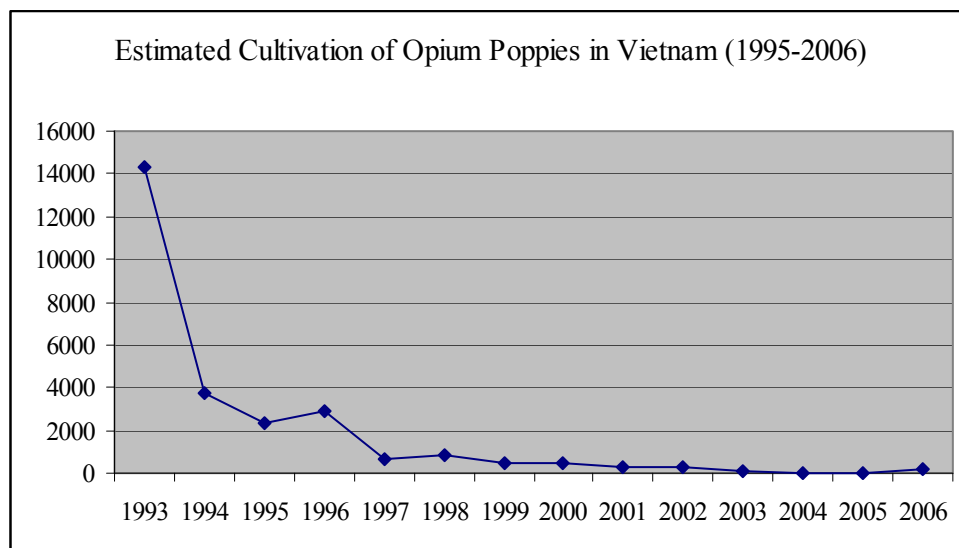
³⁷ Phuong Hoa Hoang, above n 17, 27.

Figure 3.2 Estimated Cultivation and Production of Opium Poppies in Vietnam (1993-2006)



** ha: hectare, m.t: metric ton, n.a: not available*

Source: *Vietnam: Country Profile, 2003* (2003) United Nations Offices on Drugs and Crime <http://www.unodc.org/vietnam/en/country_profile.html> at 30 August 2005; National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution, 'Situation of Drug Control in 2006 and Directions for 2007' (35 BC/BCA(VPU), 2007) at 12.



Besides the opium poppy, cannabis has been found scattered in very small quantities, of about 1000 square meters, in some southern Vietnamese provinces, such as An

Giang, Tra Vinh, Long An and Binh Phuoc provinces. The local governments have reported that cannabis cultivation has been successfully eradicated.³⁸

3.1.3 Drug Trafficking

Changes in Vietnam's economic system, especially the growth in international and regional economic integration, on the one hand, have promoted legitimate trade and development. On the other hand, they have brought about advantages for drug traffickers. The significant growth in the movement of both peoples and goods has facilitated drug smuggling.³⁹ In addition, the improvements in infrastructure, especially in the areas of communications and transportation, have provided opportunities for illicit drug traffickers to operate transnationally.⁴⁰ For these reasons, the number of drug-related cases in Vietnam increased significantly over the last decade, in terms of both the number of seizures made and of people involved in trafficking.⁴¹

In the decade 1981-1990, across the whole country there were 1698 reported cases of drug-related crimes, while in the next decade, 1991-2000, the number of cases rose to 43,211 cases, a 27-fold increase.⁴² Over the most recently available ten year period, 1997-2006, Vietnamese law enforcement authorities investigated 112,642 cases of drug-related crime, an almost triple increase compared to the period that

³⁸ Xuan Yem Nguyen and Quang Vinh Vu, above n 9, 137.

³⁹ See, eg, Mandy Bentham, *The Politics of Drug Control* (1998) 40 and Duc Nga Nguyen, 'Hai Quan Viet Nam voi Cong Tac Dau Tranh Chong Buon Lau Ma Tuy' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 67 [trans: Nguyen, Duc Nga, 'Vietnamese Customs in the Combat against Illicit Drug Trafficking' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

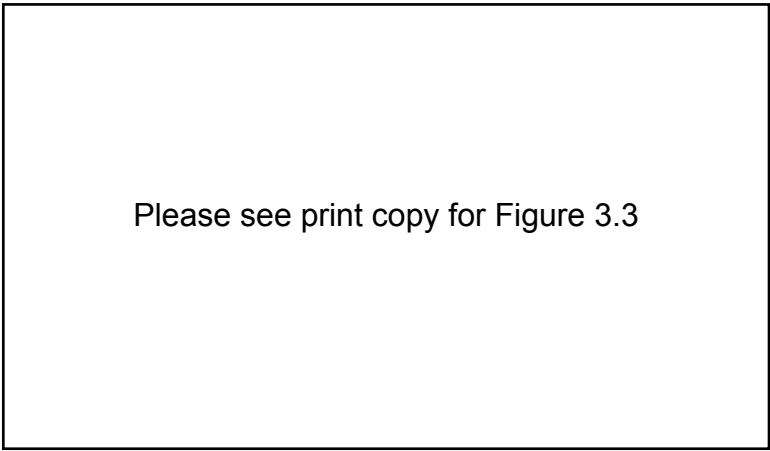
⁴⁰ Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 785.

⁴¹ See Gia Khiem Pham, 'Bai Khai Mac cua Pho Thu Tuong Pham Gia Khiem, Chu Tich Uy Ban Quoc Gia Phong, Chong AIDS va Phong, Chong Te Nan Ma Tuy, Mai Dam tai Hoi Nghi' (2001) 4 *Ban Tin Phong Chong Ma Tuy* 5, 5 [trans: Gia Khiem Pham, 'Opening Speech of the Deputy Prime Minister - the Head of the National Committee for Prevention and Suppression of AIDS, Narcotics and Prostitution' (2001) 4 *Bulletin on Narcotics Prevention and Suppression* 5] and Hong Anh Le, above n 35, 5.

⁴² See Quang Vinh Vu, 'Hoan Thien He Thong Phap Luat co Lien Quan den Cong Tac Phong, Chong Toi Pham ve Ma Tuy' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) 2 [trans: Quang Vinh Vu, 'Improving the Legal Framework for Narcotics Suppression and Prevention' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)].

ended seven years earlier.⁴³ Details of drug cases and related arrests from 1995 to date are set out in Figure 3.3. Generally, the number of criminals is growing faster than the corresponding number of prosecutions.⁴⁴ According to criminologists, Vietnamese law enforcement bodies have identified only 5-10% of drug-related cases in the country, so that undetected cases remain as the hidden bulk of the drug-trafficking iceberg.⁴⁵

Figure 3.3 Drug-Related Cases and Arrests in Vietnam (1995-2006)



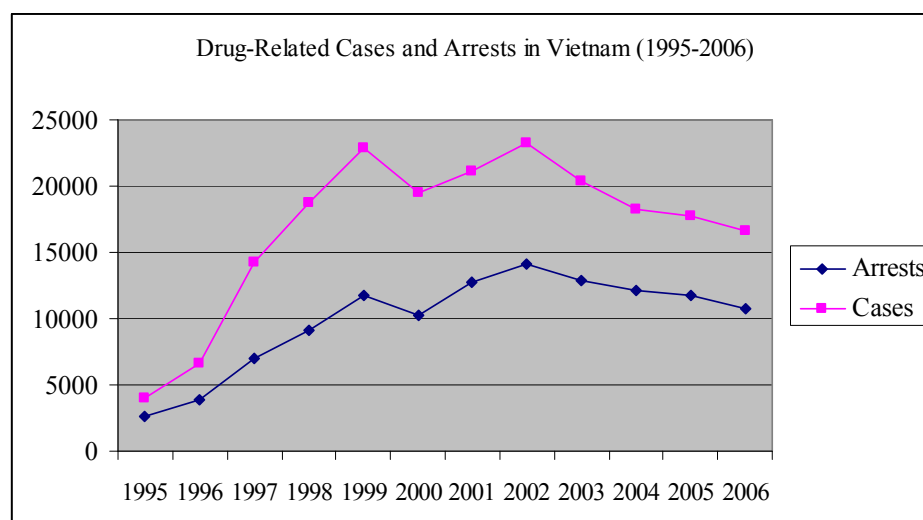
Please see print copy for Figure 3.3

Source: Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions* (2004) 777, synthesized data from the Standing Office for Drug Control; Standing Office for Drug Control, 'Report on the Five-Year Implementation of the Law on Narcotics Prevention and Suppression' (35/2006/BCA(VPU), 2006) at 9.

⁴³ Xuan Yem Nguyen, *Law on Narcotic Drugs Prevention and Suppression and Drugs Prevention in Education Units*, above n 24, 777; Standing Office for Drug Control, above n 34, 2 and National Committee, above n 36, 9.

⁴⁴ Xuan Yem Nguyen, *Toi Pham Co To Chuc, Mafia va Toan Cau Hoa Toi Pham* (2003) 1008 [trans: Nguyen, Xuan Yem, *Organized Crimes, the Mafia and Globalization of Crimes* (2003)].

⁴⁵ Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 792.



Vietnam is considered an important transit country for illicit drugs.⁴⁶ According to the International Narcotics Control Board, the territory of Vietnam is used as a transit point and storage place for heroin manufactured in the Golden Triangle,⁴⁷ being smuggled into Australia, Canada, Europe and North America.⁴⁸

Major trafficking routes for heroin manufacture mainly in the border areas of Myanmar include corridors that lead through the Yunnan province of China, and then further east to a point along that country's coast and through the Lao People's Democratic Republic to coastal areas in Cambodia and Vietnam.

⁴⁶ See, eg, Richard Clutterbuck, *Drugs, Crime and Corruption* (1995) 86, Mandy Bentham, above n 39, 40 and United Nations Office on Drugs and Crimes Vietnam, *Vietnam: Country Profile, 2003* (2003) United Nations Office on Drugs and Crime

<http://www.unodc.org/pdf/vietnam/country_profile_vietnam.pdf> at 18 December 2004.

⁴⁷ The Golden Triangle includes Myanmar, Laos and Thailand. In its annual report for 2003, the International Narcotics Control Board noticed that Myanmar was the world's second largest and Laos was the world's third largest producer of illicit opium and heroin. See, eg, International Narcotics Control Board, *Report of the International Narcotics Control Board for 2003* (2004) [para 382] <http://www.incb.org/pdf/e/ar/2003/incb_report_2003_3.pdf> at 18 August 2005. However, the areas of opium cultivation in Laos and Thailand have significantly declined in the recent years and Laos has no longer a significant source of illicit opium for the world. See International Narcotics Control Board, *Report of the International Narcotics Control Board for 2005* (2006) [para 435] <http://www.incb.org/pdf/e/ar/2005/incb_report_2005_full.pdf> at 20 March 2006. Despite that decline, it is important to mention that the region of East and South East Asia remains the second largest source of opium and heroin in the world. See International Narcotics Control Board, *Report of the International Narcotics Control Board for 2002* (2003) [para 375] <http://www.incb.org/pdf/e/ar/2002/incb_report_2002_3.pdf> at 18 August 2006.

⁴⁸ See, eg, INCB, *Report of the International Narcotics Control Board for 2005*, above n 47, para 473; *Report of the International Narcotics Control Board for 2002*, above n 47, para 375; *Report of the International Narcotics Control Board for 2000* (2001) [para 328] <http://www.incb.org/pdf/e/ar/2000/incb_report_2000_3_asia.pdf> at 18 August 2005, and *Report of the International Narcotics Control Board for 1998* (1999) [para 316] <http://www.incb.org/incb/en/annual_report_1998_chapter3.html#IIIC1> at 18 August 2005.

From the coastal areas, the heroin is shipped to illicit markets in Australia, Canada, the United States and countries in Europe.⁴⁹

Heroin, cannabis and other synthetic drugs are brought to Vietnam through different points along the borders with Laos, China and Cambodia, each of which is described below.⁵⁰ The map at Figure 3.4 below visually describes the main cross-border trafficking routes for illicit drugs involving in Vietnam.

The common border of Vietnam and Laos, which stretches through ten Vietnamese provinces with thousands of small roads and tracks running through low hills, is used as the main overland gateway for illicit drugs entering Vietnam.⁵¹ Laotian drug traffickers set up contacts with their friends and relatives in Vietnam to facilitate drug transportation.⁵² The main Vietnamese transit provinces are Lai Chau, Son La, Nghe An, Ha Tinh, and Thanh Hoa. During the three-year period from 1998 to 2000, 62.1% of the total heroin and 68.5% of the total opium seized by law enforcement authorities were taken in those provinces.⁵³

⁴⁹ International Narcotics Control Board, *Report of the International Narcotics Control Board for 2001* (2002) [para 391] <http://www.incb.org/incb/annual_report_2001.html> at 18 August 2005.

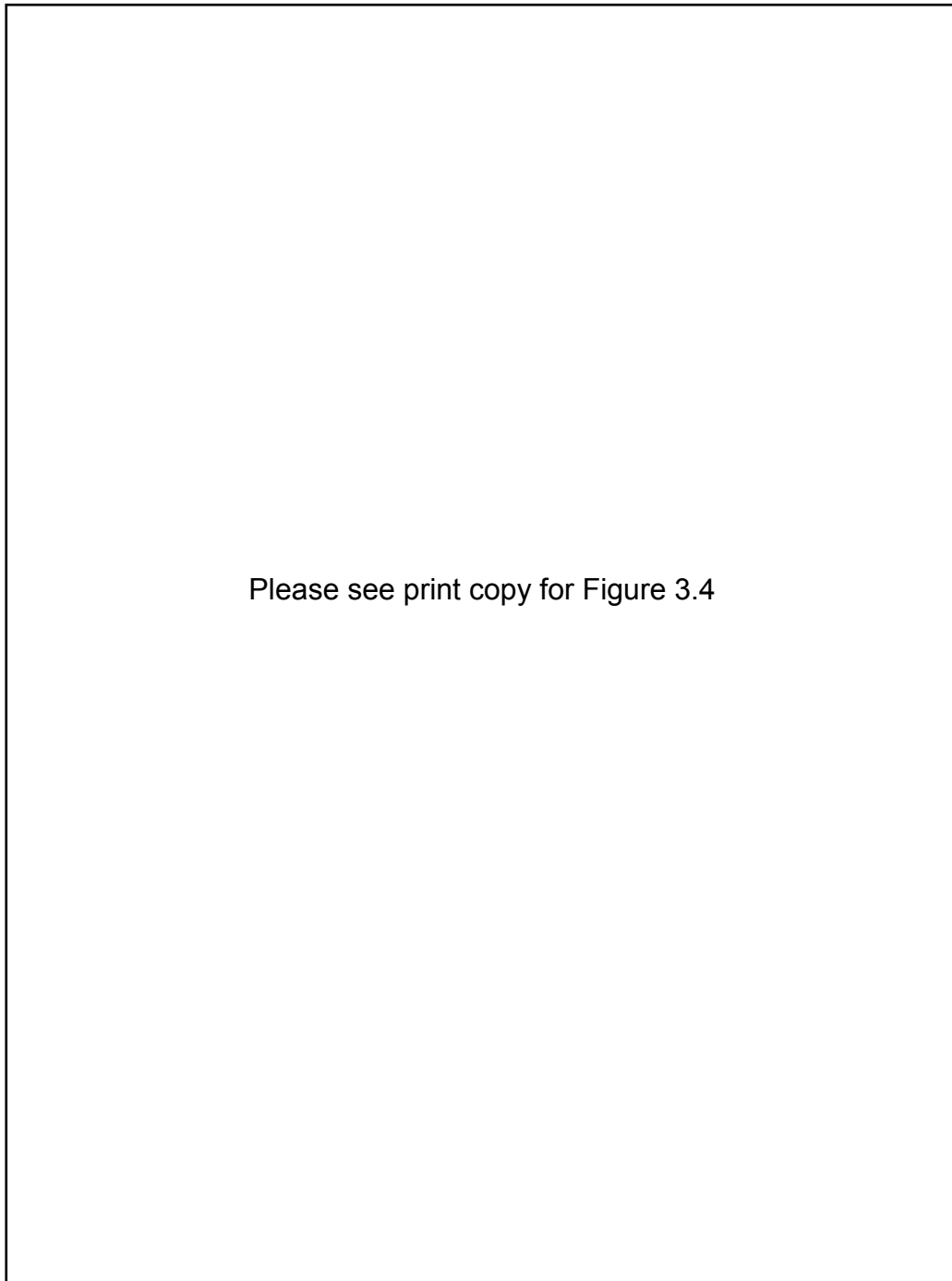
⁵⁰ Quang Vinh Vu, 'Tinh Hinh Chung ve Cong Tac Kiem Soat Ma Tuy va Van De Phong Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 3 [trans: Vu, Quang Vinh, 'General Situation on Narcotics Control and the Issue of Narcotics Prevention and Suppression in Vietnam' (Paper presented at the Drug Control in Vietnam and France, Hanoi, 1998)]; Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 781; Van Luyen Tran, 'Dac Tinh Hinh Su cua Cac Toi Tang Tru, Van Chuyen, Mua Ban Trai Phep cac Chat Ma Tuy' (1998) 9 *Toa An Nhan Dan* 5, 8 [trans: Van Luyen Tran, 'Criminal Characteristics of the Offense of Illegal Stockpiling, Transporting and Trading of Narcotic Substances' (1998) 9 *People's Court* 5] and United Nations Offices on Drugs and Crime Vietnam, above n 46, 24.

⁵¹ See, eg, United States Department of Justice, *Drug Intelligence Brief - the Drug Situation in Vietnam, November 2001* United States Department of Justice <<http://www.usdoj.gov/dea/pubs/intel/02001/02001p.html>> at 13 November 2004; United Nations Offices on Drugs and Crime Vietnam, above n 46, 24; Peter Chalk, 'Southeast Asia and the Golden Triangle's Heroin Trade: Threat and Response' (2000) 23 *Studies in Conflict and Terrorism* 89, 93; Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 781; and Hoang Tran, 'Bo Doi Bien Phong Ngan Chan "Dong Chay" Ma Tuy qua Bien Gioi' (2004) 12 *Ban Tin Phong Chong Ma Tuy* 19, 19 [trans: Hoang Tran, 'Border Guards in the Combat against "Drug Flows" across National Borders' (2004) 12 *Bulletin on Narcotics Prevention and Suppression* 19].

⁵² Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 781 and National Committee, above n 36, 3.

⁵³ Minh Huong Le, 'Ket Qua Thuc Hien Chuong Trinh Hanh Dong Phong Chong Ma Tuy Giai Doan 1998 - 2000 va Phuong Huong Trien Khai Chuong Trinh Hanh Dong Phong Chong Ma Tuy Giai Doan 2001 - 2005' (2001) 4 *Ban Tin Phong Chong Ma Tuy* 6, 8-9 [trans: Le, Minh Huong, 'Results of the Action Plans on Narcotics Prevention and Suppression in the Three-Year Period from 1998 to 2000, and Orientation on the Deployment of the Action Plan in the Next Five-Year Period from 2001 to 2005' (2001) 4 *Bulletin on Narcotics Prevention and Suppression* 6].

Figure 3.4 Opium and Cannabis Cultivation and Main Cross-Border Trafficking Routes of Illicit Drugs Involving Vietnam



Source: United Nations Offices on Drugs and Crime, *Vietnam: Country Profile, 2003* (2003)
United Nations Offices on Drugs and Crime

According to the International Narcotic Control Board, Cambodia⁵⁴ has become a major source of illicit cannabis for global markets.⁵⁵ Cambodian cannabis is brought into Vietnam through their common border,⁵⁶ via provinces such as Tay Ninh, An Giang, Dong Thap and Kien Giang, and then transported onwards to consumer countries.⁵⁷ Cambodia is also a transit country through which heroin, Ecstasy, methamphetamine and other narcotics from the Golden Triangle are transported to Vietnam, and where drug-related offenders escape to shelter from severe punishments imposed by Vietnamese criminal laws.⁵⁸

The drug trafficking situation along the border between Vietnam and China⁵⁹ is characterized by bidirectional drug movements. In a number of cases, synthetic drugs, such as diazepam, seduxen and other types of synthetic drugs, are transported from China to Vietnam,⁶⁰ as China is a major source of clandestinely manufactured amphetamine-type stimulants ('ATS').⁶¹ In the other direction, heroin and opium are

⁵⁴ Cambodia became a party to the three UN drug control conventions in April 2005. See INCB, *Report of the International Narcotics Control Board for 2005*, above n 47, para 438.

⁵⁵ See, eg, INCB, *Report of the International Narcotics Control Board for 1998*, above n 48, para 315 and United Nations Offices on Drugs and Crime, *Word Drug Report 2005* [82] <http://www.unodc.org/pdf/WDR_2005/volume_1_chap1_cannabis.pdf> at 14 September 2005.

⁵⁶ The border between Vietnam and Cambodia stretches through 9 Vietnamese provinces, including An Giang, Dong Thap, Tay Ninh, Kon Tum, Kien Giang, Binh Phuoc, Dac Lac. See Quang Vinh Vu, 'General Situation on Narcotics Control and the Issue of Narcotics Prevention and Suppression in Vietnam', above n 50, 3.

⁵⁷ Ibid, Quang Vinh Vu, 'Improving the Legal Framework for Narcotics Suppression and Prevention', above n 42, 3-4 and Hoang Tran, above n 51, 20.

⁵⁸ United States Department of Justice, above n 51 and Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 782 and National Committee, above n 36, 3.

⁵⁹ The border between Vietnam and China stretches through 6 Vietnamese provinces with a large number of small roads and tracks used by the local habitants. See, eg, Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 782 and Quang Vinh Vu, 'General Situation on Narcotics Control and the Issue of Narcotics Prevention and Suppression in Vietnam', above n 50, 4.

⁶⁰ Khiem Do, 'Vai Net ve Tinh Hinh Ma Tuy tren The Gioi va Hop Tac Quoc Te cua Viet Nam trong Phong Chong Ma Tuy' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 57 [trans: Do, Khiem, 'An Outline of the World's Drug Situation and Vietnam's Cooperation in Drug Control' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]; Quang Vinh Vu, 'Improving the Legal Framework for Narcotics Suppression and Prevention', above n 42, 3-4; Hoang Tran, above n 51, 20; and National Committee, above n 36, 2.

⁶¹ See International Narcotics Control Board, *Report of the International Narcotics Control Board for 1999* (2000) [para 321] <http://www.incb.org/pdf/e/ar/1999/incb_report_1999_3_asia.pdf> at 18 August 2005 and *Report of the International Narcotics Control Board for 2005*, above n 47, para 468.

trafficked from Vietnam to China.⁶² In recent years, the China route has become heavily used due to better road links and greater individual freedom of travel in China.⁶³ From 1998 to 2000, a large proportion of ATS, about 79% of the total, was seized in Lao Cai, Quang Ninh, Lang Son and Cao Bang provinces.⁶⁴

In addition to international trafficking, domestic smuggling routes covering on major Vietnamese cities have been identified. Among the 64 provinces of Vietnam, Hanoi and Hochiminh are the most vulnerable destinations.⁶⁵ For example, illicit drugs from Ky Son (in Nghe An province) are brought to Hanoi via Thanh Hoa and Ninh Binh provinces; drugs from Lai Chau province may be transported to Hanoi via several northern mountainous areas. Hochiminh City is a destination for drugs brought from Nghe An province via Ha Tinh and Quang Tri provinces. Quang Ninh province, where there is a large industrial conurbation based on a coalmining field, is the target point for dispersal of drugs from Hanoi via Bac Ninh, Bac Giang and Lang Son provinces.⁶⁶

All means of domestic transport, i.e. small roads, railways, waterways and airways, are utilized for drug trafficking. Recently, drug smugglers have used even State-run transportation, such as armed forces trucks special cars serving high-ranking State

⁶² Khiem Do, above n 60, 57 and Quang Vinh Vu, 'Improving the Legal Framework for Narcotics Suppression and Prevention', above n 42, 3-4; Hoang Tran, above n 51, 20; and National Committee, above n 36, 2.

⁶³ Peter Chalk, above n 51, 93.

⁶⁴ Minh Huong Le, above n 53, 8-9.

⁶⁵ Phong Hoa Nguyen, above n 2, 27; The Tiem Le, 'Tinh Hinh, Ket Qua Cong Tac Phong, Chong Ma Tuy nam 2002 va nhung Nhiem Vu Trong Tam Phong, Chong Ma Tuy nam 2003' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 13, 13 [trans: The Tiem Le, 'The Situation and Results of Drug Control in 2002 and Main Tasks of Drug Control in 2003' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 13] and Van Luyen Tran, 'Criminal Characteristics of the Offense of Illegal Stockpiling, Transporting and Trading of Narcotic Substances', above n 50, 8 and Thu Quy Nguyen, 'Thuc Trang Toi Pham Ma Tuy tren Dia Ban Ha Noi va nhung Kien Nghi, Giai Phap' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) 130 [trans: Nguyen, Thu Quy, 'Real Situation of Drug-Related Crimes in Hanoi, Recommendations and Solutions' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)].

⁶⁶ See Quang Vinh Vu, 'Improving the Legal Framework for Narcotics Suppression and Prevention', above n 42, 3. See also Trong Quan Vu, 'Mot So Van De Rut Ra tu Cong Tac Dieu Tra Toi Pham Tang Tru, Van Chuyen, Mua Ban Trai Phep Chat Ma Tuy tren Dia Ban Tinh Ninh Binh' (2006) 7 *Ban Tin Phong Chong Ma Tuy* 9, 10 [trans: Trong Quan Vu, 'What We Learn from Investigations of the Criminal Offense of Stockpiling, Transporting and Trading in Narcotic Substances in Ninh Binh Province' (2006) 7 *Bulletin on Narcotics Prevention and Suppression* 9].

officials, and postal vehicles.⁶⁷ Noi Bai and Tan Son Nhat international airports are transit points for smuggling heroin and opium from the Golden triangle and synthetic drugs from China. There are reliable indications that Vietnam's seaports and airports are used for the shipment of these drugs to Europe, Canada, Australia, New Zealand and other regional countries.⁶⁸

In Hanoi, Hochiminh, Lai Chau, Son La, Nghe An, Thanh Hoa, Yen Bai and Bac Thai provinces, a group of professional traffickers who specialize in purchasing opium harvests, called 'barefoots' in slang, bring money and goods to deposit with peasants in exchange for promises by the peasants to produce opium. When harvesting time comes, the traffickers return and selectively employ other local people to purchase opium from the previously contacted peasants. The traffickers normally refuse to buy opium resin from unknown people in order to avoid falling into police traps.⁶⁹

Several major drug rings that have been exposed in the recent years⁷⁰ demonstrated that Vietnamese trafficking of illicit drugs is now largely in the hands of professional criminal organizations.⁷¹ A number of overseas Vietnamese use their relatives residing in Vietnam to establish transnational drug trafficking routes.⁷² There are

⁶⁷ Phong Hoa Nguyen and Ngoc Hung Dang, above n 1, 156-7, Van Luyen Tran, 'Criminal Characteristics of the Offense of Illegal Stockpiling, Transporting and Trading of Narcotic Substances', above n 50, 7 and see also Dinh Trung Nguyen, 'Nong Bong Te Nan Ma Tuy tren cac Tuyen, Phuong Tien Giao Thong Van Tai' (2005) 1 *Ban Tin Phong Chong Ma Tuy* 21, 21 [trans: Dinh Trung Nguyen, 'The Serious Situation of Illicit Drug Trafficking on Varying Transportation Routes and Methods' (2005) 1 *Bulletin on Narcotics Prevention and Suppression* 21].

⁶⁸ Hung Vuong Vu, above n 22, 47; Khiem Do, above n 60, 57; Xuan Yem Nguyen, *Prostitution, Narcotics and Gambling: Crimes of the Present Time*, above n 1, 572-4; Van Luyen Tran, 'Criminal Characteristics of the Offense of Illegal Stockpiling, Transporting and Trading of Narcotic Substances', above n 50, 6 and 8; and Dinh Trung Nguyen, above n 67, 21.

⁶⁹ See Xuan Yem Nguyen, *Organized Crimes, Mafia and Globalization of Crimes*, above n 44, 1011-2; Xuan Yem Nguyen, *Toi Pham Hoc Hien Dai va Phong Ngua Toi Pham* (2001) 496 [trans: Xuan Yem Nguyen, *Modern Criminology and Crime Prevention* (2001)]; Phong Hoa Nguyen and Ngoc Hung Dang, above n 1, 154-5; and Phong Hoa Nguyen, above n 2, 31.

⁷⁰ Van Khai Phan, 'Huy Dong Suc Manh cua ca He Thong Chinh Tri va Toan Xa Hoi trong Cong Tac Phong Chong Ma Tuy' (2001) 4 *Ban Tin Phong Chong Ma Tuy* 2, 3 [trans: Van Khai Phan, 'Mobilizing the Strength of All Political Systems and Social Units in Drug Control' (2001) 4 *Bulletin on Narcotics Prevention and Suppression* 2] and Nghia Mai Hoang, 'Nhung Van De Dat Ra doi voi Cong Tac Kiem Sat Dieu Tra An An Ninh - Ma Tuy' (2000) 7 *Tap Chi Kiem Sat* 43, 44 [trans: Nghia Mai Hoang, 'Some Issues of Control and Supervision over Investigating Activities in Cases in relation to Public Security and Narcotic Substances' (2000) 7 *Procuracy's Journal* 43].

⁷¹ Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 13, 24 and United Nations Office on Drugs and Crimes Vietnam, above n 46, 25.

⁷² Hung Vuong Vu, above n 22, 46.

signs that international criminal organizations have used the ‘open door’ economic reform policy to contact domestic criminal organizations to collaborate in illicit drug smuggling.⁷³

In the eight-year period from 1993 to 2000, foreign nationals accounted for 5.66% of Vietnamese drug-related criminal convicts sentenced to death or life imprisonment.⁷⁴ Among them, the majority were Laotian, followed by Thais, Chinese and Cambodians. A few from America, Hong Kong, Taiwan, Canada and Spain were also convicted. Conversely, increasing numbers of Vietnamese drug traffickers have been arrested in other countries, such as Thailand, Canada, Singapore and Australia.⁷⁵

3.1.4 Drug Abuse

The ‘open door’ economic reform policy, on the one hand, has improved living standards among the general population but, on the other hand, it has been claimed, has contributed to the escalation of social evils, including drug abuse.⁷⁶ Data from drug treatment centers across the State show a growing trend in drug abuse.⁷⁷ In 2003, the Prime Minister emphasized that drug abuse remained as a great obstacle to national development.⁷⁸

In 1990, there were about 60,000 registered drug abusers in Vietnam.⁷⁹ The number nearly doubled in the next ten years. In the most recent year, 2006, there were

⁷³ Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 778 and Cong Son Nguyen, 'Tinh Hinh va Ket Qua Cong Tac Phong Chong Ma Tuy 6 Thang Dau Nam 2006 va Mot So Nhiem Vu Trong Tam trong Thoi Gian Toi' (2006) 8 *Ban Tin Phong Chong Ma Tuy* 2, 2 [trans: Cong Son Nguyen, 'The Situation and Results of the Work on Drug Prevention and Suppression in the First Six Months of 2006 and Main Tasks in the Coming Year' (2006) 8 *Bulletin on Narcotics Prevention and Suppression* 2].

⁷⁴ See Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 758.

⁷⁵ Ibid 778-9.

⁷⁶ See Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 13, 38 and Cong Son Nguyen, above n 73, 5-6.

⁷⁷ The Tiem Le, 'Situation and Results of Drug Control in 2002 and Main Tasks of Drug Control in 2003', above n 65, 18.

⁷⁸ Van Khai Phan, 'Ngan Chan va Bai Tru cac Te Nan Xa Hoi Nhat la Te Nan Ma Tuy, Mai Dam nham Xay dung Loi Song Van Minh, Lanh Manh' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 8, 9 [trans: Phan, Van Khai, 'Prevention and Suppression of Social Evils, Especially Drug Abuse and Prostitution, to Establish a Civilized and Healthy Lifestyle' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 8].

⁷⁹ Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 13, 38.

160,226 registered drug abusers in the whole country. (The statistics from 1995 to date are set out in Figure 3.5 below.) In several provinces, the rise in drug abuse is extraordinary. For example, the number of registered drug abusers in Hochiminh City increased by 325.5% in 2000, compared with 1997.⁸⁰ According to experts, the official statistics do not reflect the reality; the actual number is believed to be much higher.⁸¹

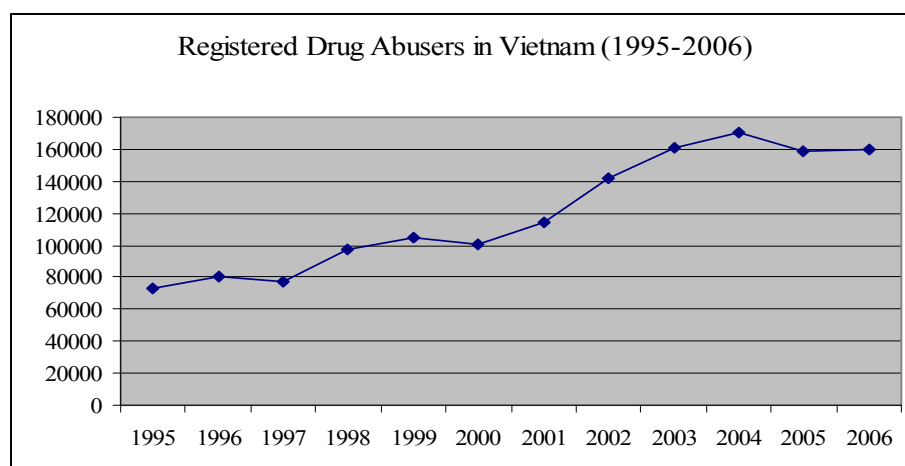
Figure 3.5 Registered Drug Abusers in Vietnam (1995 - 2006)

Please see print copy for Figure 3.5

Source: Department of Social Evils Prevention of the Ministry of Labor, Wars Invalid and Social Welfare, 'Annual Reports on Drug Prevention and Suppression' from 1995 to 1999; Standing Office for Drug Control, 'Report on the Five-Year Implementation of the Law on Narcotics Prevention and Suppression' (35/2006/BCA(VPU), 2006) at 2; and National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution, 'The Situation of Drug Control in 2006 and Directions for 2007' (35 BC/BCA(VPU), 2007) at 3.

⁸⁰ Nang Khanh Do, 'Thuc Trang Cong Tac Cai Nghien Ma Tuy va nhung Van De Phap Ly Dat Ra' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) 48 [trans: Do, Nang Khanh, 'The Reality of Drug Abuse Rehabilitation and Related Legal Issues' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)].

⁸¹ Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 786 and Burnet Institute Centre for Harm Reduction, *Vietnam: Comparison 1997 Versus 2001* [224] <<http://www.chr.asn.au/freestyler/gui/files/Vietnam1.pdf>> at 20 November 2004.



The Vietnamese pattern of drug abuse has changed significantly over the past decade. From a mainly rural phenomenon related to traditional opium smoking habits, the abuse has spread to urban areas. This tendency was confirmed in the survey, carried out by United Nations Office on Drugs and Crime and the Ministry of Labor, War Invalids and Social Affairs in 1999, which showed that 75.3% of abusers lived in cities.⁸² However, there are some exceptions in a number of mountainous areas, which have a long tradition of opium cultivation and where drug abuse still appears to be very serious. For instance, drug abusers constitute about 92% of the ethnic population in Son Vi commune, Ha Giang province.⁸³

Beside the geographical shift, a change in the age of drug abusers was observed. While in the past they were mainly middle-aged people, in recent times youth makes up the majority. The proportion of young people using drugs in urban areas has increased at an alarming rate.⁸⁴ According to the estimates of the Department for Prevention and Suppression of Social Evils, drug abusers under thirty years of age make up 70% of the total, and some are even below the age of ten.⁸⁵ The number of

⁸² United Nations Offices on Drugs and Crime Vietnam, above n 46, 28.

⁸³ Van Du Nguyen, 'Mot So Van De ve Phong Chong Ma Tuy trong Vung Thuoc Nhim Vu cua Bo Doi Bien Phong' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy giua Viet Nam va Phap, Hanoi, Vietnam, June 1998) 37 [trans: Van Du Nguyen, 'Some Issues on the Prevention and Suppression of Narcotics in Areas Supervised by Border Guards' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

⁸⁴ United Nations Offices on Drugs and Crime Vietnam, above n 46, 28 and National Committee, above n 36, 4.

⁸⁵ See Huu Lam Nguyen, 'Tinh Trạng Nghiện Ma Tuy và các Biện Pháp Cải Nghiện Ma Tuy ở Việt Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 98 [trans: Nguyen, Huu Lam, 'The Situation of Drug Abuse and Measures for Drug

pupils and students involved in drug use and abuse has also risen considerably, bringing anxiety to the community.⁸⁶

It is even more dangerous when drug abusers, in the past, were principally deviants and unemployed people. At the present time more working people⁸⁷ have become addicted to using drugs to experience hallucinations or to be released from high-pressure industrialized lifestyles.⁸⁸ In fact, unemployed people make up 47.2%, while working people and State officials account for 48.5% and 4.3% of the total drug abusers in the country, respectively.⁸⁹ Reasons for drug taking are various. Being induced by friends is the first leading cause, equivalent to 47.7%, followed by seeking feelings of delight, at 29.4%. Many drug abusers (9.9%) came from families who have addictive problems. Using drugs initially for medical treatment and later becoming dependent on them is also one of the reasons for drug abuse, at 7.6%. The percentage of drug consumption due to life impasse is recorded at 5.4%.⁹⁰

Abuse Treatment in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

⁸⁶ Ibid 98; Xuan Yem Nguyen, 'Te Nan Ma Tuy o Nuoc Ta Hien Nay - Thuc Trang, Nguyen Nhan va Giai Phap' in Tri Uc Dao and Khanh Vinh Vo (eds), *Nhung Van De Ly Luan va Thuc Tien cua viec Dau Tranh Phong, Chong cac Te Nan Xa Hoi o Nuoc Ta* (2002) 225, 228 [trans: Nguyen, Xuan Yem, 'Narcotics in Vietnam at the Present Time: The Current State, Reasons and Solutions' in Tri Uc Dao and Khanh Vinh Vo (eds), *Some Theoretical and Practical Issues in the Fight against Social Evils in Our Country* (2002) 225] and Cong Son Nguyen, above n 73, 3.

⁸⁷ In 2002, an analysis of 1523 registered drug abusers, who are working people, found that a number of them were intelligents, doctors, high-tech engineers and managers. See The Tiem Le, 'So Ket Hai Nam Thuc Hien Ke Hoach Lien Tich so 696 ve Phoi Hop Phong Chong Ma Tuy trong Cong Nhan, Vien Chuc - Lao Dong giau Bo Cong An va Tong Lien Doan Lao Dong Viet Nam' (2004) 7 *Ban Tin Phong Chong Ma Tuy* 2, 5 [trans: The Tiem Le, 'Partial Assessment of the Implementation of Joint Plan 969 between the Ministry of Public Security and the General Confederation of Labor Unions on Cooperation in Drug Prevention in the Labor Force' (2004) 7 *Bulletin on Narcotics Prevention and Suppression* 2].

⁸⁸ See Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 13, 38, Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 787 and The Tiem Le, 'Partial Assessment of the Implementation of the Joint Plan 969 between the Ministry of Public Security and the General Confederation of Labor Union on Cooperation in Drug Prevention in the Labor Force', above n 87, 2.

⁸⁹ Thi Mai Nga Nguyen and Quoc Huynh Pham, above n 13, 38. A similar observation is made by Herbert May that the conditions of modern industrial society created the psychological atmosphere in which people are more easily tempted to look to drugs for relief from the stresses of modern life. See Herbert L May, 'The Evolution of the International Control of Narcotic Drugs' (1950) 1(1) *Bulletin on Narcotics* 1 <http://www.unodc.org/unodc/bulletin/bulletin_1950-01-01_1_page003.html> at 29 September 2004.

⁹⁰ See Xuan Sac Tran, 'Tinh Trang Nghien Ma Tuy va Van De Cai Nghien Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 95 [trans: Tran, Xuan Sac, 'The Situation of Drug Abuse and Matters Concerning Drug Abuse Rehabilitation in Vietnam' (Paper presented at the Drug Control in Vietnam and France, Hanoi, 1998)] and Huu Lam Nguyen, above n 85, 99.

The pattern and mode of illicit drug use varies between urban and rural areas and between provinces and cities across Vietnam. Smoking appears to be the most common method of taking drugs as a whole, accounting for 86.7% of users. Inhaling also represents a favorable way with the proportion of 15%, and injection accounts for 7.6%. A small proportion of drug abusers use both injection and smoking, with only about 0.5% taking drugs orally.⁹¹ However, the mode of drug administration heavily depends on location and drug types. For example, in the northern mountainous and upland areas, opium smoking is the most common phenomenon, while in the big cities and towns, during the past decade, the abuse of opiates appears to have shifted away from opium and towards heroin.⁹² In the first half of the 1990s, the majority (86%) of those infected with AIDS in Vietnam were injecting drug users, though this percentage had declined to more than 50% by 2005, the sharing of infected equipment remains the principal mode of HIV-positive transmission.⁹³

In 1999, Police first detected Ecstasy tablets and noted the sharp increasing use of seduxen, diazepam, methamphetamine, amphetamine and other synthetic drugs.⁹⁴ The use of ATS called 'pink narcotics' (*hong phien*) has recently been detected in Nghe An, Hanoi, Hochiminh and other urban centers.⁹⁵

⁹¹ Xuan Sac Tran, above n 90, 94.

⁹² See, eg, International Narcotics Control Board, *Report of the International Narcotics Control Board for 2004* (2005) [para 356] <http://www.incb.org/incb/annual_report.html> at 17 August 2005 and *Report of the International Narcotics Control Board for 2005*, above n 47, para 437. According to the Report of the Standing Office for Drug Control, in the recent years, about 70% of drug users in Vietnam are addictive of heroin. See Standing Office for Drug Control, above n 34, 5.

⁹³ United Nations Office on Drugs and Crime Vietnam, *Drug Abuse in Lai Chau Province: Rapid Situation Assessment, December 2001* (2001) United Nations Office on Drugs and Crime <http://www.unodc.org/vietnam/en/lai-chau_2001-12-31_1.html> at 20 September 2004; Gia Khiem Pham, 'Huy Dong Suc Manh cua Ca He Thong Chinh Tri vao Cuoc Dau Tranh Phong Chong Ma Tuy' (2005) 1 *Ban Tin Phong Chong Ma Tuy* 4, 4 [trans: Gia Khiem Pham, 'Mobilizing Strengths of the Whole Political System in the Combat against Illicit Narcotics' (2005) 1 *Bulletin on Narcotics Prevention and Suppression* 4] and The Tiem Le, 'Hop Tac Phong Chong Ma Tuy giua Vietnam, Campuchia, Lao vi Muc Tieu Xay Dung Mot Khu Vuc On Dinh, Ben Vung va Phat Trien Lanh Manh' (2006) 9 *Ban Tin Phong Chong Ma Tuy* 2, 2 [trans: The Tiem Le, 'Cooperation in the Fight against Illicit Drugs between Vietnam, Cambodia and Laos to Establish a Region for Sustainable and Healthy Development' (2006) 9 *Bulletin on Narcotics Prevention and Suppression* 2]. See also INCB, *Report of the International Narcotics Control Board for 2005*, above n 47, para 467.

⁹⁴ The Tiem Le, 'Situation and Results of Drug Control in 2002 and Main Tasks of Drug Control in 2003', above n 65, 14.

⁹⁵ Huu Lam Nguyen, above n 85, 99 and also INCB, *Report of the International Narcotics Control Board for 2004*, above n 92, para 374 and 380 and *Report of the International Narcotics Control Board for 2005*, above n 47, para 436.

The involvement of some abusers in drug rings is a serious problem. It widens the system of trafficking and supplying drugs, which may further increase the number of abusers acting as retailers and enticing new drug users. Smoking and injecting dens are still illegally operating in difficult-to-access sites, narrow paths leading to which may twist and turn for over thousands of meters to avoid exposure to law enforcement.⁹⁶ It has been found that den owners in some areas may cooperate with each other in regard to security and secret locations for illegal activities. Examples are Lieu Thanh Nhan hamlet, Hang Buom and Cong Vi wards (Hanoi), Cau Kho and Ma Lang wards (Hochiminh City), Thon Mom commune (Son La province) and Na U commune (Lai Chau province).⁹⁷ Collective use of drugs is evident in certain public places, such as dark street corners, quiet parks, public toilets, bridge piers and rubbish dumps.⁹⁸

According to Department for Prevention and Suppression of Social Evils, the rate of drug re-abuse in the past decade was very high, around 90% to 95%, while in some provinces the rate was 100%.⁹⁹ The Vietnamese State and various social organizations have made many efforts to curb this problem.¹⁰⁰ As a result, the re-

⁹⁶ Phong Hoa Nguyen and Ngoc Hung Dang, above n 1, 196.

⁹⁷ Ibid 197, Hong Anh Le, above n 35, 3 and The Tiem Le, 'Situation and Results of Drug Control in 2002 and Main Tasks of Drug Control in 2003', above n 65, 16.

⁹⁸ See Xuan Yem Nguyen, 'Narcotics in Vietnam at the Present Time: The Current State, Reasons and Solutions', above n 86, 229.

⁹⁹ See, eg, Viet Trung Tran, 'Hieu Qua Cai Nghien Phuc Hoi Chua Cao, nhung Nguyen Nhan Co Ban can Khac Phuc' (2003) 7 *Ban Tin Phong Chong Ma Tuy* 7, 7 [trans: Viet Trung Tran, 'Low Efficiency of Drug Abuse Rehabilitation: Principal Reasons and Solutions' (2003) 7 *Bulletin on Narcotics Prevention and Suppression* 7] and Quang Vinh Vu, People's Police and Drug-Related Crime Prevention, above n 2, 78 and Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 788 and *De An 'To Chuc Quan Ly, Day Nghe va Giai Quyet Viec Lam cho Nguoi sau Cai Nghien' tai Thanh Pho Ho Chi Minh kem theo Quyet Dinh so 205/2003/QD-TTg 2003* (Thu Tuong Chinh Phu) pt I(4) [trans: *Project on 'Vocational Training, Job Creation, and Control of Drug Abusers after Medical Treatment' in Hochiminh City, promulgated by Decision 205/2003/QD-TTg 2003* (Prime Minister)] (hereinafter Drug Abuse Treatment Project of Hochiminh City).

¹⁰⁰ For example, in accordance with Article 2(1) of the *Decree 135/2004/CP promulgating Compulsory Treatment*, compulsory treatment and rehabilitation have been lengthened to at least twelve months, and in some provinces, such as Hochiminh City, the treatment and rehabilitation programs take longer. See Drug Abuse Treatment Project of Hochiminh City, above n 99, pt II(B)(3).

abuse has declined slightly to about 80% to 85% in the recent years,¹⁰¹ and around 70% in 2003.¹⁰²

In summary, the opium poppy is mainly cultivated in fifteen northern mountainous and highland provinces of Vietnam by ethnic minorities, especially the H'mong. The opium poppy crop in 1985-1986 was the most productive harvest with 19,000 hectares. Thanks to the Government's opium eradication programs, the areas of opium poppy plantations have reduced sharply and have remained insignificant. However, many difficulties still remain in seeking a sustainable alternative income for the ethnic populations. While certain successes of the Government in controlling drug cultivation have been observed, drug trafficking has become more serious. Heroin, opium and synthetic drugs are brought into Vietnam at various points along its overland borders with Laos and China, and cannabis is smuggled into the country from Cambodia. Vietnamese seaports and airports are employed by drug traffickers to transport drugs to Australia, Canada, Europe and America. The rising trend in organized drug trafficking cases has threatened national security and public safety. The increasing availability of drugs smuggled from neighboring countries has contributed to the alarming growth in drug abuse that has shifted from opium towards heroin and ATS, and from rural regions to urban areas. The abuse of drugs, especially among young people, has become a serious obstacle to national socio-economic development.

3.2 Ratification of the Three United Nations Drug Control Conventions

As described at 3.1.1 above, the first attempts of the Vietnamese Government to combat the abuse of opium were made around the middle of the seventeenth century, after the opium poppy was brought into the country. In 1665, the Government issued the initial legal formulation for a definite policy of national limitation of cultivation, smoking, transportation and possession of opium. The opium restrictions were removed during French rule over the country, and opium smoking was not a major concern during Vietnam's war. But after Vietnam regained its unification, the new

¹⁰¹ Viet Trung Tran, above n 99, 7 and Hong Anh Le, above n 35, 9. See also Standing Office for Drug Control, above n 34, 6.

Government intensified the control of opium cultivation and provided treatment for drug abusers. Since then, efforts geared towards more effective control of the drug situation in the country have never stopped. Within this historical context, it is useful to observe how the Government of Vietnam came to undertake definite steps towards international cooperation in controlling illicit drugs.

By the end of 1997, Vietnam had ratified the three DCCs currently in force as a formal commitment to international cooperation in drug control. However, the preparatory work towards the formal stage of ratification was started in 1993, four years previously.

At the beginning of 1990s, narcotics problems became recognized as serious and as posing major threats to the country.¹⁰³ Various political agendas and the media discussed the consequences of drug problems for drug abusers as well as their families and society as a whole.¹⁰⁴ The influences of drug misuse were felt not only by the individual users but also by their relatives and friends, treatment and rehabilitation agencies, law enforcement authorities and the criminal justice system. Drugs undermined the abusers' health, bringing about low productivity, physical and mental impairments and dysfunction. Intravenous drug use was closely associated with AIDS-related cases. Drug abuse disrupted family life and caused complications with pregnancies and birth defects.¹⁰⁵ It also added to the social cost of assisting, supporting, and treating abusers and their families, as well as the expense of prevention, education and law enforcement in dealing with drug control.¹⁰⁶ Illicit drugs increased the likelihood of many kinds of criminal activities, in particular trafficking-related offenses and corruption.¹⁰⁷

¹⁰² Gia Khiem Pham, 'Mobilizing Strengths of the Whole Political System in the Combat against Illicit Narcotics', above n 93, 4.

¹⁰³ See the analysis in the previous part. See also Phong Hoa Nguyen and Ngoc Hung Dang, above n 1, 98; Xuan Yem Nguyen and Quang Vinh Vu, above n 9, 71 and Van Luyen Tran, *Criminal Liability for Drug-Related Crimes*, above n 2, 16-7.

¹⁰⁴ Ibid.

¹⁰⁵ See, eg, the Preamble of the *Resolution 06/CP on Enhancing Directions on Drug Prevention and Suppression 1993* and Xuan Yem Nguyen and Quang Vinh Vu, above n 9, 22 and 26-7.

¹⁰⁶ Xuan Yem Nguyen and Quang Vinh Vu, above n 9, 23-4.

¹⁰⁷ Van Luyen Tran, *Criminal Liability for Drug-Related Crimes*, above n 2, 19-20 and Phong Hoa Nguyen and Ngoc Hung Dang, above n 1, 175.

Moreover, in political agendas, the globalisation of drug issues was also emphasized. It was stated that drug abuse had become an international problem because it had not been possible to confine drugs to their place of origin. Modern methods of transport and communication had increased and facilitated the dissemination of all drugs of abuse, both licit and illicit.¹⁰⁸ Illicit drugs affect all social sectors in all countries. Drug problems were deeply rooted in broader socio-economic concerns and no nation seemed immune from this menace.¹⁰⁹ Their impact continued to grow, drawing an ever-larger number of people into a perpetual state of dependence, physiological as well as financial. As the danger of illicit drug cultivation, manufacture, traffic and use affected all geographical areas of the world, the Government of Vietnam recognized that it was essential to undertake cooperative action to combat the threats that drug abuse and illicit trafficking posed to the national as well as the international community.¹¹⁰

Against such a background, in 1993, the Government declared its commitment to the fight against drugs by issuing *Resolution 06/CP on Enhancing Directions for Drug Control*. In this Resolution, the Government initiated an examination of the existing national legislation for the ratification of the DCCs. The Ministry of Justice was entrusted with the task of studying national laws on drug control and, step-by-step, it prepared legal documents for Vietnam's cooperation with the United Nations' efforts to strike against drug abuse and trafficking.¹¹¹

Noteworthy is that, under this Resolution, the national Steering Committee for Drug Prevention and Suppression Programs (Steering Committee) was first established. It was headed by the Director of the National Ethnic Minorities and Mountainous Areas Department. The Vice Minister of the Ministry of Interior and the Vice Minister of the Ministry of Labor, War Invalids and Social Affairs were appointed as

¹⁰⁸ Xuan Yem Nguyen, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions*, above n 24, 785.

¹⁰⁹ Van Luyen Tran cited the message of the General Secretary Boutros Ghali, when mentioned adverse impacts of drug issues. See Van Luyen Tran, *Criminal Liability for Drug-Related Crimes*, above n 2, 20.

¹¹⁰ Ibid 20-1 and Xuan Yem Nguyen and Quang Vinh Vu, above n 9, 86-7.

¹¹¹ *Nghi Quyết số 06/CP về Tang Cuong Chi Dao Cong Tac Phong, Chong Ma Tuy 1996* (Chính Phủ), s 2(b) [trans: *Resolution 06/CP on Enhancing Directions on Drug Prevention and Suppression 1993* (Government)].

its Vice Directors.¹¹² Although the Steering Committee was organized only at the ministerial rank, its establishment was a major step by the Government towards drug control. The Committee took full responsibility for the examination of the ratification of the three DCCs.¹¹³

Over four years, from 1993 to 1997, a number of amendments to national laws and regulations were made in order to bring the Vietnamese legislation basically in line with the provisions of the DCCs.¹¹⁴ Those improvements included the establishment of control regimes on addictive drugs, the criminalization of drug-related crimes and the reinforcement of drug abuse treatment.

First, in 1995, the Ministry of Health issued *Decision 939/BYT-QD* dated 6 June 1995 specifying the list of addictive drugs and control mechanisms applicable to them. Under this Decision, addictive drugs under control were not classified into different schedules, as the DCCs do.¹¹⁵ However, their list covered dependence-producing substances used in the medical field and generally complied with the scope of controlled substances under the DCCs.¹¹⁶ The control measures for licit activities relating to addictive substances adhered to the control regimes imposed on narcotic drugs and psychotropic substances under the DCCs, such as limitation of their use as drugs for medical and scientific purposes; estimates and statistical reports; licensing control of their production, manufacture and transportation; import and export authorizations; and requirements for medical prescriptions in distribution and record-keeping.¹¹⁷

¹¹² Ibid.

¹¹³ The Deputy Minister of the Ministry of Justice is a member of the Steering Committee.

¹¹⁴ See Chung Luu Uong, above n 3, 36.

¹¹⁵ See *Quyết Định số 939/QĐ-BYT ban hành Quy Chế Quản Lý Thuốc Gay Nghiện và Danh Mục Thuốc Gay Nghiện 1995* (Bo Y Te), attached list of addictive drugs [trans: *Decision 939/QĐ-BYT Promulgating the Control Regimes Applicable to Addictive Drugs and the Lists of Addictive Drugs under Control 1995* (Ministry of Health)] (hereinafter *Decision 939/QĐ-BYT*).

¹¹⁶ Duc Luan Nguyen, 'Tang Cuong Che Do Kiem Soat Tien Chat va Cac Hoa Chat Co Ban Su Dung Trong Viec San Xuat Trai Phep Ma Tuy' (1996) 11 *Duoc Hoc* 4, 4 [trans: Duc Luan Nguyen, 'Enhancing the Control of Precursors and Essential Chemicals Used in Illicit Narcotics Manufacture' (1996) 11 *Pharmacy* 4].

¹¹⁷ *Decision 939/QĐ-BYT*, above n 115, arts 3-16.

Secondly, on 10 May 1997, the *Criminal Code 1985* was revised with the insertion of a completely new chapter dealing with drug-related crimes.¹¹⁸ By establishing many different forms of conduct relating to illicit drugs as criminal offenses, the *Criminal Code 1985*, as amended, took a great step towards the adherence to the DCC requirements for the control of illicit drug activities.¹¹⁹ Under the earlier *Criminal Code 1985*, the only prescribed drug-related offense (Article 203) was the organizing of illegal drug use. Other drug-related conduct was not specified. Therefore, prosecutions relating to the unlawful drug production, manufacture, sale, transport, storage, import, export and distribution could proceed only under the offenses of ‘Unlawful stockpiling and trading in banned goods’ (Article 166) or ‘Smuggling and/or transporting goods and/or currencies across border’ (Article 97).¹²⁰ In 1989, the *Criminal Code 1985* was amended for the first time and another single separate offense was added, i.e. ‘Unlawful trading, stockpiling and transporting in narcotic substances’ (Article 96a). Thus, in contrast to the period from 1989 to 1997, when only two distinct drug-related offenses were prescribed, in 1997, the *Criminal Code 1985* was amended, for the second time, to establish thirteen separate drug-related offenses.

Thirdly, in 1995, the Standing Committee of the National Assembly enacted an *Ordinance on Administrative Sanctions*, which imposed a compulsory treatment on drug abusers in specified conditions.¹²¹ Further, guiding its implementation, the Government enacted *Decree 20/CP Promulgating Regulations on Treatment And Rehabilitation Centers 1996*. These regulations formed a legal framework for drug

¹¹⁸ *Luat Sua Doi, Bo Sung Mot so Dieu cua Bo Luat Hinh Su nam 1985, 1997* (Quoc Hoi) art 24 [trans: *Law on Amendment of and Addition to a Number of Articles in the Criminal Code 1985, 1997* (Quoc Hoi)].

¹¹⁹ The DCCs require Parties to establish certain drug-related conduct as criminal offenses. See *Single Convention on Narcotic Drugs*, opened for Signature 30 March 1961, art 36(1)(a) (entered into Force 13 December 1964); *Convention on Psychotropic Substances*, opened for Signature 21 February 1971, art 22(1)(a) (entered into Force 16 August 1976) and *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for Signature 20 December 1988, art 3(1)(a) (entered into Force 11 November 1990).

¹²⁰ See Chung Luu Uong, above n 3, 32.

¹²¹ *Phap Lenh Xu Phat Vi Pham Hanh Chinh*, art 24 [trans: *Ordinance on Administrative Sanctions 1995* (National Assembly)].

abuse treatment and rehabilitation that brought the national regulations much more in line with international provisions.¹²²

The abovementioned amendments made to national laws and regulations prepared a suitable legislative basis for the convention ratification. Thus, by the end of the year 1997, Vietnam had ratified the three DCCs.¹²³

Vietnam's decision to ratify the DCCs signalled its recognition of the international considerations that bear upon controlling the abuse and non-medical use of substances which are dangerous to the physical and mental health of mankind. Vietnam wholeheartedly approves the objectives of international cooperation in drug control, namely, to bring under control narcotic drugs and psychotropic substances which are being abused and which give rise to dependence, as well as to bring under control precursors that are used in illicit drug manufacture. It also supported the DCC provisions under which the illicit trafficking of those substances is to be severely punished.¹²⁴

The ratification by Vietnam of the DCCs comes as a natural outcome of the following facts:

- i. Vietnam's authorities were already alerted to the possible dangers of the abuse and risks to public health caused by narcotic drugs and psychotropic substances and to the growing problems of drug trafficking in the country;
- ii. Vietnam's authorities were aware of the benefits of international solidarity in taking worldwide measures to curb the increasing abuse of drugs and appreciated the necessity for international coordination in the fight against drug trafficking.

¹²² The DCCs encourage Parties to take practical measures for the prevention of drug abuse and for early identification, treatment, education, aftercare and rehabilitation. See 1961 Convention, above n 119, art 38; 1971 Convention, above n 119, art 20 and 1988 Convention, above n 119, art 19.

¹²³ *Quyết Định số 798/QĐ-CTN ngày 01/09/1997 của Chủ tịch Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam Tham Gia 3 Công Ước của Liên Hiệp Quốc về Kiểm Soát Ma Túy năm 1997* [trans: *Decision 798/QĐ-CTN to Ratify the Three United Nations Drug Control Conventions 1997* (President)].

¹²⁴ See Xuan Yem Nguyen, 'Van De Phoi Hop giữa các Cơ Quan Tham Gia Phòng Chống Ma Túy ở Việt Nam' (Paper presented at the Hội Thảo về Phòng Chống Ma Túy của Việt Nam và Pháp, Hanoi, Vietnam, 1998) 109 [trans: Nguyen, Xuan Yem, 'The Issue of Coordination among State Authorities

By ratifying the DCCs, Vietnam could expect to receive the benefit of the controlling power of the International Narcotics Control Board to limit the manufacture of and trade in narcotic drugs and psychotropic substances for proper use. Another major consideration was that the country could get access to technical and financial assistance and the stock of information disseminated by the United Nations, World Health Organization and International Criminal Police Organization as well as other convention Parties, with a view to enhancing the efficiency of the national battle against illicit drugs of abuse.¹²⁵

To sum up, facing the seriousness of drug problems in the country and being aware of the necessity of international cooperation in drug control, the Government of Vietnam made a definite step forward to become a signatory of the three DCCs. These international Conventions provide a comprehensive system for dealing with both licit and illicit drug activities that imposes certain obligations on their contracting Parties. The next [seven] Chapters present a case study of Vietnam in respect of its domestic drug control legislation in comparison with DCC standards.

Charged with Drug Control in Vietnam' (Paper presented at the Drug Control in Vietnam and France, Hanoi, 1998)] and Khiem Do, above n 60, 57.

¹²⁵ Xuan Yem Nguyen and Quang Vinh Vu, above n 9, 53-4.

4 CONTROLLED SUBSTANCES

4.1 *Controlled Substances under the UN Drug Control Conventions*

4.1.1 Defining Controlled Substances: Enumerative Method

4.1.2 Narcotic Drugs under the 1961 Convention

4.1.3 Psychotropic Substances under the 1971 Convention

4.1.4 Substances Frequently Used in Illicit Drug Manufacture under the 1988 Convention

4.2 *Controlled Substances under Vietnamese Legislation*

4.2.1 Defining Controlled Substances: A Combination of Enumerative and Descriptive Methods

4.2.2 Definition and Schedules of Narcotic Substances

4.2.3 Definition and Schedule of Precursors

4.3 *Conclusion*

The ultimate objective of the United Nations Drug Control Conventions (DCCs) is to ensure that dependence-producing substances, namely narcotic drugs and psychotropic substances, are used exclusively for medical and scientific purposes.¹ To achieve this goal, they specify the range of substances over which the Parties are obliged to impose various control measures. Thus, defining substances to be controlled is a primary requirement for each national drug control. Therefore, this study starts with the examination of controlled substances.

The first part of this Chapter analyzes substances that fall within the scope of the DCCs in terms of their definitions and classifications, providing a framework for the study which follows of the Vietnamese specification of controlled substances. The analysis of Vietnamese legislation on controlled substances focuses on comparisons between the national and international provisions in order to identify the extent of

¹ See Bror Rexed et al, *Guidelines for the Control of Narcotic and Psychotropic Substances in the Context of the International Treaties* (1984) 33 and International Narcotics Control Board, *Effectiveness of the International Drug Control Treaties: Supplement to the Report of the International Narcotics Control Board for 1994* (1995) 3.

domestic compliance with the DCCs. Recommendations for further improvement of the concerned domestic legislation are expected outcomes of this Chapter.

4.1 Controlled Substances under the UN Drug Control Conventions

Under the *1961* and *1971 Conventions*, a huge number of narcotic drugs and psychotropic substances are brought under control.² As the international control regime has gradually developed, the *1988 Convention* extends the international control to chemicals that are used in illicit manufacture of those substances.³ The DCCs, however, do not provide definitions of the controlled substances. In this part, the DCC method of specifying controlled substances is analyzed. In addition, the range of substances that each Convention covers is examined. While analyzing the controlled substances under each Convention, this research makes an effort to provide a comparative view.

4.1.1 Defining the Controlled Substances: Enumerative Method

In various languages, the terms ‘drug’, ‘substance’, ‘narcotic drugs’ and ‘psychotropic substances’ have different connotations,⁴ and there do not exist today globally recognized definitions of these terms.⁵ While dealing with those drugs, the DCCs do not attempt any definition. Instead, they straightforwardly enumerate the substances to which they apply.⁶

The current DCC method of defining controlled substances derives from the experience of previous drug control conventions. In the 1931 Conference for

² See the red and yellow lists of substances under international control prepared by the International Narcotics Control Board available at the website: <<http://www.incb.org>>

³ See the green list prepared by the International Narcotics Control Board available at the website of this organization: <<http://www.incb.org>>.

⁴ See, for example, Tadeusz L Chrusciel, 'International Aspects of Problems associated with the Use of Psycho-active drugs' (1976) 2 *Bulletin on Narcotics* 35 <http://www.unodc.org/unodc/bulletin/bulletin_1976-01-01_2_page005.html> at 25 September 2004.

⁵ See Bertil a Renborg, *International Drug Control - A Study of International Administration by and through the League of Nations* (2nd ed, 1972) 51, Cherif M Bassiouni, 'International Drug Control System' in Bassiouni M C (ed), *International Criminal Law* (1999) vol 1, 905, 916 and Louis Lessem, 'Towards an International System of Drug Control' (1974) 8 *Law Reform* 103, 127.

⁶ See *Single Convention on Narcotic Drugs*, opened for signature 30 March 1961, art 2 (entered into force 13 December 1964); *Convention on Psychotropic Substances*, opened for signature 21 February 1971, art 2 (entered into force 16 August 1976); and *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988, art 12 (entered into force 11 November 1990).

Adopting the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs,⁷ a group of experts was asked to propose a definition of the term ‘narcotic drugs’ that might be used in this instrument. However, according to the experts, it was unable to provide a satisfactory definition due to the wide variety of drugs it covered.⁸ To overcome obstacles of a technical nature, international lawmakers chose the method of directly enumerating substances falling under the Convention’s scope. Since then, this method has been used in all of the present DCCs.

The enumerative method is limiting, as it does not provide a conceptual basis for the substances. Nonetheless, it has proved to be advantageous in practical implementation. Detailed schedules of substances, including their names and chemical structures, create a uniform acknowledgement across different countries around the world that is essential to facilitate the work of national authorities engaged in drug control, such as police, customs, judiciary and administrative authorities.⁹ Additionally, from the moment of manufacture until the moment of consumption, a drug is likely to be involved in a wide range of transactions.¹⁰ At different stages, different control measures are required.¹¹ Manufacturers and other parties involved in the chain can only apply measures that are set out in the laws if they know exactly which drugs are under control. Thus, the enumerative method, at this point, helps to avoid unnecessary confusion or uncertainty about the range of controlled substances.

⁷ The *Hague Opium Convention 1912* was the first international agreement on drug control, but it focused only on the control of opium. Later, in 1925, the *Geneva International Opium Convention* was concluded, regulating mainly opium. In this Convention, the term ‘narcotic drugs’ first appeared as a generic term.

⁸ According to the report of the subcommittee, several terms would be necessary to provide a precise scientific description of substances within the scope of the Convention, because some of them are narcotic and habit-forming, some are ‘narcotic but not habit-forming, and some are neither narcotic nor habit-forming, but convertible into habit-forming narcotic drugs’. See Renborg, above n 5, 51. See also Richard H Blum, ‘International Classification’ in Richard H Blum et al (eds), *Controlling Drugs* (1974) 48, 60. According to Blum, ‘narcotic’ is just a legal label. Among the controlled drugs, the range of effects is greatly varied.

⁹ Renborg, above n 5, 51.

¹⁰ Rudi Fortson, *The Law on the Misuse of Drugs and Drug Trafficking Offences* (3rd ed, 1996) 11.

¹¹ For example: licenses for establishments and premises where the manufacture and trade of those controlled substances take place; licenses for persons involved in the manufacture, trade and distribution of those drugs; special authorizations are required for import and export; medical prescriptions, label warnings and record keeping are mandatory for certain drugs, etc.

Nonetheless, the main defect of the enumerating schedules arises when there is a need to include new substances in the existing control system. It may be cumbersome to go through all procedural steps, such as international conferences, that are required to reschedule the scope of the controls, especially when modern technologies have brought about the continual production of new powerful drugs of reliable quality.¹² It is extremely important that the lists of controlled substances are adaptable and that any alteration made to them is based on practical circumstances.¹³ To overcome the disadvantages of the enumerative method, the present DCCs have benefited from the experience of its predecessors by providing efficient machinery for expanding the Conventions' scope to other substances that produce effects similar to those originally covered.¹⁴ Under the DCCs, the Commission on Narcotic Drugs (Commission)¹⁵ is empowered to make a final decision on any necessary change to the range of controlled substances.¹⁶

In brief, due to the technical distinctions between various types of drugs covered by the DCCs, the enumerative method is chosen to define substances that fall under international control. Their precise schedules facilitate the practical work, but appear to be disadvantageous when a need to amend the schedules arises. To simplify procedures for changing the scope of control, the Commission is empowered to make necessary alterations. This machinery is a successful compromise between the needs for specific schedules and a flexible range of application.

¹² It is obvious that sophisticated chemical techniques have been continuously developed, producing more potent habit-forming substances. See Glenn F Murray and Reginald G Smart, 'The History and Rationale for the Convention on Psychotropic Substances' in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and Their International Control* (1981) 1, 1.

¹³ Fortson, above n 10, 11.

¹⁴ For example, 1961 Convention, above n 6, art 3 and 1971 Convention, above n 6, art 2(5). See also Renborg, above n 5, 51.

¹⁵ The Commission on Narcotic Drugs was established by Resolution I of February 16, 1946 of the Economic and Social Council of United Nations. It is a policy-making body as it formulates policies and advises the Economic and Social Council on matters relating to control of drugs of abuse. It coordinates activities and supervises the DCC implementation. See, eg, Charles S Rhyne, Amelito R Mutuc and Brian M Libow, *International Control of Narcotic Drugs: The Law-Making Activities of the United Nations Commission on Narcotic Drugs and the International Narcotics Control Board* (1976), 9 and 11 and S D Chatterjee, *Legal Aspects of International Drug Control* (1981) 235.

¹⁶ There are several types of changes that can be made to the scope of control, for example including an uncontrolled substance into the control regime; changing the level of control applied to a drug by transferring it from one schedule to another; or removing it from the control system. See 1961 Convention, above n 6, arts 3(3) and 3(6) and 1971 Convention, above n 6, art 2(5).

4.1.2 *Narcotic Drugs under the 1961 Convention*

The *1961 Convention* is a major achievement in international efforts to control narcotic drugs. It codified and altered the nine previous international agreements in the field and listed all narcotic drugs to be controlled. While seeking to ensure the availability of useful drugs for medical and scientific purposes and to prevent their abuse, it does not create a ‘tailor-made system of control for each individual drug’,¹⁷ because there is such a large number of controlled substances.¹⁸ In addition, their medical uses and potentials for abuse are varied.¹⁹ Therefore, based on their values for medical and scientific purposes and their risks for abuse, they are grouped into four schedules, which are subject to different levels of control.²⁰ Divergences between these controls, however, are ‘only very minor’.²¹

Schedule I of the *1961 Convention* includes raw materials (cannabis, hashish, coca leaf, opium)²² and all substances in the opiate, cocaine and cannabis groups²³ that have a relatively high abuse liability.²⁴ Substances in this Schedule are subject to all restrictions and controls laid down in this Convention, such as estimates and

¹⁷ Bassiouni, above n 5, 923.

¹⁸ At the present, there are hundreds of narcotic drugs and psychotropic substances, which fall under international control. See, for example the ‘yellow list’ of narcotic drugs and the ‘green list’ of psychotropic substances prepared by the International Narcotics Control Board.

¹⁹ For example, some narcotic drugs are highly addictive but have no medical use, while others are widely used in medical and pharmaceutical areas. See Bassiouni, above n 5, 923. See also Fortson, above n 10, 10; Blum, above n 8, 60 and Chester Nelson Mitchell, *The Drug Solution* (1990) 14.

²⁰ See, eg, Bassiouni, above n 5, 923; Lessem, above n 5, 134 and Rexed et al, above n 1, 35. To assess properties of narcotic drugs, the Commission considers the opinions of the World Health Organization, which is assisted by the Expert Committee on Drug Dependence. The Expert Committee provides information on pharmacological effects of drugs, assesses the usefulness of drugs in medical therapy and the degree of risks they pose to public health. Concerning the criteria for bringing substances under control, the *1961 Convention* does not stipulate in detail the ‘degree’ of risk to public health. As a consequence, certain discretion is vested in the technical experts. In other words, the World Health Organization has been allowed a certain amount of discretion in applying the abovementioned criteria. See Chatterjee, above n 15, 281-2. As a technical committee, recommendations of the Expert Committee on scheduling controlled substances are apparently very important. See Jasper Woodcock, ‘Administrative Considerations’ in Richard H Blum et al (eds), *Controlling Drugs* (1974) 305, 328 and 330.

²¹ See Secretary-General of the United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961* (1973) 51.

²² Bassiouni, above n 5, 923 and Lessem, above n 5, 136.

²³ See, Rexed et al, above n 1, 35 and Chatterjee, above n 15, 350.

²⁴ See, eg, Rhyne, above n 15, 15 and Tally M Wiener, ‘Drug Policy Priorities in the Wake of the June 1998 Drug Summit’ (1999) 25 *Brooklyn Journal of International Law* 759, 764.

statistics;²⁵ quantitative limitations on manufacture and importation; licensing system in manufacture, trade and distribution; authorizations for import and export; medical prescriptions, record keeping and label warnings.²⁶

Schedule II includes various forms of codeine and morphine.²⁷ These drugs are more commonly used for medical purposes and have less risk of abuse than the drugs in Schedule I.²⁸ Excepting that medical prescriptions for the supply or dispensing of these drugs to individuals are not mandatory, other control measures applicable to these drugs are the same as those applicable to the substances in Schedule I.²⁹

Schedule III contains preparations, i.e. ‘a mixture, solid or liquid, containing drugs’,³⁰ in low concentrations and in controlled proportions and, therefore, having no or negligible risk of abuse.³¹ Due to their diluted form, they are exempted from certain controls regarding international and retail trade. For example, government authorizations for import and export of these substances are not imposed and estimates and statistics are required only for the quantities that are used in their manufacture.³² Relating to this point, it is worth noting that, except for those listed in Schedule III, other preparations are subject to the same controls as the drugs they contain³³ but periodical licenses for manufacture as well as licenses over establishments and premises where their trade and distribution take place are not

²⁵ In brief, ‘estimates’ is a control system that the Parties are bound to submit annually to the International Narcotics Control Board (Board) anticipated quantities of drug requirements for medical and scientific purposes for each forthcoming year. The Board is authorized to examine and to publish estimates that are binding upon them. The quantities of drug manufacture and imports cannot exceed estimates, excepting that the Parties submit supplementary estimates and those estimates are confirmed by the Board. ‘Statistics’ (statistical returns) is a control measure applicable to narcotic drugs and psychotropic substances as well as precursors. The Parties are obliged to furnish to the Board statistical information on quantities of drugs to be manufactured, consumed, imported or exported, seized and to be held in stocks in their territories. See Section 10.2.1 for an in-depth analysis of the international estimates and statistics systems.

²⁶ 1961 Convention, above n 6, art 2(1).

²⁷ Wiener, above n 24, 764.

²⁸ See, eg, Rexed et al, above n 1, 35 and Gianfranco Dell’Alba, Olivier Dupuis and Jean-Luc Robert, *For a Revision of the United Nations Conventions on Drugs*, International Anti-Prohibitionist League [10] <http://www.antiprohibitionist.org/documents/documents01/study%20on%20the%20Conventions_en.doc> at 21 September 2005.

²⁹ 1961 Convention, above n 6, art 2(2).

³⁰ 1961 Convention, above n 6, art 1(1)(s).

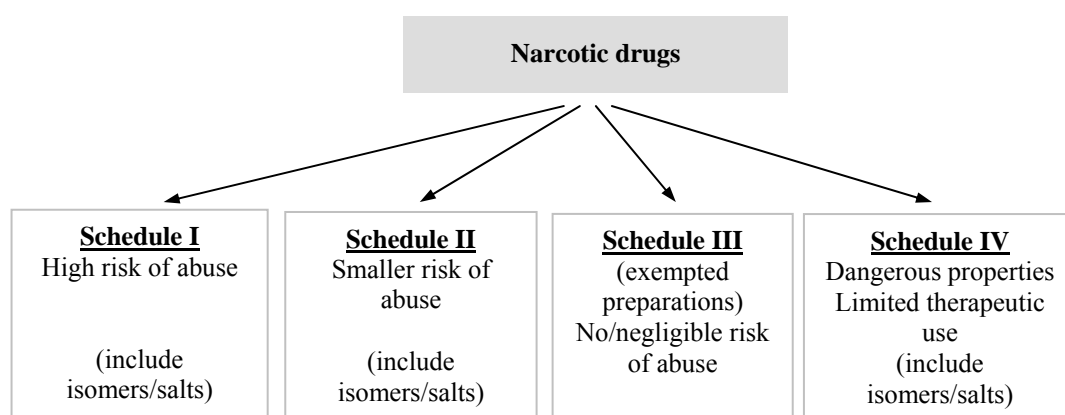
³¹ See, eg, Chatterjee, above n 15, 351, Rexed et al, above n 1, 36; Wiener, above n 24, 766 and Rhyne, above n 15, 15.

³² 1961 Convention, above n 6, art 2(4). See also Lessem, above n 5, 135-6.

mandatory.³⁴ In other words, the regimes governing preparations differ slightly from the controls applied to the drugs concerned.³⁵

Schedule IV contains drugs having particularly dangerous properties but very limited therapeutic use,³⁶ for which deletion from general medical practice is desirable.³⁷ These drugs are simultaneously included in Schedule I and are subject to all control measures. In addition, the Parties are required to apply special measures of control, such as prohibitions on production, manufacture, trade and use of these substances, except for limited amounts for medical and scientific research, if they believe those measures to be necessary to protect public health and welfare.³⁸ Although the Convention requires its Parties to apply stricter control measures upon Schedule IV, decisions are left to them in accordance with the prevailing conditions in their countries. As a result, these provisions are only recommendatory rather than mandatory. In brief, substances covered by the *1961 Convention* can be summarized in the following Figure.

Figure 4.1 Controlled Substances under the 1961 Convention



Noteworthy is that, in addition to these Schedules, the individual Parties are encouraged to extend controls in their territories to substances that are not specified in the Conventional Schedules but may be used in the illicit manufacture of drugs.³⁹

³³ 1961 Convention, above n 6, art 1(1)(s).

³⁴ 1961 Convention, above n 6, art 2(3).

³⁵ 1961 UN Commentary, above n 21, 51.

³⁶ Bassiouni, above n 5, 923 and Wiener, above n 24, 767.

³⁷ Chatterjee, above n 15, 348.

³⁸ 1961 Convention, above n 6, art 2(5).

³⁹ 1961 Convention, above n 6, art 3(3)(iii).

Rendering the Schedules adaptable to new drugs of abuse, under the *1961 Convention*, all Parties and the World Health Organization (WHO) can initiate notifications for amendments to the range of substances.⁴⁰ As a policy-making body, the Commission is entitled to make final decisions, based on technical advice from the WHO. If this authority finds a drug producing ‘similar abuse’, ‘similar ill effects’ or being ‘convertible to a drug’, it must communicate those findings to the Commission. The term ‘similar’ in the wording of the Convention has been argued to embrace ‘a wide range of comparison’⁴¹ and, due to a lack of elaboration of criteria, the *1961 Convention* leaves a wide interpretive discretion to the WHO.⁴² However, on the other side, the Convention’s procedures are laudable because pharmacological and medical aspects are obviously complicated and, while focusing on legal and administrative aspects of international cooperation in drug control, it cannot regulate those detailed technical matters.

4.1.3 Psychotropic Substances under the 1971 Convention

As mentioned, there does not exist a globally-recognized definition of the term ‘psychotropic substances’. This term has no specific scientific meaning. It is a general term for designating substances that affect the nervous system.⁴³ Therefore, all narcotic drugs under the *1961 Convention* are also psychotropic substances in nature.⁴⁴

During the drafting of the *1971 Convention*, the question of including psychotropic substances into the control scope of the earlier Convention was raised.⁴⁵ However, the international drug control bodies and the Parties involved in discussion concluded that (i) during the drafting process of the *1961 Convention* and also at its adoption conference, there was an understanding that this instrument should only apply to

⁴⁰ 1961 Convention, above n 6, art 3(1).

⁴¹ Chatterjee, above n 15, 347.

⁴² Ibid and Kettil Bruun, Lynn Pan and Ingemar Rexed, *The Gentlemen's Club - International Control of Drugs and Alcohol* (1975) 247.

⁴³ Eva Tongue, 'Reflections on the Development, Content and Acceptance of the Convention on Psychotropic Substances' in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and Their International Control* (1981) 30, 31.

⁴⁴ Ibid.

⁴⁵ See, eg, Bruun, Pan and Rexed, above n 42, 246.

substances of a narcotic kind,⁴⁶ and (ii) adding psychotropic substances to the narcotics regime would create a very complicated treaty and huge administrative problems.⁴⁷ As a consequence, the *1971 Convention* on Psychotropic Substances was adopted, but it is substantially modeled on the pattern of the *1961 Convention*.⁴⁸

It is necessary to emphasize that there is not a black-and-white border between the controlled substances under these Conventions. For example, the Commission can add some psychotropic substances under the regime of the *1961 Convention* without the necessity of deleting them from the Schedules under the *1971 Convention*.⁴⁹ The criteria for bringing psychotropic substances under control are fully applicable to narcotic drugs and, in a number of situations, the criteria for including narcotic drugs in the control regime can also apply to psychotropic substances.⁵⁰ To avoid the overlaps in their scope, while providing guidelines for the Expert Committee in reviewing dependence-producing substances for international control, the WHO notes that ‘for the practical application of controls, it is not advisable to place the same substance under more than one Convention, and different stereoisomers⁵¹ of the same substance should not be controlled under different Conventions’.⁵²

⁴⁶ A number of cases which are provided as typical examples for this notice are amphetamines, barbiturates and some tranquilizers. Although amphetamines have effects similar to cocaine and the impacts of barbiturates and some tranquilizers are similar to morphine, they are exempted from the scope of control of the *1961 Convention*. See, eg, Bruun, Pan and Rexed, above n 42, 248; Tongue, above n 43, 33 and Istvan Bayer, 'The Problem of Analogues vs International Drug Treaties' in M Klein et al (eds), *Clandestinely Produced Drugs, Analogues and Precursors: Problems and Solutions* (1989) 319, 321.

⁴⁷ Tongue, above n 43, 33 and Bruun, Pan and Rexed, above n 42, 248.

⁴⁸ Even after the *1971 Convention* was adopted, the question of combining the *1961 Convention* with the *1971 Convention* is still raised. See, eg, International Working Group on the Convention on Psychotropic Substances, *Report of the "International Working Group on the Convention on Psychotropic Substances, 1971" - September 8 -12, 1980* (1981) 11.

⁴⁹ 1961 Convention, above n 6, art 2(8).

⁵⁰ See, eg, United Nations International Drug Control Program, *Commentary on UNDCP Model Drug Abuse Bill 2000*, United Nations Office on Drugs and Crimes [para 27]

<http://www.unodc.org/pdf/lap_drug-abuse-bill_commentary.pdf> at 05 September 2005.

⁵¹ Stereoisomers are molecules that have atoms bonded together in the same order, but differ in how the molecules are directed in space. See *Stereochemistry*, Rutgers - the State University of New Jersey <<http://www.crab.rutgers.edu/~alroche/Ch05.doc>> at 12 January 2006.

⁵² See World Health Organization, *Guidelines for the WHO Review of Dependence-producing Psychoactive Substances for International Control* (2000) [para 35] <http://whqlibdoc.who.int/hq/2000/WHO_EDM_QSM_2000.5.pdf> at 15 September 2005.

Similar to narcotic drugs, psychotropic substances are listed in four schedules. The inclusion of psychotropic substances under each Schedule is based on their dependence-producing properties, their usefulness in medical therapy, impacts on public health and likelihood of causing social problems.⁵³ Nevertheless, the scheduling does not always follow objective scientific evaluation.⁵⁴ Other economic, social, legal, administrative and relevant factors may be taken into account for controlling a drug.⁵⁵ Control measures vary across the four Schedules, however, again, little differences are observed, except for Schedule I.⁵⁶

Schedule I includes the hallucinogen group LSD, DMT, mescaline and so on,⁵⁷ which are of especially serious risk to public health, but have ‘very limited, if any, therapeutic usefulness’.⁵⁸ These drugs are prohibited except for scientific and very limited medical use by duly authorized persons under the strict control of the State.⁵⁹ Upon these substances all control measures are applied. In addition, special prohibitions and limitations are prescribed in manufacture and international trade, such as restricting the amount supplied to duly authorized persons to within the quantity required for their authorized purposes; keeping records on the acquisition of substances and their use; and prohibiting export and import except when both the exporter and importer are authorized persons or enterprises.⁶⁰

⁵³ See, eg, Bassiouni, above n 5, 923; Lessem, above n 5, 144. See also United Nations, *Commentary on the Convention on Psychotropic Substances, done at Vienna on 21 February 1971* (1976) 45-63.

⁵⁴ For example, phencyclidine was excluded from the list of substances that had ‘no accepted use in medical practice but carry a high degree of hazard to public health’ just because it had some veterinary use, and people did not normally repeat its use due to the unpleasant effects. Or the case of LCD, which may not be a dependence-producing substance, but was included in the international control because of its harmfulness. See Tongue, above n 43, 34 and Chatterjee, above n 15, 460-1. See also Vis Navaratnam and N P Singam, ‘The Convention on Psychotropic Substances 1971 - A Malaysian Perspective’ in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and Their International Control* (1981) 114, 119.

⁵⁵ 1971 Convention, above n 6, art 2(5).

⁵⁶ See, eg, Oscar Schroder, ‘The Ratification and Implementation of the Convention on Psychotropic Substances in the Federal Republic of Germany’ in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and Their International Control* (1981) 77, 85.

⁵⁷ Rhyne, above n 15, 23.

⁵⁸ WHO, *Guidelines for the WHO Review of Dependence-producing Psychoactive Substances for International Control*, above n 52, [para 40]; WHO Expert Committee on Drug Dependence - *Technical Report Series: Thirty-third Report* [3] <http://whqlibdoc.who.int/trs/WHO_TRS_915.pdf> at 27 September 2005. See also Dell’Alba, Dupuis and Robert, above n 28, [11].

⁵⁹ 1971 Convention, above n 6, art 7(a).

⁶⁰ 1971 Convention, above n 6, arts 5(1), 7, 10, 11(1), 12(1)(3) and 16(4)(a).

Schedule II contains powerful barbiturates and amphetamine-type drugs,⁶¹ which cause ‘a substantial risk to public health and which have little to moderate therapeutic usefulness’.⁶² They are brought under all control measures, such as full requirements for statistics; licensing systems in manufacture, trade and distribution; authorizations for import and export; medical prescriptions; record keeping and label warnings.⁶³

Schedule III listed substances of fast- and medium- barbiturates,⁶⁴ which are liable to pose ‘a substantial risk to public health and which have moderate to great therapeutic usefulness’.⁶⁵ Due to their important therapeutic usefulness, these substances are subject to less stringent control measures than those in Schedule II, for example, simpler procedures are prescribed for international trade.⁶⁶

Schedule IV contains a variety of hypnotic, tranquillizing and analgesic drugs,⁶⁷ which are marked by ‘a smaller but still significant risk to public health and which have therapeutic usefulness from little to great’.⁶⁸ Due to their less addictive properties and their wide use in the medical area, they are treated in the least stringent manner. Certain controls on manufacture, international trade, retail trade and distribution are removed, such as separate authorizations for import and export and keeping retail trade records.⁶⁹

⁶¹ See, eg, Bassiouni, above n 5, 923 and Rexed et al, above n 1, 36.

⁶² WHO, *Guidelines for the WHO Review of Dependence-producing Psychoactive Substances for International Control*, above n 52, [para 40] and *WHO Expert Committee on Drug Dependence - Technical Report Series: Thirty-third Report*, above n 58, [3]. See also Dell'Alba, Dupuis and Robert, above n 28, 11 and Smart, Murray and Archibald, above n 12, 12.

⁶³ 1971 Convention, above n 6, arts 5(2), 8(1)(2), 9(1)(2), 10, 11(2)(3), 12(1)(3), 13(1) and 16(4).

⁶⁴ Rexed et al, above n 1, 36.

⁶⁵ WHO, *Guidelines for the WHO Review of Dependence-producing Psychoactive Substances for International Control*, above n 52, [para 40] and *WHO Expert Committee on Drug Dependence - Technical Report Series: Thirty-third Report*, above n 58, [3]. See also Dell'Alba, Dupuis and Robert, above n 28, [11].

⁶⁶ For more details of controlled measures, see 1971 Convention, above n 6, art 2(7)(c).

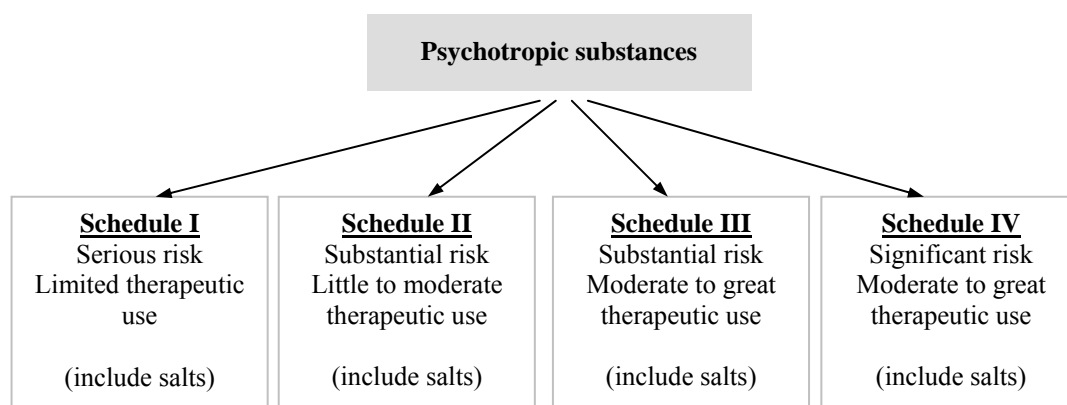
⁶⁷ See Rexed et al, above n 1, 36.

⁶⁸ WHO, *Guidelines for the WHO Review of Dependence-producing Psychoactive Substances for International Control*, above n 52, [40] and *WHO Expert Committee on Drug Dependence - Technical Report Series: Thirty-third Report*, above n 58, [3].

⁶⁹ 1971 Convention, above n 6, arts 11(5) and 12.

Similar to the earlier Convention, the *1971 Convention* extends the control over preparations of psychotropic substances.⁷⁰ However, under this Convention, the Parties are required to place preparations under the same measures of control as those applicable to psychotropic substances they contain.⁷¹ Nonetheless, the Parties can exempt certain preparations from several control measures if it is found that they have no or a negligible risk of abuse.⁷² Figure 4.2 below summarizes the controlled substances under the *1971 Convention*.

Figure 4.2 Controlled Substances under the 1971 Convention



The *1971 Convention* bears its strongest resemblance to the earlier Convention in the rescheduling procedures. Its control scope is expandable to substances having ‘similar abuse and similar ill effects as a substance in Schedule I, II, III or IV’.⁷³ The word ‘similar’, which is based on the narcotics regime model, again leaves a wide discretion to the WHO to determine the range of similarity.⁷⁴ The Commission is authorized to make final decisions, based on recommendations of the WHO. However, there are several differences between the two Conventions. Under the *1971 Convention*, the Commission has a wider range of action.⁷⁵ It can make a change to

⁷⁰ According to Article 1(f)(i) and 1(f)(ii) of the *1971 Convention*, ‘preparations’ means ‘any solution or mixture, in whatever physical state, containing one or more psychotropic substances’ or ‘one or more psychotropic substances in dosage form’.

⁷¹ If the preparations contain more than one substance, they are subject to the same controls applicable to the most strictly controlled substance they contain. See *1971 Convention*, above n 6, arts 3(1). See also Chatterjee, above n 15, 466.

⁷² Lessem, above n 5, 145. See also *1971 Convention*, above n 6, arts 3(3) and 12.

⁷³ *1971 Convention*, above n 6, art 2(4)(a)(ii).

⁷⁴ Chatterjee, above n 15, 460.

⁷⁵ Under the *1961 Convention*, the WHO assesses the dangerous properties of substances and based on its findings it recommends whether it is necessary to remove the substance in question from under control, whether to include a non-controlled substance under control, and under which regimes the

the Schedules for reasons related to other factors, such as economic, social, legal and administrative aspects, rather than solely grounded on the therapeutic aspect.⁷⁶ In addition, its decisions must be made in accordance with a two-thirds majority of its total membership regardless of the number of participating members in the vote,⁷⁷ whereas, under the *1961 Convention*, only a simple majority of the number of members involved in the vote is required.⁷⁸ The reason for such differences might originate from the fact that many psychotropic substances have extensive medical uses.⁷⁹

Another important difference between the two Conventions is the control of 'convertible' substances. While the *1961 Convention* covers not only drugs producing harmful effects but also substances 'convertible' to a drug, the *1971 Convention* applies only to substances that have dangerous properties in themselves.⁸⁰ However, in the manner of the narcotics regime, this Convention encourages the Parties to expand the scope of control to substances which may be used in the illicit manufacture of psychotropic substances.⁸¹

4.1.4 Substances Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances under the 1988 Convention

The manufacture of narcotic drugs and psychotropic substances requires different chemicals which are imperative to processing and refining each drug.⁸² Without these substances, the manufacture cannot be completed. Based on differences in their functions, chemicals involved in various stages of drug manufacture are divided into two types: (i) precursors, which are chemical substances that enter into transformative processes and 'become incorporated in full or in part into the

substance should be placed. The Commission's options are to take action upon the WHO's recommendations or not to take that action. See 1971 UN Commentary, above n 53, 30.

⁷⁶ 1971 UN Commentary, above n 53, 31. See 1971 Convention, above n 6, art 2(5).

⁷⁷ 1971 Convention, above n 6, art 17(2).

⁷⁸ 1971 UN Commentary, above n 53, 33.

⁷⁹ See, Bruun, Pan and Rexed, above n 42, 254-5 and James Moore, 'Issues and Recommendations' in Richard H Blum et al (eds), *Controlling Drugs* (1974) 332, 332.

⁸⁰ 1961 Convention, above n 6, art 3(3)(iii). See also 1971 UN Commentary, above n 53, 32.

⁸¹ 1971 Convention, above n 6, art 2(9).

⁸² William C Gilmore, 'Drug Trafficking and the Control of Precursors and Essential Chemicals: the International Dimension' in William C Gilmore and Alistair N Brown (eds), *Drug Trafficking and the Chemical Industry* (1996) 1, 2.

molecule' of the end product,⁸³ and (ii) other chemicals, which are used mainly as reagents and solvents⁸⁴ that do not become a part of the final product but are essential to the transformation processes.⁸⁵

Both precursors and essential chemicals, which are imperative to the manufacture of narcotic drugs and psychotropic substances, are also widely used every day by other legitimate industries⁸⁶ in large quantities.⁸⁷ The extensive size of the domestic and international commerce in them creates opportunities for diversion into illicit drug manufacture.⁸⁸ Thus, for the purpose of illicit drug suppression, the *1988 Convention* extends the international control over them.

Referring back to Section 4.1.3, control under the *1961 Convention* is applicable to any substance 'convertible' into a drug and to substances which are not listed in the Schedules but may be used in illicit drug manufacture. However, it is argued that

[t]he range of substances capable of conversion into narcotic drugs is in fact quite large, and the intention of the authors of the 1961 [Convention] was to deal with substances which illicit traffickers could transform into controlled drugs with relative ease.⁸⁹

The relevant regulations under the *1961 Convention*, however, present certain shortcomings. First, they are too ambitious in their scope.⁹⁰ Secondly, they are vague

⁸³ See Ngoc Hung Dang, *Nhung Van De Kiem Soat Tien Chat Ma Tuy* (2002) 13 [trans: Ngoc Hung Dang, *Matters Concerning Precursor Control* (2002)] and United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988: Done at Vienna on 20 December 1988* (1998) 251.

⁸⁴ According to the Commentary, 'a reagent is a chemical substance that reacts with, or takes part in a reaction with another substance (usually a precursor) during the processing or manufacturing of narcotic drugs or psychotropic substances', and 'a solvent is a liquid chemical substance that is used to dissolve or disperse one or more substances. It does not itself react with other substances, nor is it incorporated into the molecular structure of the end product.' See 1988 UN Commentary, above n 83, 251.

⁸⁵ 1988 UN Commentary, above n 83, 251 and Ngoc Hung Dang, above n 83, 14.

⁸⁶ For example, the pharmaceutical and chemical industries. See 1988 UN Commentary, above n 83, 253.

⁸⁷ See, eg, Bassiouni, above n 5, 927 and Gilmore, above n 82, 9.

⁸⁸ Chemical Action Task Force, 'Chemical Action Task Force: Final Report, June 1991' (1991) 2.

⁸⁹ 1988 UN Commentary, above n 83, 252.

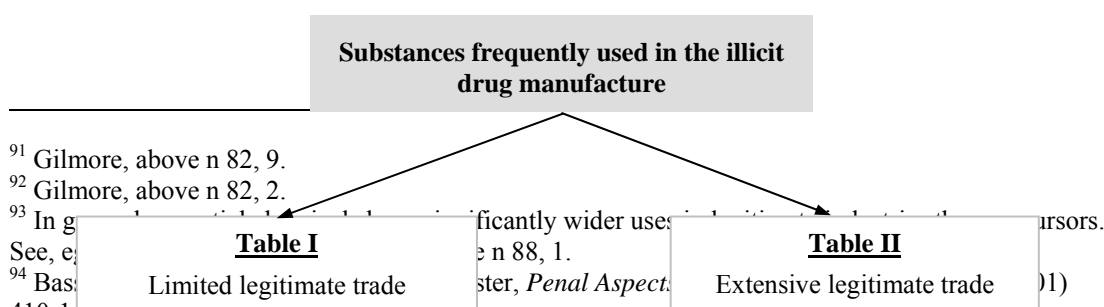
⁹⁰ For example, water is possibly a substance to be used in the illicit processing of drugs. See 1988 UN Commentary, above n 83, 253.

and weak,⁹¹ as it is left entirely subject to the Parties' discretion to decide whether to take control actions, as well as which measures are to be applied.

The *1971 Convention* does not expand the control scope to substances that are 'convertible' to psychotropic substances, but stimulates the Parties to control substances that may be used in the illicit manufacture of psychotropic substances. Consequently, this Convention encounters the same weaknesses as the earlier and provides an inadequate basis for effective international coordination in supervising precursors and essential chemicals frequently used in illicit drug manufacture.⁹²

To prevent the diversion of both precursors and essential chemicals from legitimate commerce⁹³ and to enable national authorities to detect illicit drug production by keeping track of their precursors, the *1988 Convention* enumerates lists of substances that are frequently used in drug manufacture and prescribes several control measures applicable to them. Those substances are listed into two Tables based on the volume of their use in the licit trade.⁹⁴ Table I includes substances subject to limited trade,⁹⁵ most of which are precursor chemicals.⁹⁶ Table II contains substances extensively traded, which are used in huge quantities in the chemical and other legitimate industries.⁹⁷ Many of these are essential chemicals,⁹⁸ such as acetic anhydride and acetone. Although substances frequently used in the manufacture of narcotic drugs and psychotropic substances have two different types, the term 'precursors' is commonly used to cover all those substances.⁹⁹

Figure 4.3 Controlled Substances under the 1988 Convention



⁹¹ Gilmore, above n 82, 9.

⁹² Gilmore, above n 82, 2.

⁹³ In general, the Convention provides for a significantly wider use of precursors.

See, e.g., Bassiouni, above n 88, 1.

⁹⁴ Bassiouni, above n 88, 1. See, e.g., *Penal Aspects of the 1988 Convention* (1991) 410-1.

⁹⁵ Bassiouni, above n 5, 928.

⁹⁶ See, e.g., Ngoc Hung Dang, above n 83, 12. In actuality, precursors are used principally in the pharmaceutical industry, but also in scientific studies and a limited number of other industries.

⁹⁷ See, e.g., Ibid 928; Gilmore, above n 82, 9 and Us Department of State Bureau of International Narcotics Matters, *International Narcotics Control Strategy Report, April 1994: Chemical Controls* <<http://dosfan.lib.uic.edu/ERC/law/INC/1994/10.html>> at 21 September 2005.

⁹⁸ See Ngoc Hung Dang, above n 83, 13.

⁹⁹ 1988 UN Commentary, above n 83, 251.

Unlike the *1961* and *1971 Conventions*, which prescribe in detail control regimes for each schedule of narcotic drugs and psychotropic substances, the *1988 Convention* leaves room to the Parties to impose appropriate control measures upon these substances in the context of their own territories and legal systems.¹⁰⁰ Their international control is analyzed in detail in the next Chapter.

Additionally, while under the earlier Conventions the WHO is responsible for technical assessments in relation to changing the list of substances under control, the *1988 Convention* entrusts to the International Narcotics Control Board (Board)¹⁰¹ the examination of possible modifications to controlled Tables and suggestions for appropriate control measures.¹⁰² The criteria for including a precursor or an essential chemical under control are based on the frequency of its use in the illicit manufacture of narcotic drugs and psychotropic substances and the ‘seriousness’ of public and social problems caused by the extent of its illicit manufacture.¹⁰³ Like the earlier Conventions, the interpretation of the criteria regarding the degree of ‘seriousness’ is left to the assessment of the Board.

¹⁰⁰ 1988 Convention, above n 6, art 12(1). Article 12(8)(b) of the *1988 Convention* provides a number of controlled measures that the Parties can take into account in their the adaptation to their territories.

¹⁰¹ International Narcotics Control Board was established in 1968 in accordance with the *1961 Convention*. It is a technical board that is composed of thirteen members elected by the Economic and Social Council of United Nations. In general, it is responsible for monitoring the implementation of the DCCs, such as administration of estimates system, administration of statistical return system and supervision over the manufacture and importation of drugs.

¹⁰² 1988 Convention, above n 6, art 12(4).

¹⁰³ 1988 Convention, above n 6, art 12(4)(a),(b). In 1990, the seven leading industrial countries (G7) established the committee, named Chemical Action Task Force (CATF), which was responsible for recommending more effective measures to control precursors and essential chemicals. In 1991, in its final report, the CATF recommended expansion of the coverage of the *1988 Convention* to another 10 substances. The list of substances prepared by the CATF was accepted by the Commission in 1992 (but the classification of the substances was not approved). According to the CATF, the criteria for including substances used in the illicit drug manufacture under control are: (1) the importance of the chemical to the production of one or more illicit drugs, (2) the availability of substitutes for the chemical in the production of illicit drugs, (3) the availability of the chemical in international commerce, (4) the quantity of the chemical currently being diverted to the illicit production of drugs and (5) the practicality of control. See Chemical Action Task Force, above n 88, 7-8 and Bo Ye Te, *Kiem Soat Tien Chat tai Viet Nam* (1999) 14-6 [trans: Ministry of Health, *Precursor Control in Vietnam* (1999)].

In summary, the *1961 Convention*, by codifying the nine previous conventions in the field, streamlined international control mechanisms for narcotic drugs. The Convention divides narcotic drugs into four Schedules based on the WHO assessment of their abuse properties and their values in therapeutic use. Different levels of control are applied to each Schedule but divergences are only minor. This Convention does not regulate psychotropic substances, which have increasingly caused significant abuse and risks to public health. The *1971 Convention* covers this gap by extending international control to psychotropic substances. It bears close resemblances to the *1961 Convention*. They both encourage their Parties to expand national controls to substances that may be used in illicit drug manufacture. Nevertheless, their encouragement is ‘soft’ in nature and certain gaps remain in the international control of precursors and essential chemicals. The *1988 Convention* fills the gaps by specifying the lists of substances frequently used in illicit drug manufacture that are subject to international control. The consistent expansion in the range of controlled substances manifests progress in the international management of dependence-producing drugs. Each successive Convention is designed to strengthen and complement the provisions of the previous Convention.¹⁰⁴ On the other hand, the later Conventions benefit from and bear certain resemblances to each previous one. All three DCCs use the enumerative method to precisely list substances to which they apply. In addition, effective machinery is provided to alter the list of substances and the scope of controls as circumstances demand. Due to the lack of elaborate criteria, a certain amount of discretion is vested in the bodies in charge of examining possible modifications to the list of substances and the scope of controls, such as the WHO and the Board. Nonetheless, the present provisions in relation to their control scope are straightforward and provide great opportunities to adapt them based on practical experience.

4.2 Controlled Substances under Vietnamese Legislation

Based on the study in Section 4.1 of the internationally controlled substances, this Section analyzes the Vietnamese application. Taking a different approach from the Conventions’ legislators, Vietnamese lawmakers provide conceptual definitions of

¹⁰⁴ International Narcotics Control Board, above n 1, 5.

substances subjected to national control in addition to the DCC enumerative schedules. Moreover, while specifying schedules of nationally controlled substances, they considerably restructure the convention schedules. They lump narcotic drugs together with psychotropic substances and generally call them ‘narcotic substances’ (*Chat Ma Tuy*). The two convention Tables of precursors and essential chemicals are also restructured to be listed in one Vietnamese Schedule, titled ‘precursor’ (*Tien Chat*). For these reasons, the analysis of controlled substances under Vietnamese law first starts with the method of defining nationally controlled substances. Then, their definitions and schedules are analyzed.

4.2.1 Defining Controlled Substances: A Combination of Enumerative and Descriptive Methods

Due to the tradition of opium poppy cultivation and opium smoking in Vietnam, opium has been placed under government control since early times. Moreover, for a long time, even after Vietnam gained reunification in 1975, opium was the only focus of national supervision.¹⁰⁵ Not until 1985 did the term ‘narcotic substances’ (*Chat Ma Tuy*) first appear in Vietnamese legislation.¹⁰⁶ It was used in Article 203 of the *Criminal Code 1985*, which specified organized consumption of narcotic substances as a criminal offense.¹⁰⁷ However, at that time, neither a definition nor an explanation of this term was provided.

After its first use in the *Criminal Code 1985*, the terms ‘narcotic substances’ (*Chat Ma Tuy*) and ‘narcotics’ (*Ma Tuy*) were widely applied in other legislation, such as the *Law on Protecting Public Health 1989* and *Decree on Administrative Sanctions 1991*.¹⁰⁸ In 1989, the *Criminal Code 1985* was amended to establish the manufacture, stockpiling and transportation of narcotic substances as separate criminal offenses.

¹⁰⁵ For example, in 1977, two years after Vietnam’s reunification, Decree 76/CP Combating Illicit Opium was enacted to combat trafficking of opium only.

¹⁰⁶ Van Luyen Tran, *Trach Nhiem Hinh Su doi voi cac Toi Pham ve Ma Tuy* (1998) 15 [trans: Van Luyen Tran, *Criminal Liability for Drug-Related Crimes* (1998)].

¹⁰⁷ See *Bo Luat Hinh Su Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1985* (Quoc Hoi), art 203 [trans: *Criminal Code 1985 (National Assembly)*].

¹⁰⁸ The Law on Protecting Public Health stipulated the compulsory treatment to opium or narcotic abusers and the Decree number 141/HDBT on Administrative Sanctions stipulated sanctions on opium or other narcotic abusers in certain conditions. See Phong Hoa Nguyen and Ngoc Hung Dang, *Ma Tuy va nhung Van De ve Cong Tac Kiem Soat Ma Tuy* (1994) 99 [trans: Phong Hoa Nguyen and Ngoc Hung Dang, *Narcotics and Matters Concerning Narcotics Control* (1994)].

However, once again, the term ‘narcotic substances’ was left unexplained. Due to the lack of elaboration regarding this concept, practical application of those provisions was faced with difficulties. To facilitate their implementation, especially to provide guidance for trials of drug-related crimes, in 1992, the Ministry of Interior, Supreme People’s Court and Supreme People’s Procuracy issued *Joint Circular 07/TTLN Guiding the Application of Articles 96a and 203 of the Criminal Code 1985, 1992* (JC 1992) that listed, for the first time, narcotic substances under control.¹⁰⁹ This Circular straightforwardly enumerated the nationally controlled substances and did not attempt any conceptual definition. According to this instrument, narcotic substances were opium and other substances, such as cannabis, heroine, codeine, pentanyl and pethidine.¹¹⁰

The range of controlled substances under the *JC 1992* was found to be very narrow and did not cover all substances liable to increasing abuse in the country. Therefore, later, in 1996, the Ministry of Interior, Supreme People’s Court and Supreme People’s Procuracy repealed it by *Joint Circular 09/TTLT/TANDTC/VKSNDTC/BNV Guiding the Application of Articles 96a and 203 of the Criminal Code 1985, 1996*. Concerning the definition of narcotic substances, this instrument was based on the model of its predecessor. It provided a list of popularly used narcotic substances and some precursors essential for their illicit manufacture.¹¹¹ The list was not only failed to cover all dependence-producing substances, but also was not based on any logical classification.

In 1997, Vietnam ratified the three DCCs. To bring national regulations in line with the international requirements, it was necessary to expand the scope of nationally

¹⁰⁹ See *Thong Tu Lien Nganh 07/TTLN Huong Dan Ap Dung Dieu 96a va Dieu 203 nam 1992* (Bo Noi Vu, Toa An Nhan Dan Toi Cao, Vien Kiem Sat Nhan Dan Toi Cao) [trans: *Joint Circular 07/TTLN Guiding the Application of Article 96a and Article 203 of the Criminal Code 1985, 1992* (Ministry of Interior, Supreme People's Court and Supreme People's Procuracy)] (hereinafter JC 1992).

¹¹⁰ JC 1992, above n 109, art 1.

¹¹¹ Under the *Joint Circular 09/TTLN 1996*, the common narcotics were opium poppy fruits, coca leaves, coca flowers and their refining products such as opium, cannabis resin, cocaine, codeine and morphine. Narcotics also included in other addictive synthetic drugs, such as amphetamine, dolargan, dolosan, diazepam and seduxen, and some precursors, for example acetic anhydride and ephedrine. See *Thong Tu Lien Tich so 09/TTLT/TANDTC/VKSNDTC/BNV Huong Dan Ap Dung Dieu 96a va Dieu 203, 1996* (Toa An Nhan Dan Toi Cao, Vien Kiem Sat Nhan Dan Toi Cao, Bo Noi Vu) pt A(1)

controlled substances. In 1998, the Ministry of Interior, Supreme People's Court and Supreme People's Procuracy enacted *Joint Circular 01/TTLT/TANDTC/VKSNDTC/BNV Guiding the Application of the 1985 Criminal Code, amended in 1997, 1998* to provide an explanation for the term 'narcotic substances'. According to Part 1 of this Circular, 'narcotic substances' and 'precursors' under national control were all of the substances specified in the DCCs. It, then, introduced the full Schedules under the DCCs.¹¹²

To enhance drug control in the country and to transform the international provisions into national law, the first specialized law on drug control was enacted in 2000, namely the *Law on Narcotics Prevention and Suppression 2000* (Law on Narcotics 2000). This Law, which is currently in force, makes a significant change to the method of defining substances which fall under national control. Unlike the previous legislation, which used the enumerative method, this instrument provides descriptive definitions of the terms 'narcotic substances' and 'precursors', and of other terms as well.¹¹³ In addition to those definitions, it empowers the Government to specify the lists of controlled substances.¹¹⁴

A combination of the enumerative and descriptive methods in defining controlled substances under the present Vietnamese legislation is advantageous. The convenience of such a combination is twofold.

First, by indicating their principal characteristics, the definitions provide an overall understanding of the range of nationally controlled substances without a need to make a further reference to detailed schedules. This is of importance within the

[trans: *Joint Circular 09/TTLN Guiding the Application of Article 96a and Article 203 of the Criminal Code 1985, 1996* (Ministry of Interior, Supreme People's Court and Supreme People's Procuracy)].

¹¹² See *Thong Tu Lien Tich so 01/TTLT/TANDTC/VKSNDTC/BNV Huong Dan Ap Dung Bo Luat Hinh Su 1985, Sua Doi Bo Sung nam 1997, 1998* (Toa An Nhan Dan Toi Cao, Vien Kiem Sat Nhan Dan Toi Cao, Bo Noi Vu) pt 1 [trans: *Joint Circular 01/TTLT/TANDTC/VKSNDTC/BNV Guiding the Application of the Criminal Code 1985, amended in 1997, 1998* (People's Supreme Court, People's Supreme Procuracy and Ministry of Interior)].

¹¹³ See *Luat so 23/2000/QH10 ve Phong, Chong Ma Tuy nam 2000* (Quoc Hoi) (Quoc Hoi) art 2 [trans: *Law 23/2000/QH10 on Narcotics Prevention and Suppression 2000* (National Assembly)] (hereinafter Law on Narcotics 2000).

¹¹⁴ See *Laws on Narcotics 2000*, above n 113, art 2(1),(4) and *Nghi Dinh so 67/2001/ND-CP ban hanh Cac Danh Muc Chat Ma Tuy va Tien Chat 2001, duoc Sua Doi, Bo Sung theo Nghi Dinh 133/2003/ND-CP nam 2003* (Chinh Phu), Schedules of Narcotic Substances and Precursors [trans:

Vietnamese context, as the law requires a great number of individuals, families¹¹⁵ and public organizations¹¹⁶ to stand in the front line against narcotics.¹¹⁷ The mass of people vary greatly in their backgrounds and it might be a burden for many of them to obtain complicated scientific names and chemical structures for the controlled substances.¹¹⁸ Thus, it is more practical for them to have a basic concept of dependence-producing characteristics of the controlled substances.

At this point, different approached by Vietnamese and international legislators is understandable. Under the DCCs, the member States, which are subject to international obligations, are presumed to be equipped with professional staff and various resources to gain access to the complicated drug schedules. However, the general population in Vietnam, which is subject to certain obligations under national legislation, does not have the benefit of such privileges.¹¹⁹ Thus, a brief description of the controlled substances, which would satisfy the requirements of national political circumstances, encourages the people to participate actively in combating illicit drugs.

The second advantage of Vietnam's dual approach is that, together with conceptual descriptions, the schedules of controlled substances greatly facilitate the work of the national authorities in charge of drug control as well as manufacturers, end-users and intermediaries involved in the chain of drug production and distribution. In addition, the DCCs require their Parties to bring under control the specified substances. That made it necessary for Vietnam to reproduce the lists of those substances under its national legislation.

Decree 67/2001/ND-CP promulgating the Schedules of Narcotic Substances and Precursors 2001 (Government)] (hereinafter Drug Schedule Decree 2001).

¹¹⁵ Laws on Narcotics 2000, above n 113, art 6-8.

¹¹⁶ Laws on Narcotics 2000, above n 113, art 9.

¹¹⁷ According to Article 4 of the *Law on Narcotics 2000*, preventing and suppressing abuse of narcotics is the responsibility of individuals, families, agencies and organizations as well as the whole society. See Law on Narcotics 2000, above n 113, art 4.

¹¹⁸ The DCCs designate controlled substances by their chemical formulas to facilitate their identification.

¹¹⁹ For example, according to Articles 6 and 7 of the *Law on Narcotics 2000*, individuals and their families are obliged to educate the families' members about the adverse impacts of narcotics, to prevent the families' members from being involved in using narcotic substances, to participate in the community-based abuse treatment and to cooperate with the national authorities in drug-related crime suppression. See Law on Narcotics 2000, above n 113, arts 6 and 7.

When listing controlled substances, Vietnamese lawmakers also provide the machinery for changing the national schedules upon alteration of the international control scope.¹²⁰ The Government is empowered to specify drug schedules in detail and to make amendments to them if necessary.¹²¹

Currently, many normative documents with different jurisdictions are involved in providing conceptual definitions and the lists of the controlled substances. For the purposes of easy tracking, Figure 4.4 below summarizes the current Vietnamese legislation dealing with definitions and schedules of substances that fall under national control.

Figure 4.4 The List of Vietnamese Legislations Providing Definitions and Schedules of the Nationally Controlled Substances

Legislation	Jurisdiction	Outlined Content
Law on Narcotics Prevention and Suppression 2000	National Assembly	Conceptual definitions of: <ul style="list-style-type: none"> - narcotic substances - addictive substances - psychotropic substances - addictive drugs - psychotropic drugs - precursors
Decree 67/2001/ND-CP 2001, amended by Decree 133/2003/ND-CP 2003	Government	Scheduled lists of: <ul style="list-style-type: none"> - narcotic substances (Schedules I, II and III) - precursors (Schedule IV)
Decision 2033/1999/QD-BYT 1999, amended by Decision 1442/2002/QD-BYT 2002	Ministry of Health (MOH)	<ul style="list-style-type: none"> - Conceptual definition of addictive drugs - The list of addictive drugs
Decision 3047/2001/QD-BYT 2001, amended by Decision 1443/2002/QD-BYT 2002 and Decision 71/2004/QD-BYT 2004	MOH	<ul style="list-style-type: none"> - Conceptual definition of psychotropic drugs - The list of psychotropic drugs - The list of precursors used in the medical and scientific areas
Decision 134/2003/QD-BCN 2003	Ministry of Industries	<ul style="list-style-type: none"> - Conceptual definition of precursors - The list of precursors used in industrial areas

¹²⁰ The Schedules under the DCCs are updated from time to time.

¹²¹ See Laws on Narcotics 2000, above n 113, art 2(1) and Drug Schedule Decree 2001, above n 114, art 2.

4.2.2 Definition and Schedules of Narcotic Substances

It is important to note that the word ‘narcotics’ (*Ma Tuy*) appears in the *Law on Narcotics 2000*, but is not defined. It is used as a generic term and sometimes it functions as a shorthand expression for all substances under control.¹²² The substances which fall under national control are ‘narcotic substances’ (*Chat Ma Tuy*) and ‘precursors’ (*Tien Chat*).

The term ‘narcotic substances’ (*Chat Ma Tuy*) under Vietnamese legislation has a broad meaning. According to Article 2(1) of the *Law on Narcotics 2000*, ‘narcotic substances’ mean the addictive substances and the psychotropic substances listed in the schedules promulgated by the Government.

Pursuant to Articles 2(2) and 2(3) of this Law, ‘addictive substances’ means psychoactive stimulants or depressants which easily cause a situation of user-abuse. ‘Psychotropic substances’ means psychoactive stimulants, depressants or hallucinogens, repeated uses of which will probably cause a situation of user-abuse.¹²³

From the given definitions, it can be seen that addictive substances and psychotropic substances have several common characteristics: (i) both of them are psychoactive substances that have an impact on the nervous system, (ii) these substances can cause a situation of user-abuse. Despite these similarities, there exist differences, too. According to the definition, addictive substances differ from psychotropic substances based on the degree of risk of abuse. The risk of abuse caused by addictive substances is considered higher than that of psychotropic substances, as addictive substances easily cause a state of abuse, while psychotropic substances can cause abuse if they are used repeatedly.

It is noticeable that the definitions of narcotic substances, addictive substances and psychotropic substances under Vietnamese legislation avoid precise scientific definition and appear to be simple. As mentioned, the substances under control differ

¹²² For example, pursuant to Article 2(9) of the *Law on Narcotics 2000*, licit activities dealing with ‘narcotics’ are lawful activities in relation to narcotic substances, precursors, addictive drugs and psychotropic drugs.

greatly in their effects and types.¹²⁴ For these reasons, the international legislators did not attempt any definition, but straightforwardly enumerated their lists. While trying to provide acceptable legal definitions, Vietnamese lawmakers avoid foreseen obstacles by indicating only the most commonly recognized characteristics of the controlled substances, i.e. their impact on the nervous system and the likelihood of leading to abuse by users.¹²⁵

Moreover, the Vietnamese *Law on Narcotics 2000* fails to provide further explanation for the term ‘abuse’ in the wording of the definitions. And, while dividing narcotic substances into two types based on their risk of abuse, this Law does not provide elaboration of different ‘degrees’ of risk of abuse between those substances. Thus, the demarcation line between the addictive substances and the psychotropic substances seems to be vague.

According to Article 2(1) of this Law, the Government is authorized to specify the schedules of narcotic substances that fall under national control. To guide these provisions, the Government enacted *Decree 67/2001/ND-CP promulgating the Schedules of Narcotic Substances and Precursors 2001*.¹²⁶ Pursuant to Article 2 of this Decree, each narcotic substance is listed in one of the three schedules.

Schedule I contains the extremely dangerous narcotic substances which are strictly prohibited. Their use for scientific purposes and for the study or investigation of drug-related crimes must comply with the special regulations issued by the competent authorities.¹²⁷ The Vietnamese Schedule I includes narcotic drugs in Schedule IV of the *1961 Convention*, psychotropic substances in Schedule I of the *1971 Convention* and their preparations.¹²⁸

¹²³ Laws on Narcotics 2000, above n 113, art 2(2), (3).

¹²⁴ Renborg, above n 5, 51.

¹²⁵ According to Doctor Eva Tongue, all of the controlled substances currently under the DCCs are psychotropic substances in nature, having affects on the central nervous system. And it is obvious that narcotic drugs are brought under international control due to their risk of abuse. Regarding the psychotropic substances, the criteria to include psychotropic substances into the scope of control are based on their dependence-producing properties and risks to public health (the criteria are listed in Article 2(4) of the *1971 Convention*).

¹²⁶ In 2003, Drug Schedule Decree 2001 was amended by Decree 133/2003/ND-CP 2003.

¹²⁷ Drug Schedule Decree 2001, above n 114, art 1.

¹²⁸ See the wording explains the content of Schedule I and the list of substances covered by Schedule I of Narcotic Substances issued by the Government under the Drug Schedule Decree 2001.

Schedule II contains the high-risk narcotic substances which have limited use in medical therapy, scientific study and in the study or investigation of drug-related crimes.¹²⁹ The Vietnamese Schedule II encompasses narcotic drugs in Schedule I and II of the *1961 Convention*, psychotropic substances in Schedule II of the *1971 Convention* and their preparations.¹³⁰

Schedule III contains the risky narcotic substances which are used in medical therapy, scientific study and in drug-related crime analysis.¹³¹ The Vietnamese Schedule III includes psychotropic substances in Schedule III and IV of the *1971 Convention* and their preparations.¹³² The Figure below briefly describes the three schedules of narcotic substances under the Vietnamese control.

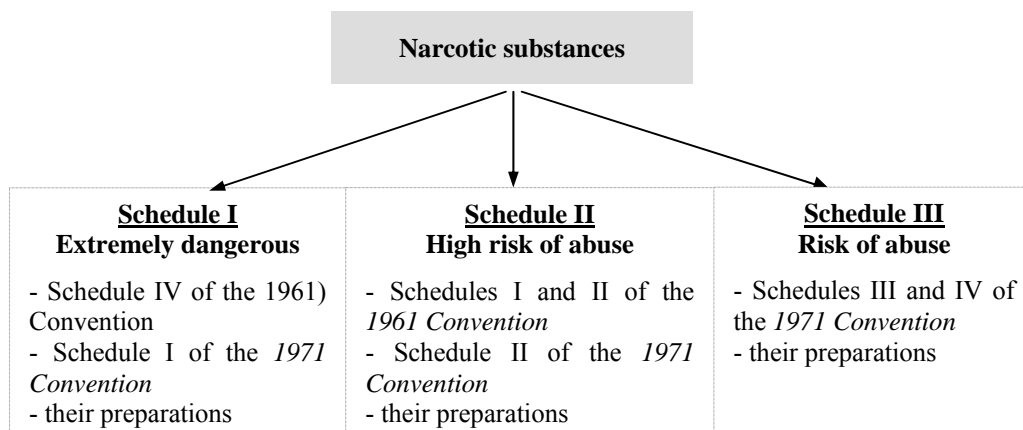
¹²⁹ Drug Schedule Decree 2001, above n 114, art 1.

¹³⁰ See the wording explains the content of Schedule II and the list of substances covered by Schedule II of Narcotic Substances issued by the Government under the Drug Schedule Decree 2001.

¹³¹ Drug Schedule Decree 2001, above n 114, art 1.

¹³² See the wording explains the content of Schedule III and the list of substances covered by Schedule III of Narcotic Substances issued by the Government under the Drug Schedule Decree 2001.

Figure 4.5 Schedules of Narcotic Substances under Vietnamese Control



The Vietnamese schedules may be amended in response to communications by the Secretary-General¹³³ concerning the inclusion of a new substance under control or moving the substances already covered by the DCCs from one schedule to another.¹³⁴ Whenever such a communication of the Secretary-General is received, the Ministry of Public Security is obliged to summon a meeting with the MOH, Ministry of Industries, Ministry of Science, Technology and Environment and other relevant Ministries to consider an amendment to the national schedules. Based on the proposals of the concerned Ministries, the Government makes final decisions and publicly promulgates the alterations by a decree.¹³⁵ The current machinery of scheduling and rescheduling the range of controlled substances is quite effective. It avoids the cumbersome lengthiness of the *Law on Narcotics 2000* and allows the national control system to respond quickly to international requirements, as scheduling and rescheduling is undertaken by the Government, rather than the National Assembly (which meets only twice a year).

Some important points concerning the national schedules of narcotic substances and their control regimes under Vietnamese legislation need to be emphasized.

¹³³ The Secretary-General of the United Nations is entitled to communicate decisions of the Commission taken pursuant to the provisions of the DCCs relating to changing the scope of controls to all the contracting Parties. See 1961 Convention, above n 6, art 3(7) and 1971 Convention, above n 6, art 2(7).

¹³⁴ Drug Schedule Decree 2001, above n 114, art 2.

¹³⁵ Drug Schedule Decree 2001, above n 114, art 2.

First, in terms of comparison between the international and national range of substances, it is laudable that Vietnam brings under control all narcotic drugs and psychotropic substances, which are covered by the DCCs.

Secondly, Parties to the DCCs are encouraged to expand, within their national circumstances, their controls to other substances, which do not fall under the DCCs but cause risks to public health or might be used in illicit drug manufacture.¹³⁶ Vietnam, however, has no separate assessment process of its own and appears to rely entirely on the international scope of control. Amendments to the Vietnamese Schedules of controlled substances are not made independently of international decisions. Consideration of amendments to the national scope of control automatically flows from the communication of the Secretary-General regarding changes in the scope of international control.¹³⁷ The situation of Vietnam is found to be similar to other developing countries, where the national pharmaceutical system is under-developed and the countries have insufficient financial resources to perform their own national risk assessments.¹³⁸

Thirdly, the manner of classification of controlled substances under the Vietnamese provisions significantly differs from the DCCs. While narcotic drugs and psychotropic substances are separately regulated under the *1961* and *1971 Conventions*, they are lumped together under Vietnamese legislation and are designated as ‘narcotic substances’, all of which are treated with proportional severity to their risk of abuse. The eight schedules under these Conventions are reduced into three national categories determined by whether they are prohibited, high-risk or risk-bearing. This approach appears to rely fully on the *Model Drug Abuse Bill 2000* of the United Nations International Drug Control Programs (Model Bill),¹³⁹ which lists narcotic drugs and psychotropic substances together, based on

¹³⁶ See 1961 Convention, above n 6, arts 3(3)(i) and 2(8) and 1971 Convention, above n 6, art 2(3) and 2(9).

¹³⁷ Drug Schedule Decree 2001, above n 114, art 2.

¹³⁸ See Reginald G Smart, Glenn F Murray and H David Archibald, *Report of the International Working Group on the Single Convention on Narcotic Drugs, 1961 - September 20 - 24, 1982* (1983) 10 and Woodcock, above n 20, 328.

¹³⁹ See United Nations International Drug Control Program, *Model Drug Abuse Bill 2000*, United Nations Office on Drugs and Crime <http://www.unodc.org/pdf/lap_drug-abuse-bill_2000.pdf> at 05 September 2005 (hereinafter Model Drug Abuse Bill 2000).

their risk of abuse, without distinguishing the Convention from which they come.¹⁴⁰ Bringing substances specified in the two Conventions under the same control regime according to their risk of abuse is an increasing trend among the Parties to those Conventions as it creates uniformity and simplicity in legislation.¹⁴¹

Fourthly, there are certain shortcomings under the Vietnamese regulations relating to control regimes applicable to each schedule. Under the *Model Bill*, while classifying the substances into various schedules, it is simultaneously provided that different levels of control are imposed upon each schedule.¹⁴² Such provisions are advantageous in two ways. On the one hand, they provide an explanation for why the controlled substances are grouped into different schedules and, on the other hand, they give a notice of different levels of control to all persons involved in controlling these substances. According to the *Model Bill*, substances in Schedule I are subject to the strictest control measures, as they are prohibited except for limited uses under special state permission. Compared to those imposed on Schedule I, less strict measures are applied to substances in Schedule II and the least strict measures are imposed on substances in Schedule III.¹⁴³ In contrast, under the Vietnamese *Drug Schedule Decree 2001*, excepting that substances in Schedule I are prohibited and subjected to the most stringent controls, it is unclear whether different control regimes are applied to substances in Schedules II and III. Other implementing guidance issued by the Government for the control of licit activities concerning narcotic substances, including the *Decree on the Control of Licit Drug Activities 2001* and the *Drug Trade Decree 2003*, also does not mention any differences in the

¹⁴⁰ There are several reasons for such an approach. There is no clear scientific distinction between narcotic drugs and psychotropic substances, the legal definition of the narcotic drugs can be applied to psychotropic substances and vice versa. In addition, the present international classification is not based on the risks that the substances pose to public health and welfare. Some narcotic drugs create low levels of dependence, while some psychotropic substances are highly addictive. See UN International Drug Control Program, *Commentary on UNDCP Model Drug Abuse Bill 2000*, above n 50, [para 26-7].

¹⁴¹ See, eg, Woodcock, above n 20, 328 and Schroder, above n 56, 85.

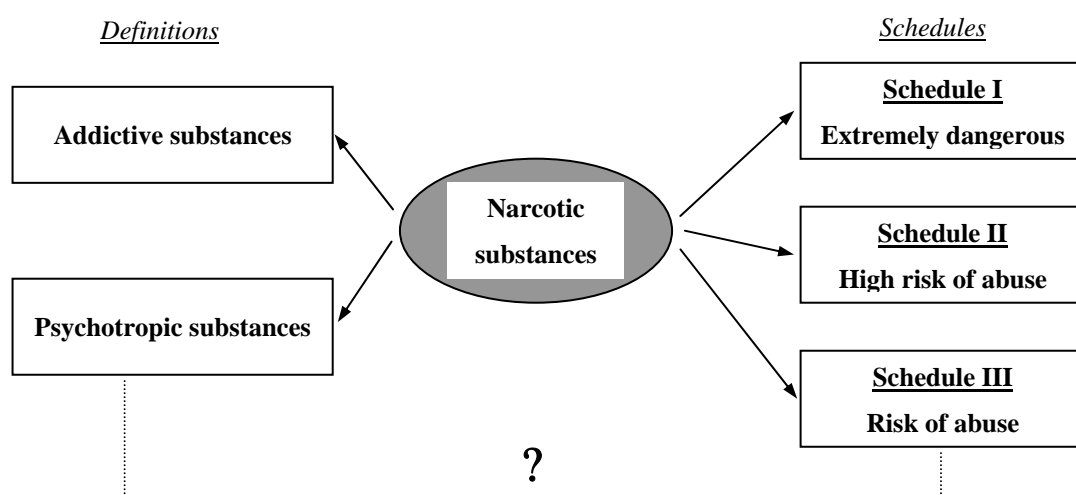
¹⁴² See *Model Drug Abuse Bill 2000*, above n 139, [pt 2, div 1, art 4(2)].

¹⁴³ Ibid and see also UN International Drug Control Program, *Commentary on UNDCP Model Drug Abuse Bill 2000*, above n 50, [para 25].

control regimes applicable to each schedule.¹⁴⁴ These gaps are likely to lead to some confusion.

Fifthly, there is an inconsistency between the schedules of narcotic substances and their definitions under the present national legislation. Under Article 2(1) of the *Law on Narcotics 2000*, ‘narcotic substances’ means addictive substances and psychotropic substances listed in the schedules promulgated by the Government. The current three Schedules, however, do not indicate which substances are addictive and which are psychotropic. The question mark in Figure 4.6 displays this shortcoming. This gap is unfortunate because the national control regime for licit drug activities requires the distinction, i.e. the control regime for licit drug activities in relation to addictive substances is different from that applicable to psychotropic substances.

Figure 4.6 Inconsistency between the Definition and Schedules of Narcotic Substances



Sixthly, it should be noted that, under the Vietnamese laws, substances used in medical therapy are termed ‘drugs’. Pursuant to Article 2(5) of the *Law on Narcotics 2000*, drugs containing narcotic substances are divided into ‘addictive drugs’ (*Thuoc Gay Nghien*) and ‘psychotropic drugs’ (*Thuoc Huong Than*). They are simultaneously defined as follows:

¹⁴⁴ To provide guidance for the implementation of the *Law on Narcotics 2000*, the Government enacted *Decree 80/2001/ND-CP on the Control of Domestic Licit Activities in relation to Narcotics 2001* (hereinafter *Decree on the Control of Domestic Licit Drug Activities 2001*), and *Decree 58/2003/ND-CP Stipulating the Control of Importation, Exportation and Transit of Narcotic Substances, Precursors, Addictive Drugs and Psychotropic Drugs through Vietnamese Territory 2003* (hereinafter *Drug Trade Decree 2003*).

‘Addictive drugs and psychotropic drugs are drugs used in medical therapy and listed in the schedules promulgated by the Ministry of Health that contain the substances stipulated in Paragraph 3 [i.e. addictive substances] **and** Paragraph 4 [i.e. psychotropic substances] of this Article’.¹⁴⁵ [emphasis added]

This definition causes potential confusion because it implies that each of addictive and psychotropic drugs contain both addictive and psychotropic substances, rather than addictive drugs containing addictive substances and psychotropic drugs containing psychotropic substances, respectively. Providing guidance for the implementation of the *Law on Narcotics 2000*, the MOH enacted *Decision 2033/1999/QĐ-BYT to Promulgate Schedules of Addictive Drugs and the Control Regimes Applicable upon Them 1999* and *Decision 3047/2001/QĐ-BYT to Promulgate Schedules of Psychotropic Drugs and the Control Regimes Applicable upon Them 2001*.¹⁴⁶ These instruments provide in detail the lists of those drugs.¹⁴⁷

4.2.3 Definition and Schedule of Precursors

The word ‘precursors’ is officially introduced in Vietnamese legislation to describe substances frequently used in illicit drug manufacture under the scope of the *1988 Convention*. While the *1988 Convention* straightforwardly enumerates the lists of substances to which the Convention applies, the *Law on Narcotics 2000* of Vietnam provides a definition of this term together with an enumerative list. According to Article 2(1), ‘precursors’ means chemical substances, which are imperative to the

¹⁴⁵ Law on Narcotics 2000, above n 113, art 2(5).

¹⁴⁶ *Quyết Định số 2033/1999/QĐ-BYT ban hành Quy Chế Quản Lý Thuốc Gay Nghiện, Danh Mục Thuốc Gay Nghiện và Thuốc Gay Nghiện ở Dang Hon Hop 1999, Sửa Đổi Bổ Sung theo Quyết Định 1442/2002/QĐ-BYT 2002* (Bo Y Te) [trans: *Decision 2033/1999/QĐ-BYT to Promulgate Schedules of the Addictive Drugs, Preparations of Addictive Drugs, and Promulgating the Control Regime Applicable to Them 1999, amended by Decision 1442/2002/QĐ-BYT 2002* (Ministry of Health)] (hereinafter *Decision to Promulgate Addictive Drug Schedules 1999*), and [trans: *Decision 3047/2001/QĐ-BYT to Promulgate Schedules of the Psychotropic Drugs, the Precursors Used in the Manufacture of Psychotropic Drugs and Preparations of Psychotropic Drugs, and Promulgating the Control Regime Applicable to Them 2001, amended by Decision 1443/2002/QĐ-BYT 2002 and Decision 71/2004/QĐ-BYT 2004* (Ministry of Health)] (hereinafter *Decision to Promulgate Psychotropic Drug Schedules 2001*).

¹⁴⁷ See the list of addictive drugs under *Decision to Promulgate Addictive Drug Schedules 1999* and the list of psychotropic drugs under *Decision to Promulgate Psychotropic Drug Schedules 2001*. The list of addictive drugs promulgated by the MOH overlaps fully with Schedule II of narcotic substances issued by the Government, and the list of psychotropic drugs coincides with Schedule III of narcotic substances specified by the Government.

process of refining and manufacturing narcotic substances, and which are specified by the Government.

It is noticeable that several international studies¹⁴⁸ that have analyzed substances frequently used in illicit drug manufacture have utilized similar descriptions. Therefore, the definition of the term ‘precursors’ under the Vietnamese *Law on Narcotics 2000* is satisfactory in respect of indicating the prominent characteristics of the substances controlled by the *1988 Convention*.

Pursuant to Article 2(4) of the *Law on Narcotics 2000*, the Government is empowered to specify precursors which fall under national control. Under the *Drug Schedule Decree 2001*, nationally controlled precursors are listed in Schedule IV. According to the explanation given for this Schedule,¹⁴⁹ all chemical substances which are listed in Tables I and II of the *1988 Convention* are included in this Schedule. Thus, Vietnamese legislation does not classify precursors into different Tables as the *1988 Convention* does. However, for practical implementation, the Government empowers the MOH and the Ministry of Industries, respectively, to issue the list of precursors used for medical and scientific purposes and the list of precursors used in various other industries as well as to stipulate in detail the control regimes applicable to them.¹⁵⁰ As a result, precursors in Schedule IV are split into two categories, which fall under different control regimes, i.e. (i) precursors used in the pharmaceutical industry and scientific study, and (ii) precursors used in other industries. The controls applicable to precursors used in medical and scientific areas are subject to the same controls applicable to psychotropic drugs and which are more stringent than those applied to precursors used in industrial fields (Vietnamese drug control regimes are analysed in the next Chapter). Thus, the classification approach under Vietnamese legislation is different from that under the *1988 Convention*.¹⁵¹

¹⁴⁸ See, e.g., Gilmore, above n 82, 2 and Chemical Action Task Force, above n 88, 1.

¹⁴⁹ See the wording explains the content of Schedule IV under Drug Schedule Decree 2001.

¹⁵⁰ See Decree on the Control of Domestic Licit Drug Activities, above n 141, arts 19 and 20.

¹⁵¹ The category of precursors, which are used in pharmaceutical industry and scientific study, includes a number of the substances in both Tables I and II. Similarly, the category of precursors which are used in other industries also contains a number of substances both in Tables I and II.

4.3 Conclusion

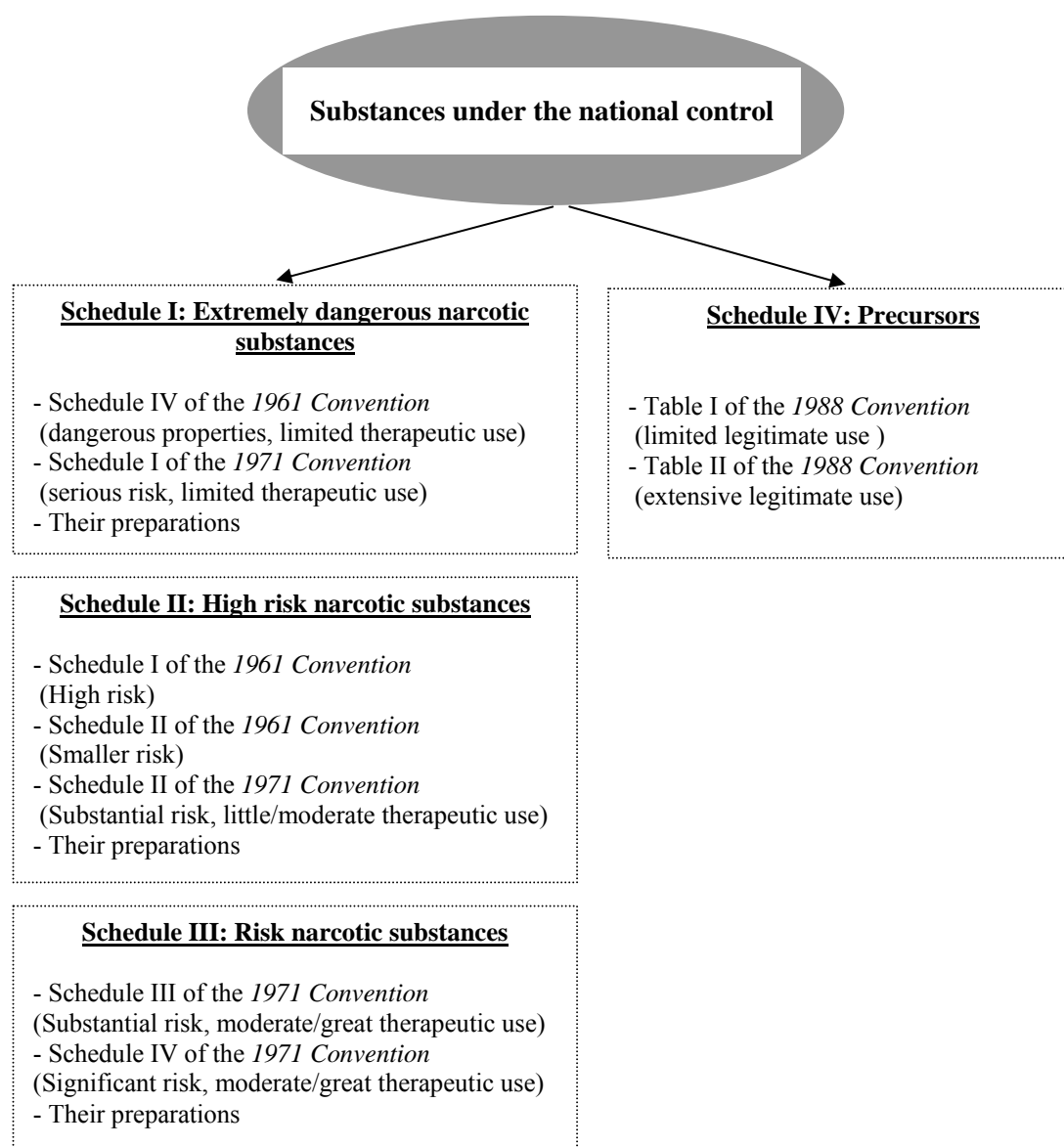
To sum up, it is laudable that all narcotic drugs, psychotropic substances and precursors covered by the DCCs are, in their entirety, brought under legal control in Vietnam. However, in respect of their defining and classifying, the approaches of Vietnamese lawmakers are significantly different from those of the international legislators.

Under the three DCCs, the substances, namely narcotic drugs, psychotropic substances and substances frequently used in illicit drug manufacture, are straightforwardly enumerated and classified into different categories, which are subject to greater or lesser levels of control. In contrast, under Vietnamese legislation, substances under control, namely ‘narcotic substances’ (*Chat Ma Tuy*) and ‘precursors’ (*Tien Chat*), are conceptually defined as well as listed in the specified schedules.

The Vietnamese term ‘narcotic substances’ (*Chat Ma Tuy*) has a wider meaning than narcotic drugs under the *1961 Convention*. Under the *Law on Narcotics 2000* of Vietnam, narcotic substances include both narcotic drugs under the *1961 Convention* and psychotropic substances under the *1971 Convention*. In addition, while narcotic drugs and psychotropic substances are separately regulated under different DCCs, they are lumped together and treated with the same severity in accordance with their risk of abuse. The broadly defined narcotic substances under Vietnamese law are divided into three Schedules according to their risk of abuse. Such a classification system fully relies on the model laws of the United Nations Drug Control Programs.

‘Precursors’ (*Tien Chat*) under Vietnamese control are the substances frequently used in the illicit manufacture of narcotic drugs and psychotropic substances and which fall under international control. Under the *1988 Convention*, they are divided into two Tables based on the volume of their use in licit commerce. In contrast, under Vietnamese legislation, precursors are split into two categories based on their fields of use. Precursors which are used in the pharmaceutical industry and scientific study are subject to stricter controls than those used in other industries. The diagram below briefly describes substances under the Vietnamese control in correlation with controlled substances under the three DCCs.

Figure 4.7 Substances under the Vietnamese National Control



Although substances that fall under the three DCCs are all brought under control in Vietnam, there are certain gaps in Vietnamese legislation in relation to the definitions and classifications of the controlled substances which are necessary for national lawmakers to reconsider as possible amendments.

- (i) The failure to further elucidate a number of basic terms used in the wording of their definitions, such as ‘abuse’, ‘dependence’, ‘production’ and ‘manufacture’, makes these definitions incomplete. The WHO and

the DCCs provided explanations for certain terms.¹⁵² Vietnamese legislators can refer to those sources in attempting to provide definitions in the national legislation.

The inconsistency between the conceptual definition of narcotic substances and their Schedules needs to be resolved. It is recommended that their Schedules demonstrate clearly which substances are addictive substances and which of them are psychotropic substances, because national control regimes for licit drug activities are divided between addictive and psychotropic substances. (These regimes analyzed in the next Chapter.) Furthermore, it is more logical and would be better structured if divergences in the stringency of control regimes applicable to different schedules are clearly stated.

¹⁵² See 1961 Convention, above n 6, art 1(n); 1971 Convention, above n 6, art 1(i); and World Health Organization, 'World Health Organization Expert Committee on Addiction-producing Drugs: Thirteenth Report' (1964) (2) *Bulletin on Narcotics* <http://www.unodc.org/unodc/bulletin/bulletin_1964-01-01_2_page006.html> at 20 August 2004.

5 CONTROLS ON LICIT DRUG ACTIVITIES

5.1 *Restrictions on the Cultivation of Drug-Producing Plants*

5.1.1 Restrictions on the Cultivation of Drug-Producing Plants under the 1961 Convention

5.1.2 Prohibition of the Cultivation of Drug-Producing Plants under the Vietnamese Legislation

5.2 *Quantitative Restrictions on Licit Drug Activities*

5.2.1 Quantitative Restrictions on Licit Drug Activities under the Drug Control Conventions

5.2.2 Quantitative Restrictions on Licit Drug Activities under the Vietnamese Legislation

5.3 *Control of International Trade in Drugs: Import and Export Authorizations*

5.3.1 Control of International Trade in Drugs under the Drug Control Conventions

5.3.2 Control of International Trade in Drugs under the Vietnamese Legislation

5.4 *Licensing of Licit Drug Activities and Premises*

5.4.1 Licensing under the Drug Control Conventions

5.4.2 Licensing under the Vietnamese Legislation

5.5 *Controls of Persons Involved in Licit Drug Activities*

5.5.1 Controls of Persons under the Drug Control Conventions

5.5.2 Controls of Persons under the Vietnamese Legislation

5.6 *Medical Prescriptions*

5.6.1 Medical Prescriptions under the Drug Control Conventions

5.6.2 Medical Prescriptions under the Vietnamese Legislation

5.7 *Label Warning*

5.7.1 Label Warning under the Drug Control Conventions

5.7.2 Label Warning under the Vietnamese Legislation

5.8 *Advertisement Limitation*

5.8.1 *Label Warning under the Drug Control Conventions*

5.8.2 *Label Warning under the Vietnamese Legislation*

5.9 *Record Keeping*

5.9.1 *Record Keeping under the Drug Control Conventions*

5.9.2 *Record Keeping under the Vietnamese Legislation*

5.10 *Conclusion*

As mentioned in Chapter 1, the international drug control regime requires Parties, on the one hand, to control licit activities ('commodity control') and, on the other hand, to control illicit activities ('penal control').¹ With respect to 'the commodity control', the DCCs specify a variety of measures that Parties are to apply to their licit drug economies, including limitation of drug cultivation; quantitative restrictions in drug manufacture, import and export; control of international trade via import and export authorizations; licensing control of licit drug activities and premises; control of persons involved in licit drug activities; medical prescriptions for drug retail; label warning; limitation on drug advertisement and record keeping. Each of these measures strengthens and supplements others for the ultimate purpose of limiting the availability of dependence-producing drugs to medical and scientific needs and, of preventing their diversion into illicit channels. In this Chapter, each commodity control measure under the DCCs is studied in-depth, followed by the examination of the Vietnamese application. Due to the importance of the subject matter, this Chapter is one of the most important parts of the Thesis.

To analyze the international licit drug control framework, it is necessary to start with the control of narcotic drugs under the *1961 Convention* (narcotics regime), followed by the control of psychotropic substances under the *1971 Convention* (psychotropics regime) and to conclude with the control of precursor under the *1988 Convention* (precursor regime).

¹ See Cherif M Bassiouni, 'International Drug Control System' in Bassiouni M C (ed), *International Criminal Law* (1999) vol 1, 905, 922-8 and Neil Boister, *Penal Aspects of the UN Drug Conventions* (2001) 2.

In contrast to these three international drug control regimes, Vietnam maintains three different national drug control regimes. First, the most stringent national regime is imposed on nationally-controlled addictive substances, addictive drugs and their preparations, i.e. narcotic drugs in Schedules I and II of the *1961 Convention*, and psychotropic substances in Schedule II of the *1971 Convention* and their preparations (hereinafter the ‘Vietnamese addictive drug regime’). Second, a less stringent national regime is applied to nationally-controlled psychotropic substances, psychotropic drugs, their preparations and precursors used in pharmaceutical industry, i.e. psychotropic substances in Schedules II and III of the *1971 Convention*, their preparations and a few precursors listed in Tables I and II of the *1988 Convention* (hereinafter the ‘Vietnamese psychotropic drug regime’). Third, the least stringent national regime is applicable to nationally-controlled precursors used in industries other than the pharmaceutical industry, i.e. other precursors listed in Tables I and II of the *1988 Convention* (hereinafter the ‘Vietnamese precursor regime’).² Thus, to study national control, the addictive drug regime is first analyzed, followed by the psychotropic drug regime and then the precursor regime.

As is evident, the conceptual structure of the Vietnamese licit drug control regime, which is based on the risk to society posed by different substances, does not correspond directly to that of the international licit drug control regime, which is based on the different types of substances. The Vietnamese scheduling of substances according to the risks they pose has its source in the UN model law, as set out in Chapter 4. Although the lack of direct correspondence between national laws the DCC obligations complicates the task of connecting them, this Chapter demonstrates that the connections can be made.

5.1 Restrictions on the Cultivation of Drug-Producing Plants

5.1.1 Restrictions on the Cultivation of Drug-Producing Plants under the 1961 Convention

The *1961 Convention* brings the cultivation of opium poppy, coca bush, and cannabis

² See Sections 4.2.2 and 4.2.3 for cross reference. To summarise, narcotic drugs in Schedule IV of the *1961 Convention* and psychotropic substances in Schedule I of the *1971 Convention* are listed in Vietnamese Schedule I of extremely dangerous narcotic substances, which are strictly prohibited from all licit activities, including use, manufacture/production and trade.

plants under international control.³ Its Parties are required to prohibit drug cultivation in their territories, if that control is ‘*the most suitable measure*’ to protect public health and welfare, and to prevent the diversion of drugs into illicit traffic. The decision is vested with Parties in accordance with the prevailing conditions in their countries.⁴ If they permit the cultivation, they are obliged to take a number of appropriate controls.

First, they must designate areas in which the cultivation of drug-producing plants is permitted.⁵ The designation should be based on past statistics on land areas used for drug plantations and on their average yields, to ensure the quantity of drugs produced is limited to medical and scientific purposes.⁶

Secondly, they must control cultivation by means of licenses.⁷ Authorized licenses should contain detailed identifying information on licensees as well as cultivation plots and should be limited to ‘a single crop period’ so that non-compliant license holders face a constant threat of losing their license.⁸

Thirdly, they are bound to establish national agencies which are responsible for designating cultivation areas, issuing cultivation licenses and, especially, for exercising the government monopoly on drug crop products, i.e. to purchase and to

³ These plants are the sources of certain substances liable for abuse, such as opium, coca leaves, cocaine, cannabis and cannabis resin. Unlike the *1961 Convention*, the *1971 Convention* does not require for the control of the cultivation of plants from which psychotropic substances may be extracted.

⁴ *Single Convention on Narcotic Drugs*, opened for signature 30 March 1961, art 22(1) (entered into force 13 December 1964) and *Protocol Amending the Single Convention on Narcotic Drugs, 1961*, opened for signature 31 December 1972, art 12 (entered into force 8 August 1975). See also United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961* (1973) 275 and S D Chatterjee, *Legal Aspects of International Drug Control* (1981) 386. Regarding this point, attention should be drawn to the fact that the international drug control machinery was initiated by drug-consuming countries, such as European nations and the United States, and imposed on drug-producing countries due to the threat that illicit drugs constituted on Western societies. While drug-consuming countries are mainly in the developed world, most of the natural drug-producing countries are developing states where drug-related profits play an important role. The prohibition of drug cultivation, therefore, not only directly affects millions of poor farmers in those states, but also causes additional costs in law enforcement to their governments. Thus, the provisions of the *1961 Convention* on drug cultivation appear to be a compromise between drug-consuming and drug-producing states by leaving certain discretions to Parties. See Bassiouni, above n 1, 914.

⁵ 1961 Convention, above n 4, arts 23(2)(a), 26(1) and 28(1).

⁶ See Chatterjee, above n 4, 383 and 1961 UN Commentary, above n 4, 281.

⁷ 1961 Convention, above n 4, arts 23(2)(b), 26(1) and 28(1).

⁸ 1961 UN Commentary, above n 4, 281-2.

take ‘physical possession’ of drug crops ‘as soon as possible’.⁹ As the agencies are obliged to purchase all crops without considering their size, commentators have noticed that huge stocks may present a number of problems, such as risk of illicit traffic, high safety costs and market imbalance between crops and stocks.¹⁰ This obligation of Parties, however, should be read together with their duty to designate cultivation areas. When designating cultivation areas, they need to take into account estimates of crops to be harvested in the future. If they carry out their obligations in good faith, the possibility of over-stocks in drug crops would be constrained.

Opium poppy, coca bush and cannabis plant may be cultivated simply for industrial and horticultural purposes, such as fibre, seeds and straw.¹¹ Parties permitting such cultivation are only bound to take adequate control to prevent the misuse and illicit traffic of poppy straws, coca leaves and other products of these plants.¹²

5.1.2 Prohibition on the Cultivation of Drug-Producing Plants under Vietnamese Legislation

As mentioned in Section 3.1.1, due to the serious dangers that drug abuse poses to social safety and national order, in the middle of seventeenth century, the plantation of opium poppy was fully prohibited in Vietnam. In line with this initial policy, further national laws, made during the feudal period, continued to proscribe the prohibition of the opium poppy cultivation.¹³ Thus, at that very early time, Vietnam imposed a strict control regime on the cultivation of drug-producing plants.

⁹ National agencies are responsible for purchasing crop yields, maintaining stocks and performing wholesale and international trade in agricultural products. They must purchase and take physical possession of opium poppy and cannabis crops not later than four months after the end of the harvest and as soon as possible after the end of the harvest with respect to coca bush. See 1961 Convention, above n 4, arts 23(2)(d), 26(1) and 28(1). See also 1961 UN Commentary, above n 4, 278 and Chatterjee, above n 4, 384.

¹⁰ Chatterjee, above n 4, 389.

¹¹ For example, opium poppy seeds can be used for extracting oil; coca leaves can be used for the preparation of a flavouring agent; and cannabis plants are cultivated for fibre, seeds and leaves. See Louis Lessem, 'Towards an International System of Drug Control' (1974) 8 *Law Reform* 103, 137.

¹² Poppy straw and coca leaves for non-medical purposes are subject to estimates, statistics and import and export authorizations. See 1961 Convention, above n 4, arts 25(2), 25(3), and 27(2) and Lessem, above n 11, 137. The cultivation of cannabis plant for industrial purposes, such as fibre and seeds, however, is not subject to the mentioned control measures. Parties are only required to adopt measures they deem necessary to avoid the misuse and the diversion of cannabis leaves into illicit traffic. See 1961 Convention, above n 4, art 28(3).

¹³ See Ngoc Bung Vu, *Phong Chong Ma Tuy trong Nha Truong* (1997) 121 [trans: Ngoc Bung Vu, *Narcotics Prevention in Education Institutions* (1997)], Phong Hoa Nguyen, *Cac Toi Pham ve Ma Tuy: Dac Diem Hinh Su, Dau Hieu Phap Ly, cac Bien Phap Phat Hien Dieu Tra* (1998) 91 [trans:

However, at that time, only opium poppy cultivation was subjected to government control.¹⁴ The cultivation of cannabis plant and coca bush was not regulated.

In 1997, when Vietnam ratified the DCCs, its *Criminal Code 1985* was amended to establish the cultivation of opium poppy and other drug producing plants as a criminal offense.¹⁵ The *Criminal Code 1999*, which replaced the *Criminal Code 1985* and is currently in force, reintroduced the regulations of its predecessor.¹⁶ Later, under the *Law on Narcotics 2000*, the cultivation of drug producing plants was and remains explicitly prohibited.¹⁷ Thus, Vietnam imposes very stringent control over drug cultivation. This current policy is considered a natural outcome of the fact that Vietnamese authorities were already alerted to the risks caused by narcotic substances to public health and the problems posed by drug trafficking.¹⁸ From another angle, the stringency of the existing domestic law probably derives from the long established history of drug cultivation prohibition in the country.

Concerning the control of drug cultivation in Vietnam, it is noteworthy that before the *Law on Narcotics 2000*, the prohibition of the cultivation of drug producing plants was not expressly stated. It was simply a logical inference from the fact that the cultivation of drug producing plants was a criminal offense. Article 3(1) of this Law marked considerably clearer restrictions by explicitly providing that the cultivation of drug producing plants be strictly prohibited over the whole territory.

5.2 Quantitative Restrictions in Licit Drug Activities

5.2.1 Quantitative Restrictions under the Drug Control Conventions

Convention Narcotics Regime Aiming at limiting the availability of narcotic drugs exclusively for medical and scientific needs, the *1961 Convention* imposes quantitative restrictions on varied elements of narcotics supply, including drug

Phong Hoa Nguyen, *Drug-Related Crimes: Criminal Characteristics, Legal Constituents, Measures to Discover and to Investigate* (1998)].

¹⁴ See Section 3.1.1 for cross-reference.

¹⁵ The Criminal Code is the only national legislation in which all offenses are located. See *Bo Luat Hinh Su Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1985, duoc sua doi bo sung nam 1997* (Quoc Hoi), art 185a [trans: *Criminal Code of Vietnam 1985, amended in 1997* (National Assembly)].

¹⁶ *Bo Luat Hinh Su Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1999* (Quoc Hoi) art 192 [trans: *Criminal Code of Vietnam 1999* (National Assembly)] (hereinafter CCV 1999).

¹⁷ *Luat so 23/2000/QH10 ve Phong, Chong Ma Tuy nam 2000* (Quoc Hoi) art 3(1) [trans: *Law 23/2000/QH10 on Narcotics Prevention and Suppression 2000* (National Assembly)] (hereinafter Law on Narcotics 2000).

¹⁸ See Section 3.2 for cross-reference.

production, manufacture, import and accumulated possession. This quantitative control lies at the heart of the narcotics regime.

Production: Parties are obliged to prevent the produced quantities of opium, coca leaves, cannabis and cannabis resin from exceeding the estimates published by the International Narcotics Control Board (Board).¹⁹ Amounts of poppy straw and coca leaves produced for industrial and horticultural purposes must also be restricted to the quantities estimated for non-medical use.²⁰

Opium is one of the original substances under international control that have evolved through a long history.²¹ For this reason, the *1961 Convention* continues to prescribe a number of particular rules for opium production. First, if the Board discovers that the licit opium production is not restricted to within the estimates and a significant amount of opium has been diverted into illicit traffic, it can deduct ‘all, or a portion, of such an amount from the quantity to be produced and from the total estimates’ established for the concerned country or territory.²² Secondly, all countries that intend to increase or to commence opium production for export must restrict the amounts to be produced to ‘within the world need in accordance with the estimates published by the Board’.²³ Parties are obliged not to permit the commencement or increase in production, if these activities may lead to illicit traffic in opium.²⁴ Thirdly, a country which did not produce opium for exports prior to 1 January 1961 but desires to export the opium it produces is bound to notify the United Nations Economic and Social Council (Council) or the Board to obtain their prior approvals.²⁵ Considering various factors,²⁶ these bodies may ‘recommend’ the concerned Party not engage in opium production. Nevertheless, countries that

¹⁹ A brief introduction of the estimates system is provided at footnote 25 of Chapter 4. For further information, see Section 10.1.6.

²⁰ 1961 Convention, above n 4, art 27(2).

²¹ See, for example, the *Hague Opium Convention 1912*, the *First Geneva Agreement on Opium 1925* and the *Geneva International Opium Convention 1925*. See also Chatterjee, above n 4, 380.

²² 1972 Protocol, above n 4, art 11 (i.e. amended 1961 Convention, art 21bis(2)).

²³ 1961 Convention, above n 4, art 24 (1)(a) and 1961 UN Commentary, above n 4, 287 and 298.

²⁴ 1961 Convention, above n 4, art 24 (1)(b).

²⁵ A Party has to make notification to the Council if it plans to produce amounts more than five tons annually or to the Board if it plans to produce amounts not exceeding five tons annually. See 1961 Convention, above n 4, art 24 (2)(a) and (b).

²⁶ When considering Parties’ notifications, the Board takes into account various factors, such as whether the Parties in question have enacted satisfactory laws and regulations for opium production control, whether they can maintain effective control and whether there is potential demand for opium that will be produced. See 1961 UN Commentary, above n 4, 291.

exported opium during the ten years prior to 1 January 1961 are not required to make such notification and can automatically continue to produce opium for export.²⁷

Although these provisions have contributed to the limitation of worldwide opium supply, unfortunately they present several shortcomings. In general, they are not totally satisfactory for limiting the global opium production, as they are not applicable to non-Parties.²⁸ The different policies applicable to countries exporting opium before and after 1961, as mentioned above, arguably provide some countries with unreasonable privileges. Additionally, the approval or disapproval of the Council and the Board for opium production are not legally binding on Parties and, therefore, have little practical importance.²⁹

Manufacture and Import/Export: In addition to drug production, Parties are obliged to limit the manufacture and import of narcotic drugs in their countries to exclusively medical and scientific purposes.³⁰ Quantities of drugs to be manufactured and imported must be restricted to no more than the sum of the following:

- (a) the quantity consumed, within the limit of the relevant estimate, for medical and scientific purposes;
- (b) the quantity used, within the limit of the relevant estimate, for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;
- (c) the quantity exported;
- (d) the quantity added to the stock for the purpose of bringing that stock up to the level specified in the relevant estimate; and
- (e) the quantity acquired within the limit of the relevant estimate for special purposes.³¹

The said sum, however, is subject to the subtraction of the any amount of drugs that has been released from seizure and from ‘special stocks’³² for civilian needs, and that has been over-manufactured and over-imported in the preceding year.³³ In brief, the

²⁷ 1961 Convention, above n 4, art 24 (2) and (3).

²⁸ See Chatterjee, above n 4, 389 and 1961 UN Commentary, above n 4, 290.

²⁹ See Chatterjee, above n 4, 390 and 1961 UN Commentary, above n 4, 292.

³⁰ 1961 Convention, above n 4, art 4(c).

³¹ 1961 Convention, above n 4, art 21(1).

³² According to Article 1(1)(w) of the *1961 Convention*, ‘special stocks’ are the amounts of drugs held by the Government for special government purposes (such as, requirements of the armed forces) and to meet exceptional circumstances (i.e. catastrophic events, such as major earthquake and large scale epidemic). See 1961 Convention, above n 4, art 1(1)(w) and 1961 UN Commentary, above n 4, 229.

³³ 1961 Convention, above n 4, art 21(2) and (3) and Section 10.2.1.1 for cross-reference. The sum of drugs to be manufactured and imported is very close to the estimates established for the relevant

quantity of drugs that Parties are authorized to manufacture and to import is described as follows:

$$\text{Manufacture} + \text{imports} = \text{national needs} + \text{exports}$$

To ensure quantitative restrictions in drug manufacture, Parties are obliged to require drug manufacturers to obtain periodical manufacturing licenses that indicate types and quantities of drugs they are authorized to manufacture. With respect to importation, they are bound to require importers to obtain import authorizations specifying the quantity of drugs to be imported for each transaction.³⁴ The system of periodical manufacturing licenses and import authorizations allows governments to be flexible, enabling them to adjust the quantity of drugs available in accordance with changing conditions that affect national needs.³⁵ According to the official UN Commentary, Parties can limit the number of enterprises engaged in drug manufacture and international trade to facilitate the government management.³⁶

Noteworthy is that under the *1961 Convention*, on the one hand, importing countries have to limit the drug supply in their countries while, on the other hand, exporting countries also have responsibilities for limiting drug exportation to others. Exporting countries are bound not to permit the export of drugs to any country or territory except ‘within the limits of the total of the estimates for that country or territory’.³⁷ But, because quantities of seized drugs that have been released for licit use and of drugs taken from special stocks for civilian use are subtracted from the total quantity of drugs to be imported and manufactured, it is, in practice, impossible for the exporting countries actually to account for the deduction when calculating their export quantities, as the deductions are ‘normally not known to the exporting

countries. Nevertheless, it differs from the estimates in two aspects. First, it includes *actual* quantities of drugs added to the stocks to reach the estimated level, while the estimates include the amount *anticipated* for such a purpose. Secondly, the estimates only include quantities which serve national needs, whereas, the manufacturing and importing amounts additionally include quantities for export. See 1961 UN Commentary, above n 4, 265.

³⁴ The system of periodical licenses, however, is not applicable to the manufacture of preparations (1961 Convention, above n 4, art 29(2)(c)). In practice, it is recommended that Parties utilize a quota system for quantitative limitation. Each Government should define maximum quantities of drugs to be manufactured or imported by each licensed manufacturer or importer. See 1961 UN Commentary, above n 4, 263 and 354 and Bertil a Renborg, *International Drug Control - A Study of International Administration by and through the League of Nations* (2nd ed, 1972) 138.

³⁵ 1961 UN Commentary, above n 4, 264 and 323 and Chatterjee, above n 4, 397.

³⁶ 1961 UN Commentary, above n 4, 319 and 354.

Parties'.³⁸ They can only calculate deductions based on publications of the Board, resulting in a time lag. In addition, they also face difficulties in computing the limits of drug quantities they are authorized to export, because they generally do not know the quantities that others have shipped to the importing country.³⁹ Thus, as a whole, exporting countries play only a supplementary role in the restriction of quantities of drugs coming into importing countries. The importing Parties take the principal responsibility for limiting the amounts of drugs to be imported into their countries.

Accumulation: Quantitative controls under the narcotics regime extend to the possession of drugs and poppy straw.⁴⁰ Parties are obliged to prevent manufacturers, traders and distributors (including state enterprises) from accumulating in their possession amounts of drugs and poppy straw that exceed the quantities required for the normal conduct of their business.⁴¹ It is for Parties to determine the maximum quantity of drugs and poppy straw that manufacturers, traders and distributors may accumulate for their business.⁴² In relation to manufacturing, the official UN Commentary suggests that 'under normal conditions, the maximum amounts in the possession of drug manufactures should not exceed their requirements for six months, and under exceptional conditions, those for one year'.⁴³ This control measure does not in any event apply to retail trade in substances in Schedule II and exempted preparations in Schedule III.⁴⁴

Convention Psychotropics Regime Similar to the *1961 Convention*, the *1971 Convention* obliges its Parties to limit the manufacture and import of psychotropic substances in their countries to medical and scientific purposes.⁴⁵ However, contrary to the earlier Convention, the *1971 Convention* does not provide

³⁷ 1961 Convention, above n 4, arts 31(1)(b).

³⁸ 1961 UN Commentary, above n 4, 350.

³⁹ 1961 UN Commentary, above n 4, 351-2.

⁴⁰ 1961 Convention, above n 4, arts 29(3) and 30(2)(a).

⁴¹ The purpose of this control is to prevent an undue accumulation of drugs that may lead to overstock and the dangers of illicit traffic (Renborg, above n 34, 84). The convention requirement of limiting the accumulation of poppy straw in the possession of retail traders and retail distributors is arguably superfluous, as 'these retail outlets will generally not hold any poppy straw'. In practice, many Parties only control quantities of poppy straw accumulated in the possession of manufacturing and trading enterprises. See 1961 UN Commentary, above n 4, 334-5.

⁴² 1961 Convention, above n 4, arts 29(3) and 30(2)(a).

⁴³ 1961 UN Commentary, above n 4, 326.

⁴⁴ 1961 Convention, above n 4, arts 2(2),(3).

⁴⁵ See *Convention on Psychotropic Substances*, opened for signature 21 February 1971, art 5(2) (entered into force 16 August 1976).

any formula for calculating the maximum amount of psychotropic substances that Parties may manufacture.⁴⁶ No specific quantitative limitation is imposed on imports and accumulated possession. With respect to the very dangerous psychotropic substances in Schedule I, Parties are bound to ‘restrict the amount supplied to a duly authorized person to the quantity required for his authorized purpose’.⁴⁷ This provision, again, vests the Parties with full discretion to specify the amount that each duly authorized person may obtain. As a whole, the supply control of psychotropic substances is mainly based on licensing controls, as described in Section 5.4, rather than quantitative restrictions.

Convention Precursor Regime Bearing resemblances to the 1971 Convention, the 1988 Convention does not prescribe any specific limits on amounts of precursors and essential chemicals that Parties may permit to be manufactured in their countries. Moreover, this Convention does not oblige Parties to limit the purpose of manufacture of these substances to medicine and science, as they are used in large volumes in different industries. They are solely required to take measures they deem appropriate to monitor the manufacture of precursors and essential chemicals in order to prevent the diversion of these substances into illicit traffic.⁴⁸

5.2.2 Quantitative Restrictions in Licit Drug Activities under Vietnamese Legislation

Licit drugs that are available in Vietnam come mainly from two sources: domestic manufacture and importation.⁴⁹ As the pharmaceutical industry in Vietnam is not highly developed, the principal materials for domestic drug manufacture are almost

⁴⁶ Different from the 1961 Convention, the term ‘production’ is not used in the 1971 Convention. All processes by which psychotropic substances are obtained are generally defined as ‘manufacture’, including the separation of psychotropic substances from the plants which yield them. See 1971 Convention, above n 45, art 1(i) and United Nations, *Commentary on the Convention on Psychotropic Substances, done at Vienna on 21 February 1971* (1976) 24.

⁴⁷ 1971 Convention, above n 45, art 7(d).

⁴⁸ See *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988, art 12(1) and (8) (entered into force 11 November 1990).

⁴⁹ In addition to drugs manufactured and imported, addictive and psychotropic drugs available for individual users in Vietnam come partly from their relatives residing in foreign countries. See Van Hoa Do, *Xác Định Mô Hình Co Cau Cay Trong Thich Hop Tren Dat Doc Vung Cao Mien Nui Phía Bắc Góp Phần Bổ Sung Các Giải Pháp cho Chương Trình Thay Thế Cây Thuốc Phiện* (D Phil thesis, Viện Khoa Học Kỹ Thuật Nông Nghiệp Vietnam, 1996) 38 [trans: Van Hoa Do, *Finding a Suitable Cultivation Structure for Northern Mountainous and Upland Areas as a Contribution to the Opium Poppy Alternatives Program* (D Phil Thesis, Technical Agriculture Institution, 1996)].

all imported.⁵⁰ In accordance with international requirements, both are subjected to quantitative limitations. The Vietnamese quantitative control of drug manufacture and import is principally based on the estimates system.

Vietnamese Addictive Drug Regime

Manufacture Under the Vietnamese *Control Regime applicable to Addictive Drugs promulgated by Decision 2033/1999/QĐ-BYT 1999* (Addictive Drug Control Regime 1999), licensed manufacturers are obligated to furnish to the Pharmaceutical Department of the Ministry of Health (PD) annual estimates of anticipated quantities of materials required for their drug manufacture for the forthcoming year.⁵¹ Based on past statistics and the estimates for Vietnam published by the Board, the PD confirms the anticipated quantities of materials that licensed manufacturers are authorized to obtain within the year in question.⁵² It is necessary to emphasize that manufacturers are only bound to submit estimates of materials but not of drugs to be manufactured. Thus, the Vietnamese quantitative control over drug manufacture is an indirect system that is predicated on the control of materials essential for drug manufacture. This indirect control appears to be problematic, because the quantities of drugs possibly obtained from the same amount of materials may be varied by using different technologies. Therefore, the restriction on materials is not always as effective as the restriction directly applicable to drugs. Moreover, certain gaps in the provisions of the *Addictive Drug Control Regime 1999* are observed. While Article 8 requires various trading and distributing enterprises and persons involved in the drug economy to furnish annual estimates to the competent authorities, it does not expressly oblige manufacturers to furnish annual estimates. The obligation of manufacturers to submit estimates of materials is only indirectly indicated in Article 9 concerning the confirmation of estimates which reads as follows: ‘the Pharmaceutical Department is vested with authority to confirm

⁵⁰ Duy Cuong Nguyen, 'Chan Chinh Cong Tac XuatNhap Khau trong Nganh Duoc' (1994) 1 *Duoc Hoc* 2, 4 [trans: Duy Cuong Nguyen, 'Reorganization of Import and Export in the Pharmaceutical Industry' (1994) 1 *Pharmacy* 2].

⁵¹ See *Quy Che Quan Ly Thuoc Gay Nghien ban hanh kem theo Quyét Dinh 2033/1999/QĐ-BYT 1999* (Bo Y Te) art 8 [trans: *Control Regime Applicable to Addictive Drugs Promulgated by Decision 2033/1999/QĐ-BYT 1999* (Ministry of Health)] (hereinafter *Addictive Drug Control Regime 1999*).

⁵² During the year, licensed manufacturers may submit supplementary estimates which are also subjected to the examination and confirmation of the Pharmaceutical Department. Any estimate that exceeds the quantities established for the preceding year must be accompanied by a detailed explanation. See *Addictive Drug Control Regime 1999*, above n 51, art 8.

estimates of materials required for drug manufacture'.⁵³ Additionally, while providing varied forms of obligations for estimating drugs in trade and distribution, the *Addictive Drug Control Regime 1999* does not provide for a form of drug materials estimates.

Furthermore, under the *1961 Convention*, Parties must require drug manufacturers to obtain periodical licenses indicating the types and quantities of drugs that they are authorized to manufacture. The Vietnamese addictive drug regulations, however, fail to impose this control. It may be argued that materials necessary for domestic drug manufacture are principally imported. Therefore, by way of case-by-case approval of the importation of materials (i.e. import authorizations), drug manufacture is indirectly regulated. However, as importers of materials are not always manufacturers, the system of import and export authorizations cannot replace the system of periodical manufacturing licenses.

Still relating to the control of addictive drug manufacture, the *Addictive Drug Control Regime 1999* prescribes a government monopoly for the purpose of purchasing drugs that have been domestically manufactured so as to prevent their diversion into illicit channels. Under Article 6(1) and 6(3), manufacturers are bound to sell all addictive drugs that they have manufactured to designated state enterprises, namely Central Enterprise I (*Xi Nghiep Trung Uong I*) and Central Enterprise II (*Xi Nghiep Trung Uong II*). These enterprises, in their turn, are responsible for supplying addictive drugs to all licensed trading and distributing enterprises and persons.⁵⁴ Thus, in addition to the quantitative restriction, the *Addictive Drug Control Regime 1999* provides a very stringent supplementary control of the manufacture of addictive drugs. As mentioned previously, the official UN Commentary encourages the government monopoly in the supply of addictive drugs and, therefore, the existing regulations of Vietnam are laudable.

Importation and Exportation Under the *Addictive Drug Control Regime 1999*, licensed importers must annually furnish to the PD estimates of anticipated quantities of addictive drugs to be imported for the forthcoming year. The

⁵³ Addictive Drug Control Regime 1999, above n 51, art 9.

⁵⁴ Addictive Drug Control Regime 1999, above n 51, art 6(1) and (3).

estimates have to be submitted in the form prescribed⁵⁵ and importers are bound to state not only anticipated quantities of drugs to be imported but also expected importing countries as well as airports or seaports of entry. Based on the statistical figures and the estimates established, the PD confirms the anticipated quantities that licensed importers are authorized to import within the relevant year.⁵⁶ In addition to the annual estimates, the quantity of addictive drugs to be imported for each transaction is further subjected to the system of import and export authorizations. An import authorization is required to state clearly the type and amount of the controlled substance that the licensed importer is authorized to purchase for each transaction.⁵⁷ Thus, the quantitative restriction imposed on drug importation under Vietnamese legislation is fully in line with the international standards.

Under the *1961 Convention*, contracting countries are obliged to limit exported drug quantities to within the estimates established for importing countries. Although Vietnam is not a drug exporting country,⁵⁸ the *Addictive Drug Control Regime 1999* also provides the legal basis for the quantitative restriction of drug exportation. Markedly similar to the control of drug importation, licensed exporters are to furnish to the PD estimates of anticipated quantities of drugs to be exported for the forthcoming year.⁵⁹ The drug quantity to be exported for each transaction must be limited to within the amount stated in an import authorization issued by competent authorities of the importing countries.⁶⁰

Accumulation

The Vietnamese quantitative control of licit drug activities, regrettably, presents definite weaknesses in respect of preventing the over-accumulation of addictive drugs by enterprises and persons involved in the licit

⁵⁵ Addictive Drug Control Regime 1999, above n 51, art 7(2). Pursuant to form 'Number 1A' designed for estimates of the importation of drugs and forms 'Number 1B1' and 'Number 1B2' used for estimates of their preparations. Form 'Number 1B1' is used for estimates of preparations of addictive substances and addictive drugs which are imported for the first time and not yet registered for use in Vietnam and form 'Number 1B2' is used for estimates of preparations of addictive substances and addictive drugs which are already registered for use in Vietnam. See the forms 'Number 1B1' and 'Number 1B2' attached to Addictive Drug Control Regime 1999, above n 51.

⁵⁶ Addictive Drug Control Regime 1999, above n 51, arts 7(2) and 8.

⁵⁷ *Nghi Dinh so 58/2003/ND-CP Quy Dinh Kiem Soat Nhap Khau, Xuat Khau, Van Chuyen Qua Canh Lanh Tho Viet Nam Chat Ma Tuy, Tien Chat, Thuoc Gay Nghien, Thuoc Huong Than 2003* (Chinh Phu) art 6(3) [trans: *Decree 58/2003/ND-CP Stipulating the Control of Importation, Exportation and Transit of Narcotic Substances, Precursors, Addictive Drugs and Psychotropic Drugs through Vietnamese Territory 2003* (Government)] (hereinafter Drug Trade Decree 2003).

⁵⁸ See Duy Cuong Nguyen, above n 50, 4.

⁵⁹ Addictive Drug Control Regime 1999, above n 51, art 7(2).

drug economy. Under the *Addictive Drug Control Regime 1999*, manufacturers, traders and distributors are not required to limit the quantity of drugs they possess to what they need in the course of their businesses. Thus, compared to the narcotics regime under the *1961 Convention*, the domestic regulations present a gap in the regime.

Vietnamese Psychotropic Drug Regime

The Vietnamese quantitative restrictions on manufacture, international trade and accumulation of psychotropic drugs are built on the model of the regime applicable to addictive drugs. For this reason, the *Control Regime applicable to Psychotropic Drugs promulgated by Decision 3047/2001/QĐ-BYT 2001* (Psychotropic Drug Control Regime 2001) are very close in language to the *Addictive Drug Control Regime 1999*. The estimates control, the indirect quantitative restrictions on materials and the import authorization limitation are also applicable to psychotropic drug activities. Nonetheless, the controls applicable to their manufacture are less stringent than those imposed on addictive drugs, as licensed manufacturers are not bound to sell the drugs they manufacture to designated State enterprises. Due to the fact that the *Psychotropic Drug Control Regime 2001* reintroduces the pattern of *Addictive Drug Control Regime 1999*, the above-mentioned weakness in the indirect quantitative control of drug manufacture and the shortcoming in preventing drug accumulation are replicated.

Vietnamese Precursor Regime

Under the *1988 Convention*, quantitative restrictions are only provided as an optional measure to control precursors. Under Vietnamese drug control legislation, these controls are mandatory for precursor manufacture, import and export. Pursuant to the *Control Regime applicable to Precursors used in Industries, promulgated by Decision 134/2003/QĐ-BCN 2003* (Precursor Control Regime 2003), manufacturers must register with the Ministry of Industry (MOI) their manufacturing plans for the forthcoming year, including types and amounts of precursors to be manufactured. After those plans are approved by the MOI, manufacturers are bound to limit the manufacture of

⁶⁰ Drug Trade Decree 2003, above n 57, art 6(3).

precursors within the registered amounts.⁶¹ The import and export of precursors are also subjected to control by import or export authorizations (the system is analyzed in detail below). As a result, the quantity of precursors involved in each international transaction is also under government control.⁶²

5.3 Control of International Trade in Drugs: Import and Export Authorizations

5.3.1 Control of International Trade in Drugs under the Drug Control Conventions

The system of import and export authorizations is an important measure in the international drug control system.⁶³ It is designed to control the quantity of drugs of abuse involved in trans-national trade and to prevent their diversion into illicit channels by means of a series of interlocked Government authorizations.⁶⁴ This control is grounded on the two main principles that were first introduced by the *Hague Opium Convention 1912*:

1. No shipment of narcotic substances shall be made to a country without its knowledge and express consent.
2. All movements of narcotic substances in international trade shall be under constant Government control through a chain of Government authorizations or certificates.⁶⁵

Convention Narcotics Regime

Under the *1961 Convention*, importing countries have to require a separate import authorization for each drug importation. Correspondingly, exporting countries must require a separate export authorization for each drug exportation. Before issuing an export authorization, they must ask for an

⁶¹ *Quy Che Quan Ly Tien Chat Su Dung trong Linh Vuc Cong Nghiep ban hanh kem theo Quyet Dinh 134/2003/QD-BCN 2003* (Bo Cong Nghiep) art 4(2) [trans: *Control Regime applicable to Precursors used in Industries, promulgated by Decision 134/2003/QD-BCN 2003* (Ministry of Industries)]. (hereinafter Precursor Control Regime 2003).

⁶² *Quy Che Quan Ly Thuoc Huong Tam Than ban hanh kem theo Quyet Dinh 3047/2001/QD-BYT 2001* (Bo Y Te) art 8(4) [trans: *Control Regime Applicable to Psychotropic Drugs Promulgated by Decision 3047/2001/QD-BYT 2001*(Ministry of Health)] (hereinafter Psychotropic Control Regime 2001).

⁶³ See, eg, Frank Maas, 'Alternatives to Indirect Control of International Narcotics Traffic' (1975) 8 *International Law and Politics* 241 246; Bassiouni, above n 1, 924 and 1961 UN Commentary, above n 4, 358.

⁶⁴ See, Renborg, above n 34, 72.

⁶⁵ These principles were later developed into detailed regulations by the *Geneva International Opium Convention 1925* and the existing DCC provisions bear great similarity in language to that Convention provisions. See Renborg, above n 34, 72. See also 1961 UN Commentary, above n 4, 348.

import authorization, issued by the importing countries.⁶⁶ A legitimate drug shipment must be accompanied with an export authorization.⁶⁷

For effective control, import and export authorizations have to contain all details relating the shipments, including names of the drugs, their international non-proprietary name (if any), quantities to be imported or exported, names and addresses of the authorized importers and exporters and the period within which the importation and exportation must be effected.⁶⁸ In addition, the export authorizations have to clearly state information on the related import authorizations, including numbers and dates of the import authorizations and the competent authorities that issued those authorizations.⁶⁹

Generally, the exportation of drug consignments to a bonded warehouse⁷⁰ is prohibited in order to prevent the diversion of drugs stored there. However, if a shipment to a bonded warehouse is specially permitted, both the import and export authorizations need to specify clearly that the drug consignment will be exported for that purpose.⁷¹ It should be noted that import and export authorizations are principally for international trade in drugs for commercial purposes. Therefore, medical practitioners or scientists who import or export small quantities of drugs for therapeutic and scientific purposes, or patients who import minor drug amounts for

⁶⁶ 1961 Convention, above n 4, art 31(5).

⁶⁷ 1961 Convention, above n 4, art 31(6)(7). If competent authorities in the exporting country issue an export authorization, they are obligated to send one copy of the export authorization to the Government of the importing country and one copy accompanies the shipment. The accompanying export authorization makes it possible for competent authorities to identify the legitimacy of the drug shipment at any moment in the course of the transportation. The copy of export authorization sent to the importing country serves as an advanced notification to the importing country that an authorized shipment is expected to arrive. When the importation has been effected, competent authorities of the importing country must return without undue delay to the exporting country the export authorization with an endorsement certifying the amount actually imported (see, eg, Renborg, above n 34, 77 and 1961 UN Commentary, above n 4, 365 and 374-5). The transiting countries are obliged not to permit the transportation of drug shipments through their territories without a copy of the export authorization. See 1961 Convention, above n 4, art 31(11).

⁶⁸ 1961 Convention, above n 4, art 31(4)(b). See also Renborg, above n 34, 76.

⁶⁹ 1961 Convention, above n 4, art 31(4)(c).

⁷⁰ “Bonded warehouses” are storages facilities established or authorized by law in which an importer may, under the control of the customs authorities, deposit imported goods”. See 1961 UN Commentary, above n 4, 371.

⁷¹ 1961 Convention, above n 4, arts 31(9) and 31(12). While consignments of drugs are stored in a bonded warehouse, any process that may change the nature of the drugs is not permitted. Any withdrawal of drugs from the bonded warehouse and any alteration of the packing requires the permission of competent authorities.

their own use in accordance with medical prescriptions, are not subject to this control.⁷²

Convention Psychotropics Regime

The basic rules governing international trade in psychotropic substances are similar to those applicable to narcotic drugs. However, in detail, they differ.

First, the quantities of narcotic drugs to be imported must be strictly limited to within the specified sum, as mentioned previously. In marked contrast, as the estimates system is not applicable to psychotropic substances,⁷³ their international trade is not subject to quantitative limitations. Nevertheless, member States are obliged to restrict psychotropic drug supply in their countries exclusively for medical and scientific purposes⁷⁴ and they are encouraged to use ‘simplified estimates’ as a guide for approving international transactions of these substances.⁷⁵

Secondly, while the same control mechanism is applicable to narcotic drugs in different Schedules (excepting preparations listed in Schedule III),⁷⁶ slight differences occur in the mechanism to control different schedules of psychotropic substances. Imports and exports of psychotropic substances in Schedule I are generally prohibited, unless both importers and exporters are authorized government authorities.⁷⁷ In other respects, international trade in psychotropic substances in Schedules I and II, and their preparations, is subject to the same mechanism applicable to narcotic drugs.⁷⁸ But such a trade in psychotropic substances in Schedule III and their preparations is subjected to less stringent controls. Import and export authorizations are not required. The exporters are only obliged to furnish export declarations to the importing countries before each transaction.⁷⁹ Imports and

⁷² 1961 UN Commentary, above n 4, 355-6 and 363.

⁷³ See Section 10.2.1.1 for cross-reference.

⁷⁴ 1971 Convention, above n 45, art 5(2).

⁷⁵ See form B/P of the Board. See also International Narcotics Control Board, *Report of the International Narcotics Control Board for 2005* (2006) [para 109] <http://www.incb.org/pdf/e/ar/2005/incb_report_2005_full.pdf> at 20 March 2006.

⁷⁶ 1961 Convention, above n 4, arts 31(16).

⁷⁷ 1971 Convention, above n 45, art 7(f).

⁷⁸ 1971 Convention, above n 45, arts 3(1) and 12(1). However, note that Parties may exempt certain preparations of substances in Schedule III from the control of import/export authorizations in accordance with Article 3(3) of the *1971 Convention*.

⁷⁹ An export declaration must be made in triplicate. Two copies are to be submitted to the competent authorities of the exporting country and another copy must accompany the shipment. The competent authorities of the exporting country, in turn, send a copy of the declaration to the competent

exports of psychotropic substances in Schedule IV and their preparations are fully exempted from this control.⁸⁰ Additionally, Parties to the *1971 Convention* are authorized to prohibit the import into their countries of one or more substances in Schedules II, III and IV and their preparations.⁸¹ Notwithstanding such prohibition, Parties may specifically authorize the imports of those substances under special import licenses.⁸² Divergences in the control of international trade in psychotropic substances appear to be a compromise between countries which desire to impose control by import and export authorizations on all psychotropic substances and those which wish only to apply that system to the more dangerous substances.⁸³

Convention Precursor Regime

Parties to the *1988 Convention* are also required to monitor the international trade in precursors and essential chemicals frequently used in illicit manufacture of drugs.⁸⁴ Nevertheless, in a departure from the earlier Conventions, it does not provide any internationally uniform control but entrusts the member States with establishing and maintaining a domestic system 'to facilitate the identification of suspicious transactions'.⁸⁵ With respect to substances in Table I, however, if importing Parties communicate requests to the Secretary-General, exporting Parties are bound to provide pre-export notifications to them. The information to be included in those pre-export notifications is similar to that required for export declarations under the *1971 Convention*.⁸⁶

5.3.2 Control of International Trade in Drugs under Vietnamese Legislation

Due to the fact that Vietnam is mainly a drug importing country, the national legal framework for the control of international trade in drugs is well developed. The

authorities of the importing country. An export declaration must contain information necessary for identifying the legitimacy of the shipment, including names and addresses of the importers and exporters, names, quantities and pharmaceutical forms of drugs involved in the transaction and, dates of despatch. See 1971 Convention, above n 45, art 12(2).

⁸⁰ 1971 Convention, above n 45, arts 3(1) and 12(2).

⁸¹ 1971 Convention, above n 45, art 13(1).

⁸² 1971 Convention, above n 45, art 13(3). In those cases, the importation and exportation of those substances are subject to the control of import and export authorizations. See 1971 UN Commentary, above n 46, 217.

⁸³ 1971 UN Commentary, above n 46, 249.

⁸⁴ See William C Gilmore, 'Drug Trafficking and the Control of Precursors and Essential Chemicals: the International Dimension' in William C Gilmore and Alistair N Brown (eds), *Drug Trafficking and the Chemical Industry* (1996) 1, 12.

⁸⁵ 1988 Convention, above n 43, art 12(9)(a).

⁸⁶ 1988 Convention, above n 43, art 12(10)(a).

national provisions on import and export authorizations are very close to the convention standards and are applicable to all nationally controlled substances. Their only main defect is that the prohibition on importing dependence-producing drugs to bonded warehouses is not prescribed.

Under *Decree 58/2003/ND-CP Stipulating the Control of Importation, Exportation and Transit of Narcotic Substances, Precursors, Addictive Drugs and Psychotropic Drugs 2003* (Drug Trade Decree 2003), the international trade in all nationally controlled substances, including precursors, is subjected to the control of import and export authorizations. Moreover, individual medical practitioners and scientists are not permitted to carry out the importation of drugs of abuse.⁸⁷ For the performance of therapeutic or scientific functions, these persons are only entitled to purchase drugs domestically from licensed traders in accordance with estimates confirmed by the PD.

Pursuant to Article 6(1)(b) of this Decree, before each drug importation, importers have to submit to the competent authorities⁸⁸ an application that clearly states the purpose of the import, names and amounts of substances to be imported, transportation means and conditions to ensure transport safety, as well as the intended schedule and border gate of entry.⁸⁹ Additionally, the importing application must be submitted with a written ‘export permit’ issued by competent authorities of the exporting country.⁹⁰ It should be noted that under the DCCs, the exporting country requires an import authorization before issuing an export authorization, therefore, the ‘export permit’ required under the *Drug Trade Decree 2003* does not mean an export authorization. That permit is simply a notification made by the exporting country of an intended export transaction, conditional on the prior receipt of an import authorization issued by the importing country. Thus, to avoid any misunderstanding as well as to ensure the uniform interpretation of the related provision, an official explanation of the phrase ‘export permit’ used in the domestic legislation is needed.

⁸⁷ Under Article 4 of *Drug Trade Decree 2003*, licensed enterprises and organizations but not individuals may be granted an authorization to import nationally controlled substances. See *Drug Trade Decree 2003*, above n 57, art 4.

⁸⁸ For the Vietnamese authorities that are empowered to issue import authorizations, see Section 10.3.2.

⁸⁹ *Drug Trade Decree 2003*, above n 57, art 6(1)(b).

In accordance with the *Drug Trade Decree 2003*, before each drug exportation, licensed exporters are similarly obliged to submit an exporting application, including details on the purpose of the export, the names and amounts of substances involved, transportation means and conditions to ensure transport safety, as well as the intended schedule and border gate of exit.⁹¹ This application must be submitted with a written ‘import permit’ issued by competent authorities of the importing country.⁹² The ‘import permit’ used in the wording of the relevant provision means an import authorization under the DCCs.

Under the *Law on Narcotics 2000* and its implementing regulations, import and export authorizations are only granted to enterprises or organizations that acquire a special license to be involved in international trade in drugs.⁹³ An import or export authorization must include identifying information on the authorized importer or exporter, the names and amounts of the controlled substances to be imported or exported, the border gates of entry or exit, and time limits within which the importation or exportation must be effected.⁹⁴ In comparison with the international standards under the *1961 Convention*, the national legislation fails to require export authorizations to provide information on the related import authorizations, such as numbers and dates of the import authorizations and the competent authorities which issued those authorizations.⁹⁵ The existing domestic provisions are also inadequate, as they do not require the authorizations to indicate the international non-proprietary name of drugs (if any) in addition to their trade names.

Under the *Drug Trade Decree 2003*, each drug shipment that passes through the territory of Vietnam must obtain a transit authorization issued by the Ministry of Public Security. An application for a transit authorization must be furnished with both import and export authorizations as well as transit authorizations issued by

⁹⁰ Drug Trade Decree 2003, above n 57, art 6(1)(a).

⁹¹ Drug Trade Decree 2003, above n 57, art 6(1)(b).

⁹² Drug Trade Decree 2003, above n 57, art 6(1).

⁹³ Law on Narcotics 2000, above n 17, art 19 and Drug Trade Decree 2003, above n 57, art 4. See also Addictive Drug Control Regime 1999, above n 51, art 7(1) and Psychotropic Drug Control Regime 2001, above n 62, art 7(1).

⁹⁴ See Drug Trade Decree 2003, above n 57, art 6(3).

⁹⁵ See the previous Section 5.3.1 for cross-reference and 1961 Convention, above n 4, art 31(4)(c).

competent authorities of the countries (if any) through which the shipment in question has passed before reaching Vietnam.⁹⁶

5.4 Licensing of Licit Drug Activities and Premises

Licensing is essential to the control of licit drug activities, as licenses are necessary to distinguish between licit and illicit activities. The term ‘license’ as used in the DCCs generally refers to ‘a written Government authorization’. Under the domestic laws of each country, it may acquire synonymous names, such as ‘permit’, ‘authorization’ or ‘certificate’.⁹⁷

5.4.1 Licensing under the Drug Control Conventions

5.4.1.1 Licensing Control of Licit Drug Activities

Convention Narcotics and Psychotropics Regimes Before analyzing the licensing system, it is worth mentioning that licensing under the psychotropics regime is built on the narcotics regime and, therefore, they are very similar. Under both the 1961 and 1971 Conventions, Parties are obliged to control under license varied phases of their licit drug economy, namely drug manufacture, trade, import, export and distribution.⁹⁸ A general authorization to engage in chemical or pharmaceutical industries is considered insufficient, and Parties are to require persons engaging in licit drug activities to obtain a special license issued by competent authorities.⁹⁹ For the purpose of preventing malpractice, the official UN Commentary recommends that special licenses need to specify each specific activity to which they relate.¹⁰⁰ Scientists and medical practitioners, however, are not obliged to obtain special licenses for performing therapeutic and scientific work.¹⁰¹

⁹⁶ Similar to import and export authorizations, transit authorizations must specify full names and addresses of the transporting enterprises or persons, names and amounts of the controlled substances to be transited, time limits within which transits are to take place and designated border gates of entry and exits. See Drug Trade Decree 2003, above n 57, art 13(3).

⁹⁷ See, for example, 1961 UN Commentary, above n 4, 316 and 328 and 1971 UN Commentary, above n 46, 154.

⁹⁸ 1961 Convention, above n 4, arts 29(1), 30(1)(a) and 31(3)(a). The compounding of preparations on prescription carried out by retail pharmacists and medical practitioners, however, is not subject to the requirement of a manufacturing license; because such compounding is simply considered a part of drug sale, distribution or dispensation that these persons are authorized to perform. See 1961 UN Commentary, above n 4, 316 and 1971 UN Commentary, above n 46, 170.

⁹⁹ 1961 UN Commentary, above n 4, 318 and 328-9 and 1971 UN Commentary, above n 46, 169.

¹⁰⁰ The UN Commentaries recommend that manufacturing licenses do not authorize the licensees to engage in trade in drugs. The licensed manufacturers are only entitled to conduct certain trade activities that normally fall within the scope of manufacturing business, such as to buy raw materials

Although the licensing applicable to psychotropic substances bears many resemblances to that imposed on narcotic drugs, differences between the two regimes exist. First, imports and exports of preparations of narcotic drugs in Schedule III are expressly exempted from this measure.¹⁰² In contrast, this control is imposed on the international trade in all preparations of psychotropic substances, unless individual Parties notify the exemption of certain preparations because of their negligible risk of abuse.¹⁰³

Secondly, regarding its scope, the Parties to the *1961 Convention* are not bound to control drug possession by means of a license. For the purpose of preventing drug misuse and their diversion, they are simply obliged not to permit the possession of narcotic drugs except under legal authority.¹⁰⁴ General licenses to engage in the manufacture and national and international trade and distribution of drugs are assumed to imply the right to legally possess drugs necessary for the authorized activities. Unlike the *1961 Convention*, the *1971 Convention* expressly requires Parties to control under special license the possession of psychotropic substances in Schedule I.¹⁰⁵ Understandably, because psychotropic substances in Schedule I are very dangerous and have limited therapeutic usefulness, they must be under the most stringent controls. Nonetheless, the requirement that their possession needs a special license presents some confusion. It is doubtful whether enterprises or persons, who obtain a special license to engage in the manufacture, trade and distribution of substances in Schedule I, need a further, separate license in order to possess them in

or other drugs that are necessary for manufacturing the drugs specified. Manufacturers are not authorized to trade in drugs that they are 'neither authorized to make nor could not need for the manufacture of drugs'. Similarly, general licenses for trade in drugs do not include the right to engage in imports and exports of drugs. The international trade in drugs is subjected to a separate license. Licenses for domestic trading in drugs should also indicate clearly whether wholesale or retail trade is authorized. See 1961 UN Commentary, above n 4, 329 and 355 and 1971 UN Commentary, above n 46, 170 and 216.

¹⁰¹ 1961 Convention, above n 4, art 30(1)(c). In general, medical practitioners (i.e. physicians, veterinarians and dentists) are authorized to perform therapeutic functions only upon the obtaining of a special license from health authorities or after having completed prescribed academic studies or having passed required examinations. With such a general authorization, they are considered qualified enough to be exempted from the requirement of a special license. This exemption is limited only to their performance of therapeutic and scientific functions, i.e. when they supply or dispense drugs to their own patients or holders of animals they treat. Their supply or dispensation of drugs to other patients or holders of animals should be treated as retail trade in drugs. See 1961 UN Commentary, above n 4, 333 and 356 and 1971 UN Commentary, above n 46, 170.

¹⁰² 1961 Convention, above n 4, art 31(16).

¹⁰³ 1971 Convention, above n 45, arts 3(1)(2) and 12.

¹⁰⁴ 1961 Convention, above n 4, art 33.

¹⁰⁵ 1971 Convention, above n 45, art 7(b).

the course of their business or work.¹⁰⁶ The application of this provision is fully subject to the Parties' interpretation.

Thirdly, under the *1961 Convention*, State enterprises involved in drug manufacture, trade, import and export are explicitly exempted from special licenses.¹⁰⁷ In contrast, the *1971 Convention* does not provide for such a distinction. Nevertheless, State enterprises involved in the manufacture and international trade of psychotropic substances are also regarded as exempt from special licenses because, having been given that function by Governmental authority, they are considered as automatically 'licensed' to do so.¹⁰⁸

Convention Precursor Regime

In contrast to both the *1961* and *1971 Conventions*, the *1988 Convention* vests its Parties with discretion to apply appropriate control measures to licit activities relating to substances in Tables I and II.¹⁰⁹ Licensing is solely an optional measure that Parties may consider in managing their licit precursor economy.¹¹⁰

5.4.1.2 Licensing Control of Establishments and Premises

Convention Narcotics and Psychotropics Regimes

Under the *1961* and *1971 Conventions*, Parties are additionally bound to control, by licensing, 'establishments' and 'premises'¹¹¹ in which drug manufacture, trade and distribution take place.¹¹² These provisions are an innovation in the international legal framework for drug control,¹¹³ aimed at ensuring qualitative standards to prevent theft or other drug diversions.¹¹⁴ To comply with the Convention's requirements, each establishment and each location belonging to the same manufacturer, trader or distributor should

¹⁰⁶ See, for example, 1971 UN Commentary, above n 46, 157.

¹⁰⁷ 1961 Convention, above n 4, arts 29(1), 30(1)(a) and 31(3)(a).

¹⁰⁸ 1971 UN Commentary, above n 46, 169.

¹⁰⁹ 1988 Convention, above n 43, art 12(8)(a).

¹¹⁰ 1988 Convention, above n 43, arts 12(8)(b)(i).

¹¹¹ Pursuant to Art 1(g) of the *1971 Convention*, 'premises' means 'building or part of buildings, including the appertaining land'. Both the *1961* and *1971 Conventions* do not define the term 'establishments'. The official 1971 UN Commentary explains that 'establishments' means 'places of manufacture, trade or distribution including their premises, fixtures and staff if any'. See 1971 UN Commentary, above n 46, 174.

¹¹² 1961 Convention, above n 4, arts 29(2)(b) and 30(1)(b)(ii) and 1971 Convention, above n 45, art 8(2)(b).

¹¹³ Chatterjee, above n 4, 427.

¹¹⁴ 1961 UN Commentary, above n 4, 322 and Bror Rexed et al, *Guidelines for the Control of Narcotic and Psychotropic Substances in the Context of the International Treaties* (1984) 52.

have a separate license although multiple licenses may be combined in a single document.¹¹⁵ Places where pharmacists compound preparations or medical practitioners perform therapeutic or scientific functions are exempted from special licenses.¹¹⁶

Licensing of premises in relation to narcotic drugs, however, differs slightly from that applicable in the case of psychotropic substances. Under the *1961 Convention*, establishments and premises where trade and distribution of preparations in Schedule III take place are explicitly exempted from this sort of control. Under the *1971 Convention*, this control is imposed in respect of all preparations, except that individual member States may declare an exemption for certain preparations that present no or negligible risk of abuse.¹¹⁷

Convention Precursor Regime Again, in contrast to both earlier Conventions, the Parties to the *1988 Convention* are vested with discretion to control under license establishments and premises involved in licit activities relating to substances in Tables I and II.¹¹⁸

5.4.2 Licensing under Vietnamese Legislation

5.4.2.1 Licensing Control of Licit Drug Activities

Vietnamese Addictive Drug and Psychotropic Drug Regimes In Vietnam, all phases of the pharmaceutical industry, including manufacture, import, export, wholesale trade and retail trade (i.e. distribution) of drugs, are strictly controlled under license. In accordance with the *Law 34/2005/QH11 on Drugs 2005* (Law on Drugs 2005) and *Ordinance 07/2003/PL-UBTVQH11 on Private Medical and Pharmaceutical Practice 2003* (Private Medical and Pharmaceutical Practice Ordinance 2003), to be involved in licit pharmaceutical activities in Vietnam, relevant enterprises and persons have to obtain an authorization issued by the Minister for Health or Directors of Provincial Departments of Health.¹¹⁹ These

¹¹⁵ 1961 UN Commentary, above n 4, 322 and 332 and 1971 UN Commentary, above n 46, 174.

¹¹⁶ 1961 UN Commentary, above n 4, 321 and 332 and 1971 UN Commentary, above n 46, 175.

¹¹⁷ See 1971 UN Commentary, above n 46, 175.

¹¹⁸ 1988 Convention, above n 43, arts 12(8)(b)(ii).

¹¹⁹ That authorization is called *Giay Chung Nhan Du Dieu Kien Hanh Nghe Duoc Tu Nhan* in the Vietnamese language. See *Phap Lenh so 07/2003/PL-UBTVQH11 Hanh Nghe Y Duoc Tu Nhan* (Uy Ban Thuong Vu Quoc Hoi) art 41 [trans: *Ordinance 07/2003/PL-UBTVQH11 on Private Medical and*

authorizations are only granted to enterprises and persons which satisfy the prescribed conditions on human resources, establishments and premises, and equipment and quality management, and which vary according to the category of licit pharmaceutical activity, i.e. manufacture, wholesale trade, retail trade and international trade.¹²⁰ For that reason, each authorization must state clearly which specific activities it covers, name and full address of the person responsible for the operation, full addresses of establishments and premises in which authorized activities take place and its expiry date.¹²¹ Under existing law, authorizations are only valid for five years. After this period, licensees who desire to continue their activities have to submit an extension application to the licensing authorities.¹²²

These authorizations, however, are not sufficient for licensees to engage in the supply of drugs of abuse. The manufacture, import and export of addictive and psychotropic drugs in Vietnam are subjected to special permits¹²³ issued by the Ministry of Health (PD),¹²⁴ but licence authorizations discussed above are a prerequisite to being granted a special permit.¹²⁵ Thus, this domestic control is in line with the convention provisions.

Pharmaceutical Practice 2003 (Standing Committee of National Assembly)] (hereinafter Private Medical and Pharmaceutical Practice Ordinance 2003) and *Luat Duoc so 34/2005/QH11 cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2005* (Quoc Hoi) art 11(1),(3) [trans: *Law 34/2005/QH11 on Drugs 2005* (National Assembly)] (hereinafter Law on Drugs 2005).

¹²⁰ *Thong Tu so 01/2004/TT-BYT Huong Dan ve Hanh Nghe Y Duoc Tu Nhan 2004* (Bo Y Te) art 46 to art 50 [trans: *Circular 01/2004/TT-BYT Guiding Private Medical and Pharmaceutical Practice 2004* (Ministry of Health)] (hereinafter Circular Guiding Private Medical and Pharmaceutical Practice 2004).

¹²¹ Law on Drugs 2005, above n 120, art 12(1),(2).

¹²² Private Medical and Pharmaceutical Practice Ordinance 2003, above n 120, art 43 and *Nghi Dinh so 103/2003/ND-CP Quy Dinh Chi Tiet Thi Hanh Mot So Dieu cua Phap Lenh Hanh Nghe Y Duoc Tu Nhan 2003* (Chinh Phu) art 10(2) [trans: *Decree 103/2003/ND-CP on Detailizing a Number of the Provisions of the Ordinance on Private Medical and Pharmaceutical Practice 2003* (Government)] (hereinafter Decree on Detailizing the Private Medical and Pharmaceutical Practice Ordinance 2003).

¹²³ See, eg, *Nghi Dinh so 80/2001/ND-CP Huong Dan viec Kiem Soat cac Hoat Dong Hop Phap Lien Quan den Ma Tuy o Trong Nuoc 2001* (Chinh Phu) art 4(1) [trans: *Decree 80/2001/ND-CP on the Control of Domestic Licit Activities in relation to Narcotics 2001* (Government)] (hereinafter Decree on the Control of Domestic Licit Drug Activities 2001) and Drug Trade Decree 2003, above n 57, art 4.

¹²⁴ See Addictive Drug Control Regime 1999, above n 51, art 3(1) and Psychotropic Drug Control Regime 2001, above n 62, arts 3(1) and 7(1).

¹²⁵ See, eg, Addictive Drug Control Regime 1999, above n 51, arts 3(1) and art 7(1) and see Psychotropic Drug Control Regime 1999, above n 62, arts 3(1) and 7(1). Regarding this point, it should be noted that the Ministry of Public Security may designate some departments within its competence to import controlled drugs for the purpose of training and doing research on drug-related crimes. In such cases, those departments are exempted from the requirement of an authorization *Giaoy Chung Nhan Du Dieu Kien Hanh Nghe Duoc Tu Nhan* issued by the Ministry of Health. See Drug Trade Decree 2003, above n 57, arts 4(3) and 5(3).

It must be remembered that the Vietnamese Government continues to maintain a monopoly on the supply of addictive drugs. Thus, under the *Addictive Drug Control Regime 1999*, special permits to import addictive drugs are granted only to two state enterprises, namely Central Enterprise I (*Xi Nghiep Trung Uong I*) and Central Enterprise II (*Xi Nghiep Trung Uong II*).¹²⁶ Nevertheless, the Ministry of Health (PD) may authorize other state enterprises in each of Hanoi and Hochiminh City¹²⁷ to import the drugs that are required for local needs, but the authorizations must be in accordance with estimates confirmed by the PD.¹²⁸

Under Vietnamese regulations, while manufacture and international trade in controlled drugs are subjected to special permits, their wholesale trade and retail distribution are not. Enterprises and pharmacies that acquire general authorizations to engage in pharmaceutical wholesale trade and retail distribution are automatically entitled to conduct activities in relation to drugs of abuse. Nonetheless, they must submit their estimates to the PD and have to limit their trade within the estimates confirmed by this authority, i.e. the estimates control is applied instead of licensing.¹²⁹

Vietnamese Precursor Regime

Under the *Precursor Control Regime 2003*, enterprises involved in the manufacture of precursors are not required to obtain a special authorization but merely a general authorization to be involved in corresponding licit activities relating to chemicals.¹³⁰ The requirement for special permits is imposed only on their international trade for commercial purposes. The importation of precursors by manufacturing enterprises for their own manufacture is exempted from this control.¹³¹

¹²⁶ Addictive Drug Control Regime 1999, above n 51, art 6(1). Central Enterprise I is responsible for supplying addictive drugs, in accordance with estimates confirmed by the Pharmaceutical Department, to trading pharmaceutical enterprises, central hospitals and scientific institutions, including medical and pharmaceutical universities and colleges, located in the north of the country (i.e. north from Thua Thien Hue province). Central Enterprise II takes the same responsibility as that of the Central Enterprise I within the south of the country (i.e. south from Da Nang Province).

¹²⁷ Hanoi Capital and Hochiminh City are the two economic centres of Vietnam.

¹²⁸ Addictive Drug Control Regime 1999, above n 51, art 6(2).

¹²⁹ Addictive Drug Control Regime 1999, above n 51, art 8 and Psychotropic Drug Control Regime 2001, above n 62, art 8.

¹³⁰ Enterprises holding an authorization to trade in dangerous and toxic chemicals are also automatically authorized to be involved in trade in precursors. See Precursor Control Regime 2003, above n 61, arts 4(1) and 6.

¹³¹ Precursor Control Regime 2003, above n 61, art 8(2). Under Article 8(2)(d) of the *Precursor Control Regime 2003*, an authorization to engage in trading in dangerous and toxic chemicals issued

5.4.2.2 *Control under License of Establishments and Premises*

Under the *Private Medical and Pharmaceutical Practice Ordinance 2003* and *Circular 01/2004/TT-BYT guiding Private Medical and Pharmaceutical Practice 2004* (Circular guiding Private Medical and Pharmaceutical Practice 2004), establishments and premises in which the manufacture, wholesale trade and retail trade in pharmaceuticals take place have to satisfy a number of specified conditions to ensure the quality of pharmaceuticals, such as temperature and humidity of stocks.¹³² Establishments and premises engaged in varied activities relating to addictive and psychotropic drugs must also satisfy these general conditions.¹³³

Under the DCCs, as analyzed above, for the purpose of preventing theft or other drug diversions, Parties must additionally require each establishment and premises in which licit drug activities take place to obtain a special permit. It is a matter of regret that the national regulations of Vietnam omit to provide for security conditions as regards establishments and premises engaged in licit activities relating to drugs of abuse. This omission appears to be a major defect of the domestic framework. To cover this gap, security conditions for those establishments and premises need to be established.

5.5 *Control on Persons Involved in Licit Drug Activities*

5.5.1 *Control on Persons under the Drug Control Conventions*

Convention Narcotics Regime

Under the *1961 Convention*, Parties are under a general obligation to control persons involved in licit drug activities.¹³⁴ According to the official UN Commentary, the term ‘persons’ refers to

by the Ministry of Natural Resources and Environment or a Provincial Department of Natural Resources and Environment is a prerequisite of being granted an authorization to import and export precursors. As a consequence, international trade in precursors for commercial purposes is simultaneously subject to the licensing control of the two government authorities, namely the Ministry of Industries and the Ministry of Natural Resources and Environment. Nonetheless, the control of the Ministry of Natural Resources and Environment principally focuses on the aspect of protecting the environment and public health, whereas the control of the Ministry of Industries aims at preventing their diversion into illicit channels. See Ngoc Hung Dang, *Nhung Van De Kiem Soat Tien Chat Ma Tuy* (2002) 12 [trans: Ngoc Hung Dang, *Matters Concerning Precursor Control* (2002)].

¹³² Private Medical and Pharmaceutical Practice Ordinance 2003, above n 120, art 13(1) and Circular Guiding Private Medical and Pharmaceutical Practice 2004, above n 121, arts 46(1)(b), 47(1)(b),(d),(đ) and 48(2),(3).

¹³³ As mentioned above, authorizations to carry out manufacture, trade and distribution of pharmaceuticals are a prerequisite of being involved in corresponding activities relating to controlled drugs.

¹³⁴ 1961 Convention, above n 4, arts 29(2)(a), 30(1)(b)(i) and 31(3)(b).

all natural persons participating in drug activities, including owners or managers of firms, office workers, technicians, manual labourers and even duly authorized medical practitioners and scientists.¹³⁵ As the *1961 Convention* does not provide for any specific control to be applied, Parties are vested with wide discretion to interpret this obligation.¹³⁶

In a separate provision, Parties are additionally obliged to require all persons licensed for cultivation, manufacture, import, export, trade and distribution of drugs to obtain ‘adequate’ qualifications.¹³⁷ The term ‘adequate’, although, it has been criticized as ‘very vague’,¹³⁸ is used on purpose to leave some degree of discretion to Parties in determining specific requirements in the light of their own conditions. Some countries may require high standards of medical education and experience, whereas others may provide lesser requirements because of shortcomings in trained medical personnel.¹³⁹

Convention Psychotropics Regime

Similar to the *1961 Convention*, the Parties to the *1971 Convention* are obliged to control persons carrying on or engaged in licit drug activities.¹⁴⁰ Nonetheless, to prevent the extreme requirement of the *1961 Convention* to control *all* persons involved, the *1971 Convention* provides only for the control of ‘duly authorized’ persons. The additional phrase ‘duly authorized’ makes the convention requirement more practicable.¹⁴¹

Convention Precursor Regime

Unlike the *1961* and *1971 Conventions*, the *1988 Convention* provides merely that Parties may, at their option,

¹³⁵ 1961 UN Commentary, above n 4, 320 and 331.

¹³⁶ The 1961 UN Commentary recommends that Parties vest their competent authorities with legal authority to apply different control measures to persons engaged in licit drug activities, for example, periodical or unannounced inspections, and exclusion of drug-related suspects or convicted persons from participation in licit drug activities. However, these controls should be carried out in a ‘reasonable’ and ‘practical’ manner. For example, periodical inspections should not cause major disturbances to normal operations of enterprises and actual inspections of all enterprises and all related persons are not necessary, as they probably cause ‘a great deal of expense and work’. See 1961 UN Commentary, above n 4, 320 and Renborg, above n 34, 89.

¹³⁷ 1961 Convention, above n 4, art 34(a).

¹³⁸ 1961 UN Commentary, above n 4, 406.

¹³⁹ 1971 UN Commentary, above n 46, 180.

¹⁴⁰ 1971 Convention, above n 45, art 8(2)(a).

¹⁴¹ 1971 UN Commentary, above n 46, 172.

control persons engaged in manufacture and distribution of substances in Tables I and II.¹⁴²

5.5.2 Control on Persons Involved in Licit Drug Activities under Vietnamese Legislation

Vietnamese Addictive Drug and Psychotropic Drug Regimes Vietnamese legislation provides for several controls over persons involved in the manufacture, trade and distribution of drugs of abuse. First, they must meet all conditions prerequisite to being involved in pharmaceutical activities. Secondly, they must satisfy more stringent conditions to conduct activities relating to addictive and psychotropic drugs.

Under the *Law on Drugs 2005* and *Private Medical and Pharmaceutical Practice Ordinance 2003*, persons who hold the top managerial or technical position in pharmaceutical enterprises and pharmacies in Vietnam have to obtain an authorization issued by competent authorities that is called a *Private Medical and Pharmaceutical Practice Certificate*.¹⁴³ To be granted such an authorization, they must satisfy conditions concerning professional qualifications, working experience and moral standards.¹⁴⁴ Normally, they are required to have a university pharmaceutical diploma and five years' experience working in the pharmaceutical industry.¹⁴⁵ Due to the shortage of trained personnel in remote and under-developed areas, that requirement is downgraded to an intermediate pharmaceutical school diploma and two years' working experience.¹⁴⁶ Concerning moral standards, they are required to comply with professional ethics.¹⁴⁷ Unfortunately, there is no test for professional ethics and this requirement has little practical meaning. However, under the *Law on Drugs 2005*, criminals and persons who has been subject to

¹⁴² 1988 Convention, above n 43, art 12(8)(b)(i).

¹⁴³ That authorization is called *Chung Chi Hanh Nghe Y Duoc Tu Nhan* in Vietnamese language. See *Law on Drugs 2005*, above n 120, art 13(1) and *Private Medical and Pharmaceutical Practice Ordinance 2003*, above n 120, art 11.

¹⁴⁴ See, eg, *Law on Drugs 2005*, above n 120, art 13(1); *Private Medical and Pharmaceutical Practice Ordinance 2003*, above n 120, art 9 and, *Decree on Detailizing the Private Medical and Pharmaceutical Practice Ordinance 2003*, above n 123, art 5.

¹⁴⁵ *Circular Guiding Private Medical and Pharmaceutical Practice 2004*, above n 121, art 19(1).

¹⁴⁶ *Circular Guiding Private Medical and Pharmaceutical Practice 2004*, above n 121, art 19(2) and (4).

¹⁴⁷ *Law on Drugs 2005*, above n 120, art 13(1)(c) and *Decree on Detailizing the Private Medical and Pharmaceutical Practice Ordinance 2003*, above n 123, art 5(3).

administrative sanctions for breaching of the medical and pharmaceutical regulations are strictly prohibited from engaging in pharmaceutical activities.¹⁴⁸

The control of persons involved in the pharmaceutical industry in Vietnam extends to technical workers. Pursuant to the *Circular Guiding Private Medical and Pharmaceutical Practice 2004*, technical workers are required to have ‘adequate’ professional qualifications.¹⁴⁹ The term ‘adequate’ used in the language of the relevant provision apparently provides domestic manufacturers and traders with great flexibility. This probably originates from the fact that Vietnam still faces a shortage in qualified professionals.¹⁵⁰ Similar to the controls imposed on top managers, pharmaceutical enterprises are obliged not to employ persons who have been convicted of criminal offenses or are under administrative sanctions for breaching the medical and pharmaceutical regulations.¹⁵¹

In addition, persons involved in activities relating to drugs liable to abuse have to meet a number of more stringent controls. Pursuant to the *Addictive Drug Control Regime 1999*, persons who are responsible for processing addictive drugs must have, at the least, a university pharmaceutical diploma,¹⁵² as are persons who take part in their supply or distribution. Nonetheless, in regions suffering from a lack of qualified trained personnel, persons who have an intermediate pharmaceutical school diploma and a written authorization from the top managers of pharmacies may engage in the supply or distribution of those drugs. The validity of each of such authorization must be limited to a six-month period.¹⁵³

Built on the pattern of the *Addictive Drug Control Regime 1999*, the *Psychotropic Drug Control Regime 2001* requires that persons involved in psychotropic drug activities must have suitable professional qualifications. Nevertheless, its

¹⁴⁸ Law on Drugs 2005, above n 120, art 13(2).

¹⁴⁹ Circular Guiding Private Medical and Pharmaceutical Practice 2004, above n 121, art 7(1)(a).

¹⁵⁰ See, eg, Hung Thai Cao, 'Thuc Trang va Giai Phap Nang Cao Nang Luc, Hieu Qua Hoat Dong cua Co Quan Quan Ly Nha Nuoc ve Duoc' (2004) 2A *Luat Hoc* 5 art 7 [trans: Hung Thai Cao, 'The Current State and Proposals to Improve the Efficiency of the Operation of State Authorities on Drug Management' (2004) 2A *Drug Study* 5]. See also International Working Group on the Single Convention on Narcotic Drugs, *Report of the International Working Group on the Single Convention on Narcotic Drugs, 1961 - September 20 - 24, 1982* (1983) 10 and International Working Group on the Convention on Psychotropic Substances, *Report of the "International Working Group on the Convention on Psychotropic Substances, 1971" - September 8 -12, 1980* (1981) 16.

¹⁵¹ Circular Guiding Private Medical and Pharmaceutical Practice 2004, above n 121, art 7(1)(e).

¹⁵² Addictive Drug Control Regime 1999, above n 51, arts 3(2) and 6(7).

requirements are less stringent. Persons who are responsible for processing, supplying or distributing psychotropic drugs are only required to have, at the least, an intermediate pharmaceutical school diploma.¹⁵⁴ In regions that face a shortage of qualified trained personnel, persons who complete an official training course on pharmaceuticals and obtain a written authorization from the top managers of pharmacies may engage in drug supply or distribution.¹⁵⁵

Note that Vietnamese drug control legislation does not provide for inspections as a specific control over persons involved in drug activities. Inspection is solely an administrative measure to ensure the implementation of and adherence to the various laws and regulations as a whole. The PD, Provincial Departments of Health and Office of Health Inspectors within the competence of the Minister for Health are vested with legal authority to carry out periodical and occasional inspections of all enterprises and persons involved in the different licit drug activities.¹⁵⁶

Vietnamese Precursor Regime As this control is merely a recommendation under the *1988 Convention*, Vietnamese legislation does not provide for any specific control over persons involved in precursor activities.

5.6 Medical Prescriptions

5.6.1 Medical Prescriptions under the Drug Control Conventions

Control of retail sales of drugs of abuse to individual users is the final stage of drug supply control.¹⁵⁷ The objectives of the DCCs cannot be achieved if these drugs are easily obtained. Thus, to limit the use of drugs to exclusively medical and scientific purposes, the *1961* and *1971 Conventions* require their Parties to limit drug supply or dispensing to individuals to medical prescription.¹⁵⁸ For the purpose of proper

¹⁵³ Addictive Drug Control Regime 1999, above n 51, arts 6(7) and 10.

¹⁵⁴ Psychotropic Drug Control Regime 2001, above n 62, art 3(3).

¹⁵⁵ Psychotropic Drug Control Regime 2001, above n 62, art 6(5).

¹⁵⁶ Addictive Drug Control Regime 1999, above n 51, art 17 and Psychotropic Drug Control Regime 2001, above n 62, art 17.

¹⁵⁷ See Renborg, above n 34, 90.

¹⁵⁸ 1961 Convention, above n 4, art 30(2)(b) and 1971 Convention, above n 45, art 9(1). As the Convention does not prescribe in detail whether oral prescriptions are admitted, their interpretation varies from country to country. In some states, oral prescriptions are accepted in special circumstances, such as for emergency cases or for supply in small quantities. In those cases, the UN Commentaries suggest that pharmacists are to be obliged to maintain records of data that would have to be included in a written prescription. See 1961 UN Commentary, above n 4, 337 and 1971 UN Commentary, above n 46, 182-3.

control, a prescription needs to indicate clearly relevant persons, names and quantities of the prescribed drugs as well as directions for use.¹⁵⁹

Convention Narcotics Regime

The *1961 Convention* encourages its Parties to require prescriptions in respect of narcotic drugs in Schedule I to be made in the form of counterfoil books, officially issued by the Government.¹⁶⁰ For the purpose of proper control, a prescription needs to indicate clearly relevant persons, names and quantities of the prescribed drugs, and directions for use.¹⁶¹ The prescription control, however, is not mandatory for substances in Schedule II and exempted preparations in Schedule III. Duly authorized medical practitioners obtaining drugs for performing their therapeutic and scientific functions are also exempted from this measure.¹⁶²

Convention Psychotropics Regime

Similar to the *1961 Convention*, the *1971 Convention* requires its Parties to control by means of medical prescriptions the supply or dispensation of psychotropic substances, except for the acquisition of drugs by duly authorized medical practitioners.¹⁶³ The later Convention, however, does not make any express exemption in terms of different drug Schedules but allows its Parties individually to notify exemptions in the following two circumstances.¹⁶⁴ First, they are authorized to exempt entirely substances in Schedules II, III and IV that present ‘no or negligible risk of abuse’.¹⁶⁵ Secondly, to ensure the availability of drugs needed for medical use in residential areas facing a shortage of authorized physicians, such as remote mountain villages, islands or small counties, they are also entitled to exempt the retail trade of substances in Schedule III and IV from the requirement of medical prescriptions.¹⁶⁶ Such an exemption, however, has to be

¹⁵⁹ 1961 UN Commentary, above n 4, 337 and 1971 UN Commentary, above n 46, 183. See also Rexed et al, above n 115, 73-4.

¹⁶⁰ 1961 Convention, above n 4, art 30(2)(b)(ii). In practice, some countries provide medical practitioners with serially numbered and accountable prescription forms and require that each prescriber and dispensing pharmacist keep one copy of the prescription, the third copy to be sent to the drug administration. See Rexed et al, above n 115, 74. See also James R Cooper et al (eds), *Impact of Prescription Drug Diversion Control Systems on Medical Practice and Patient Care* (1992) 10.

¹⁶¹ 1961 UN Commentary, above n 4, 337 and 1971 UN Commentary, above n 46, 183. See also Rexed et al, above n 115, 73-4.

¹⁶² 1961 Convention, above n 4, art 30(2)(b) and 1971 Convention, above n 45, art 9(1).

¹⁶³ 1971 Convention, above n 45, art 9(1).

¹⁶⁴ 1971 UN Commentary, above n 46, 181.

¹⁶⁵ 1971 Convention, above n 45, art 3(2).

¹⁶⁶ 1971 Convention, above n 45, art 9(3). See also Rexed et al, above n 115, 73.

restricted to the specified drugs, small-prescribed quantities and exceptional cases.¹⁶⁷ In addition, it is required that only pharmacists and retail distributors who are specifically authorized to supply or to dispense exempted substances are able to do so.¹⁶⁸

5.6.2 Medical Prescriptions under Vietnamese Legislation

In line with the convention requirements, the supply of addictive and psychotropic drugs to individuals in Vietnam is subjected to the control of medical prescriptions. Under the *Law on Drugs 2005*, medical prescriptions are the legal basis for the supply of dependence-producing drugs to individuals. In other words, their retail sales without medical prescriptions are unlawful and strictly prohibited.¹⁶⁹

Under the *Control Regime on Medical Prescriptions promulgated by Decision 1847/2003/QĐ-BYT 2003*, medical prescriptions have to be made in writing and each must contain the name and full address of the patient, the name and signature of the prescriber, the non-proprietary name and quantities of the prescribed drugs and also directions for use.¹⁷⁰ Prescriptions for addictive drugs must be made in the form of counterfoil books of which each patient, prescriber and pharmacist must keep a copy.¹⁷¹ Prescriptions for psychotropic drugs are not required to be in this form but pharmacists must keep records on the quantities of drugs involved in each retail sale.¹⁷² For the purpose of control, the prescriptions are only valid for ten days from the date of issuance and can not be repeated.¹⁷³ The maximum amount of addictive drugs to be prescribed each time must be restricted to a seven-day treatment, while the amount of psychotropic drugs prescribed each time cannot exceed a ten-day treatment.¹⁷⁴ To further prevent the illegal repeating of prescriptions, pharmacists are

¹⁶⁷ 1971 Convention, above n 45, art 9(3). The phrase ‘exceptional cases’ does not refer to ‘emergency cases’. It is added for the purpose of emphasizing that ‘the supply of psychotropic substances without a medical prescription should not be treated as a normal activity’. See 1971 UN Commentary, above n 46, 190.

¹⁶⁸ 1971 Convention, above n 45, art 9(3). See also 1971 UN Commentary, above n 46, 189-90.

¹⁶⁹ Law on Drugs 2005, above n 120, art 46. See also *Quy Che Ke Don Thuoc va Ban Thuoc Theo Don ban hanh kem theo Quyet Dinh so 1847/2003/QĐ-BYT 2003* (Bo Y Te), arts 4(1),(2) and 15 [trans: *Control Regime for Medical Prescriptions, promulgated by Decision 1847/2003/QĐ-BYT 2003* (Ministry of Health)] (hereinafter *Control Regime for Medical Prescriptions 2003*).

¹⁷⁰ Control Regime for Medical Prescriptions 2003, above n 170, arts 5(1),(2) and 7.

¹⁷¹ Control Regime for Medical Prescriptions 2003, above n 170, arts 5(2) and 7(9).

¹⁷² Control Regime for Medical Prescriptions 2003, above n 170, art 5(1).

¹⁷³ Control Regime for Medical Prescriptions 2003, above n 170, art 12.

¹⁷⁴ Control Regime for Medical Prescriptions 2003, above n 170, art 8.

obliged to write down in the prescriptions the amount of drugs that have been actually sold to the patients.¹⁷⁵

Thus, the current national legal framework for the medical prescription control is satisfactory compared to the convention standards. This control, strengthened by the estimates system, has greatly contributed to Vietnamese success in limiting retail drug supply to exclusively medical purposes.

5.7 Label Warning

5.7.1 Label Warning under the Drug Control Conventions

Cautionary warnings on labels or packages containing drugs liable to abuse are of importance in protecting the health of communities. Thus, the *1961* and *1971 Conventions* prescribe certain mandatory and desirable controls on drug labels and packages.

Convention Narcotic Regime

Improper labeling of drugs possibly results in their misuse and serious health problems.¹⁷⁶ Therefore, Parties to the *1961 Convention* are bound to prescribe that drug labels offered for wholesale and retail sale must include the exact content by weight or by percentage.¹⁷⁷ Additionally, the introduction of different trade names rather than generic or chemical names may lead users to underestimate the risks of taking multiple doses of the same drug.¹⁷⁸ Thus, for safety reason, Parties are recommended to require drug labels to indicate ‘the international non-proprietary name communicated by the World Health Organization’.¹⁷⁹ This may be extended to other written documents used for commercial purposes, such as offers, advertisements or descriptive literature relating to drugs.¹⁸⁰ For further protection of community health, Parties are encouraged to

¹⁷⁵ Control Regime for Medical Prescriptions 2003, above n 170, art 19.

¹⁷⁶ See Rexed et al, above n 115, 66.

¹⁷⁷ 1961 Convention, above n 4, art 30(5). See also 1961 UN Commentary, above n 4, 345. The required information is meaningful not only for drug users but also for the implementation of the estimates system (Chatterjee, above n 4, 427). This control, however, is not mandatory with respect to the retail trade of narcotic drugs in Schedule II, exempted preparations in Schedule III, or drugs compounded in accordance with medical prescriptions. See 1961 Convention, above n 4, arts 2(2), (3) and 30(5).

¹⁷⁸ See House of Representatives Standing Committee on Community Affairs, *A Report on the Prescription and Supply of Drugs: Prescribed Health, Part I: Regulation and the Pharmaceutical Industry* (1992) 15.

¹⁷⁹ 1961 Convention, above n 4, art 30(3). See also Chatterjee, above n 4, 426-7.

¹⁸⁰ 1961 Convention, above n 4, art 30(3).

require interior wrappings of packages containing narcotic drugs to bear ‘a clearly visible double red band’.¹⁸¹ These easily recognized signs have been proved to facilitate the work of authorities in drug control. They also help to draw the attention of physicians as well as users to the dangers associated with prescribing or taking them.¹⁸² Nonetheless, the special signs can also attract the attention of illicit traffickers, bringing about greater risk of theft. Therefore, in contrast to interior wrappings, exterior wrappings of drug packages are not allowed to be marked with a visible double red band.¹⁸³

Convention Psychotropics Regime

From the above analysis, it can be seen that most of the measures to control the labels and packages on narcotic drugs are merely recommendatory. Thus, as a whole, the regulations of the *1961 Convention* on this subject are ‘soft’. In contrast, the labeling and packaging of psychotropic substances is subjected to several mandatory controls. Parties to the *1971 Convention* are obliged to require that leaflets accompanying retail packages containing drugs must indicate information necessary for the safety of users. Additionally, they must provide that directions for use, including cautionary warnings, be indicated on labels of psychotropic substances, if practicable.¹⁸⁴

5.7.2 Label Warning under Vietnamese Legislation

For the purpose of protecting public health, labels of both addictive and psychotropic drugs offered for sale in Vietnam must contain information specified in the relevant regulations.¹⁸⁵ Under the *Decree 80/2001/ND-CP guiding the Control of Domestic Licit Activities in relation to Narcotics 2001* (Decree on the Control of Domestic Licit Drug Activities 2001) and *Circular 14/2001/TT-BYT providing Guidance on the Labelling of Drugs and Cosmetics that Affect Human Health 2001*, the drug label

¹⁸¹ 1961 Convention, above n 4, art 30(4).

¹⁸² 1961 UN Commentary, above n 4, 343. In practice of some countries, the phrase ‘Prescription Only’ or ‘Supply Without Prescription Illegal’ are included in the label of those drugs. See, eg, House of Representatives Standing Committee on Community Affairs, above n 179, 17.

¹⁸³ 1961 Convention, above n 4, art 30(4).

¹⁸⁴ 1971 Convention, above n 45, art 10(1).

¹⁸⁵ Decree on the Control of Domestic Licit Drug Activities 2001, above n 124, art 11(1) and *Thong Tu so 14/2001/TT-BYT Huong Dan Ghi Nhan Thuoc va My Pham Anh Huong Truc Tiep toi Suc Khoe Con Nguoi 2001* (Bo Y Te) art 2(1),(4) [trans: *Circular 14/2001/TT-BYT providing Guidance on the Labelling of Drugs and Cosmetics that Affect Human Health 2001* (Ministry of Health)] (hereinafter *Circular on the Labeling of Drugs and Cosmetics that Affect Human Health 2001*).

must include the international non-proprietary name,¹⁸⁶ the content by weight or by percentage and other information necessary for the safety of users, such as therapeutic indications, contraindications, dosage and method of administration.¹⁸⁷ If the labels do not have enough space to indicate information required for the safety of users, the required information must be provided in leaflets accompanying the retail packages containing the drugs.¹⁸⁸ Moreover, to provide special warnings, the drug labels must include the phrase ‘Prescription Only’.¹⁸⁹ Thus, the Vietnamese national legislation in this field is in line with convention standards.

5.8 *Advertisement Limitation*

5.8.1 *Advertisement Limitation under the Drug Control Conventions*

Like improper labeling, dishonest advertisements of drugs liable to abuse can lead to misuse by the public. Moreover, illicit traffickers may take advantage of such advertising. Thus, the *1961* and *1971 Conventions* provide certain rules on drug advertising.

Convention Narcotics Regime

The provision on advertisements in the *1961 Convention* appears very simple and superficial. It is only ‘desirable’ that Parties require written or printed advertisements ‘of every kind’ (including advertisement to the public) relating to narcotic drugs to indicate ‘the international non-proprietary name communicated by the World Health Organization’.¹⁹⁰

Convention Psychotropic Regime

In contrast to the ‘soft’ rules of the narcotics regime, the *1971 Convention* provides that Parties must prohibit the advertisement of psychotropic substances to the public, if such prohibition is constitutionally possible.¹⁹¹ As drugs must be supplied to individual users only in conformity with medical prescriptions issued by duly authorized medical

¹⁸⁶ If a drug does not have an international non-proprietary name, a trade name may be used. See Circular on the Labeling of Drugs and Cosmetics that Affect Human Health 2001, above n 186, art 6.

¹⁸⁷ See Decree on the Control of Domestic Licit Drug Activities 2001, above n 124, art 11(1) and Circular on the Labeling of Drugs and Cosmetics that Affect Human Health 2001, above n 186, arts 6-12.

¹⁸⁸ Circular on the Labeling of Drugs and Cosmetics that Affect Human Health 2001, above n 186, art 10.

¹⁸⁹ Decree on the Control of Domestic Licit Drug Activities 2001, above n 124, art 11(1) and Circular on the Labeling of Drugs and Cosmetics that Affect Human Health 2001, above n 186, arts 6-12.

¹⁹⁰ 1961 Convention, above n 4, art 30(3).

¹⁹¹ 1971 Convention, above n 45, art 10(2).

practitioners, it is appropriate that the advertisement of those drugs to the public is fully prohibited. On this point, the provisions of the *1971 Convention* are, indeed, more progressive than those of the *1961 Convention*.

5.8.2 Advertisement Limitation under Vietnamese Legislation

Vietnamese drug control legislation does not provide any special regime on the advertisement of addictive and psychotropic drugs. Their advertisement is subjected to the same controls that are applied to all drugs to be supplied or dispensed under medical prescriptions. Pursuant to the *Law on Drugs 2005*, their advertisement to the public is strictly prohibited.¹⁹² Thus, the existing national regulations on limiting drug advertisement are more stringent than the general requirements of the *1961 Convention*. Noteworthy is that drug advertisement was prohibited over the whole territory of Vietnam before it became a Party to the DCCs. Pursuant to Article 6(4) of the *Decree 194/CP on Advertising Activities in the Territory of Vietnam 1994*, the advertisement of commodities that are restricted or prohibited from being involved in circulation is strictly forbidden.¹⁹³ As narcotic substances are restricted from circulation,¹⁹⁴ their advertisement is forbidden. This Decree was replaced by the *Ordinance 39/2001/UBTVQH10 on Advertisements 2001* which currently maintains that prohibition.¹⁹⁵

5.9 Record Keeping

5.9.1 Record Keeping under the Drug Control Conventions

Record keeping is a very important measure in drug control, as it is indispensable to the implementation of many other measures. First, in relation to the estimates and statistics systems, record keeping enables drug manufacturers, importers, exporters, traders and distributors to submit to competent authorities the data necessary to calculate national estimates and statistics.¹⁹⁶ Secondly, in connection with

¹⁹² Law on Drugs 2005, above n 120, art 53.

¹⁹³ *Nghi Dinh so 194/CP ve Hoat Dong Quang Cao tren Lanh Tho Viet Nam 1994* (Chinh Phu) art 6(1) [trans: *Decree 194/CP on Advertising Activities in the Territory of Vietnam 1994* (Government)].

¹⁹⁴ See *Nghi Quyet so 06/CP ve Tang Cuong Cong Tac Chi Dao Phong Chong Ma Tuy 1993* (Chinh Phu) art 1(c) [trans: *Resolution 06/BCT-TW on Enhancing Directions on Drug Prevention and Suppression 1996* (Government)].

¹⁹⁵ *Phap Lenh so 39/2001/UBTVQH10 ve Quang Cao 2001* (Uy Ban Thuong Vu Quoc Hoi) art 5(8) [trans: *Ordinance 39/2001/UBTVQH10 on Advertisement 2001* (Standing Committee of National Assembly)].

¹⁹⁶ See, eg, 1961 UN Commentary, above n 4, 409 and 1971 UN Commentary, above n 46, 197.

quantitative restrictions on drug activities, records are of importance for the supervisory authorities to discover whether related persons have actually limited their activities as required. Thirdly, in relation to prescriptions, the maintenance of records is a documentary proof of compliance. Thus, in general, record keeping enables competent authorities not only to examine the legitimacy of each drug transaction but also to discover the diversion of drugs into illicit channels through discrepancies between data recorded by relevant persons and enterprises involved in the flow of drugs.¹⁹⁷

Convention Narcotics Regime

Under the *1961 Convention*, Parties are to require government authorities, manufacturers, traders, scientists, scientific institutions and hospitals to keep records relating to narcotic drugs manufactured, acquired or disposed of.¹⁹⁸ Distributors involved in retail trade of preparations in Schedule III¹⁹⁹ and medical practitioners performing therapeutic functions,²⁰⁰ however, are exempted from this control.²⁰¹ It is for Parties to determine templates and details of forms of records to be kept in the light of their own circumstances and practices, but the quantity of drugs involved in each manufacture, acquisition and disposal of drugs must be recorded.²⁰² Those records must be kept for at least two years.²⁰³ That period of time is considered necessary for competent authorities to verify the accuracy of figures recorded.²⁰⁴

Convention Psychotropics Regime

Based on the pattern of the narcotics regime, Parties are bound to require manufacturers, traders, scientists, scientific institutions and hospitals to keep records relating to psychotropic substances manufactured, acquired or disposed of, for at least two years.²⁰⁵ They are also vested with discretion in specifying which records are to be kept. However, the

¹⁹⁷ 1961 UN Commentary, above n 4, 409 and 1971 UN Commentary, above n 46, 198.

¹⁹⁸ 1961 Convention, above n 4, art 34(b). See also 1961 UN Commentary, above n 4, 408-9.

¹⁹⁹ 1961 Convention, above n 4, art 2(4).

²⁰⁰ To remember that medical practitioners perform therapeutic functions when they supply or dispense drugs to their own patients or holders of animals they treat. See, eg, 1961 UN Commentary, above n 4, 333.

²⁰¹ However, medical practitioners are obliged to keep records of counterfoil books of prescriptions, if under domestic law counterfoil books are mandatory. See 1961 Convention, above n 4, art 34(b). See also 1961 UN Commentary, above n 4, 408.

²⁰² 1961 UN Commentary, above n 4, 410 and 413. See also Rexed et al, above n 115, 41.

²⁰³ 1961 Convention, above n 4, art 34(b).

²⁰⁴ See 1971 UN Commentary, above n 46, 212-3.

²⁰⁵ 1971 Convention, above n 45, art 11.

1971 Convention specifies in more detail key data to be recorded with respect to each drug Schedule. Noticeably, the most stringency is applied to substances in Schedule I, whereas the least stringent control is applicable to substances in Schedule IV. The divergences in degrees of control are designed to avoid imposing a heavy administrative burden in the implementation of record keeping.²⁰⁶

Convention Precursor Regime

The provisions on record keeping of the *1988 Convention* are very simple. Parties need only require that commercial documents, such as invoices, cargo manifests, customs, transport and other shipping documents, in relation to transactions of substances in Tables I and II be kept for a minimum period of two years and be made available for any inspection by competent supervisory authorities.²⁰⁷

5.9.2 Record Keeping under Vietnamese Legislation

As records are of great importance to drug management, all enterprises and persons involved in various licit drug activities in Vietnam are obliged to maintain a system of records for a minimum period of five years.²⁰⁸

Vietnamese Addictive Drug Regime

Pursuant to the *Addictive Drug Control Regime 1999*, manufacturers of addictive drugs must keep record books on each drug manufactured. Entries in those record books are specified in

²⁰⁶ See, eg, 1971 UN Commentary, above n 46, 202. In respect of psychotropic substances in Schedule I, all persons involved in their manufacture, trade and distribution (including medical practitioners and government authorities) are under an obligation to record the quantity of drugs manufactured and held in stock. Additionally, in relation to each acquisition and disposal, they must record data on the quantity of drugs acquired or disposed, date, and information on suppliers and recipients. The requirements in relation to psychotropic substances in Schedule II are basically the same as those applicable to substances in Schedule I, except that details of the quantity of drugs to be held in stock are not required and medical practitioners are not obliged to keep records of drugs used for therapeutic purposes. The manufacture, wholesale, import and export of psychotropic substances in Schedule III are subject to recording requirements similar to those applicable to substances in Schedule II. Detailed records of the quantity, date, supplier and recipient involved in each acquisition or disposal, however, are not mandatory with respect to their retail distribution. However, enough information on their acquisition and disposal must be made available for general inspections by competent authorities. The retail trade in psychotropic substances in Schedule IV is fully exempted from the requirement of record keeping. Their manufacture and international trade are only subject to records of the manufactured, imported and exported quantities. See 1971 Convention, above n 45, arts 7(e) and 11 and 1971 UN Commentary, above n 46, 200, 202 and 207.

²⁰⁷ 1988 Convention, above n 43, art 12(9)(e).

²⁰⁸ See Decree on the Control of Domestic Licit Drug Activities 2001, above n 124, art 13(1) and (2); Addictive Drug Control Regime 1999, above n 51, art 15(3) and Psychotropic Drug Control Regime 2001, above n 62, art 15(3).

Form *Number 4* issued by the Ministry of Health,²⁰⁹ under which quantities of drugs to be manufactured both by plan and in practice must be recorded because discrepancies between them may help to discover any diversion during the manufacturing process. Traders and distributors of addictive drugs are bound to keep records in accordance with Form *Number 5* (transaction list) and Form *Number 6* (quantities of drugs involved).²¹⁰ The crosscheck of those record books helps to disclose if there is any diversion in a particular drug and they are also important data sources for estimates and statistics.

Vietnamese Psychotropic Drug Regime

The psychotropic drug regime of record keeping bears substantial resemblances to the addictive drug regime. The language and forms under the *Psychotropic Drug Control Regime 2001* appear to be a copy of those under the *Addictive Drug Control Regime 1999*.²¹¹ Thus, under national legislation, both addictive and psychotropic drugs are subjected to the same stringent control of record keeping that corresponds well to the convention requirements.

Vietnamese Precursor Regime

The *Precursor Control Regime 2003* obliges all enterprises and persons involved in manufacture, trade, transportation and using of precursors to keep records on qualities and quantities of precursors.²¹² It, however, does not specify the detail for entries in various records and does not provide any form for recording. The lack of detailed regulations is a shortcoming of this instrument, because it can cause divergences in data-gathering and, as a consequence, does not allow cross-comparison. Moreover, the requirement to keep records on qualities of precursors seems to be inappropriate and impractical as applied to transporters because, in general, they cannot specify the specific quantities of the precursors to be transported.

²⁰⁹ Addictive Drug Control Regime 1999, above n 51, art 15(1).

²¹⁰ Manufacturers who carry out wholesale and retail trade in drugs they manufacture are also bound to keep records in accordance with Form *Numbers 5 and 6*. According to Form *Number 5*, the following information needs to be recorded: the name of a particular drug to which the record relates, the date of transactions relating to this drug, the reason for each transaction, the amount received or delivered, the total amount held in stock, and the serial number and date of related commercial documents. Pursuant to Form *Number 6*, names and full addresses of enterprises or persons involved in a specific transaction as well as names and quantities of drugs involved must be recorded. See Addictive Drug Control Regime 1999, above n 51, art 15(2).

²¹¹ Psychotropic Drug Control Regime 2001, above n 62, art 15(1) and (2).

²¹² Precursor Control Regime 2003, above n 61, art 14.

5.10 Conclusion

In summary, the DCCs have designed a very comprehensive system to control licit activities relating to dependence-producing drugs. Among various prescribed measures, quantitative restrictions underpin the narcotics regime, as the quantity of narcotics to be supplied and to be used within one country must be limited to that confirmed by the Board. Many measures applicable to psychotropic substances are built on the model of the narcotics regime. Therefore, numerous provisions of the *1971 Convention* bear a considerable resemblance (even in language) to the corresponding provisions of the *1961 Convention*. As a whole, the narcotics regime is the more stringent. The psychotropics regime is less stringent, as the estimates control is not required. The precursor regime is very ‘soft’, as most measures are merely recommendatory.

In compliance with the DCC provisions, Vietnam has brought licit drug activities within its territory under many convention-specified measures. The Vietnamese legal framework is sometimes stricter than the general convention requirements. For example, the cultivation of drug-producing plants is entirely prohibited in the whole territory of Vietnam. The advertisement of drugs of abuse to the public is expressly forbidden. Many mandatory measures are imposed on licit precursor activities in Vietnam, such as import and export authorizations and licensing control; in contrast, their controls under the *1988 Convention* are only optional. Figure 5.1 below provides a brief summary of the national application compared with international requirements.

Despite the successes mentioned already in convention implementation, the failure to establish several control measures over domestic licit drug activities, as set out under the DCCs, makes the national drug control regime of Vietnam not fully compliant with the convention standards.

First, to ensure strictly quantitative limitation, Parties to the *1961 Convention* are obliged to control under periodical license the manufacture of narcotic drugs. This mandatory measure, furthermore, enables Parties to adjust periodically the total quantity of drugs available in their country to avoid overstock. Unfortunately, Vietnamese domestic legislation has not yet established such a control measure.

Moreover, the omission to control quantities of narcotic substances that may be accumulated in the possession of manufacturers, traders and distributors during the course of their business is a major defect of the national laws and regulations on drug control. Because of those gaps, in comparison with international standards, the national quantitative control system is still inadequate. The opportunity to revise the existing regulations needs to be taken in order to bring domestic law in line with the convention provisions.

Figure 5.1 A Brief Summary of the National Controls of Licit Drug Activities

General convention requirements	Implementation by Vietnam	Comments on the Vietnamese compliance
1. Restrictions on drug-producing plant cultivation	Full prohibition	Satisfactory
2. Quantitative restrictions in drug production, manufacture, import/export and accumulation: <u>2.1 Narcotic drugs:</u> - quantitative restrictions in production - quantitative restrictions in manufacture: limiting the amount of drugs to be manufactured within the sum specified, periodical manufacturing licences - quantitative restrictions in importation: limiting the amount of drugs to be imported within the sum specified in the Convention, import authorization - quantitative restrictions in accumulation	- there is no narcotics production in Vietnam - estimates control of materials and Government monopoly of addictive drugs manufactured, no periodical licence control - estimates control and import authorization - nil	Generally satisfactory but some gaps exist - omission to apply periodical manufacturing licence - satisfactory - gap

<u>2.2 Psychotropic substances:</u> no specific calculating formula <u>2.3 Precursors:</u> no mandatory measures	- manufacture: estimates of materials, - import: estimates and import authorization estimates of precursor to be manufactured and imported, import authorization	- satisfactory (stricter than the minimum requirements of the <i>1971 Convention</i>) satisfactory (mandatory control)
3. Control of international trade: import/export authorizations <u>3.1 Narcotic drugs and psychotropic substances:</u> import/export authorizations <u>3.2 Precursors:</u> no mandatory requirements	import/export authorizations import/export authorizations	satisfactory satisfactory (mandatory control)
4. Licensing controls <u>3.1 Narcotic drugs and psychotropic substances:</u> - licensing control of activities - licensing control of establishments and premises <u>3.2 Precursors:</u> no mandatory requirements	- special permits - nil	- satisfactory - gap

	special permits to import precursors for commercial purposes	satisfactory
5. Controls of persons involved in drug activities:	specific requirements on qualifications, working experience and moral standards	satisfactory
6. Medical prescriptions	applied with more specific requirements	satisfactory
7. Label warning	information for the safety of users	satisfactory
8. Advertisement limitation	prohibition of advertisement to the public	satisfactory
9. Record keeping	applied to all phases of licit drug activities	generally satisfactory, being of nature framework

Secondly, the national drug control legislation omits to lay down security requirements as regards establishments and premises in which licit drug activities take place. This omission may provide circumstances for theft or other diversions of licit dependence-producing drugs into illicit channels. As control under license of premises involved in drug activities is mandatory under the DCCs, the national legislation in this field should specify safety requirements for establishments and premises involved in licit drug activities.

Thirdly, in respect of the control of international trade in drugs of abuse, it is necessary to mention that under the DCCs, Parties are generally required to prohibit the importation of drugs of abuse to bonded warehouses, unless the conditions of bonded warehouses are adequate to prevent thefts or diversions of stored drugs. Again, that recommendation should be taken into account. An examination of bonded warehouses should be carried out to find out whether they are sufficiently secure from theft or other diversions of drugs liable for abuse.

Additionally, not concerning DCC compliance but, rather, national controls on licit drug activities in general, a few weaknesses exist in domestic law. The existence of a confusing multitude of legal documents in this field has become a barrier to the implementation of and adherence to laws and regulations. The core national legislation in this field, i.e. *Decree on the Control of Domestic Licit Drug Activities 2001*, is largely a framework. Its practical implementation, consequently, has to rely mostly on numerous regulations made by different Ministries. To facilitate the work of drug control authorities as well as of enterprises and persons involved in licit drug economy, the various fragmented statutes in this field should be consolidated.

In respect of quantitative restrictions, the indirect control applicable to materials used in the manufacture of addictive and psychotropic drugs weakens drug supply control. As quantities of drugs possibly obtained from the same amount of materials may be varied by using different technologies, the current controls present a loophole for drug traffickers to divert licit manufactured drugs into illicit channels. To cover that shortcoming, quantitative restrictions should be placed directly on the amount of drugs to be manufactured. For that purpose, the *Addictive Drug Control Regime 1999* and *Psychotropic Drug Control Regime 2001* need to be amended. In addition,

another shortcoming of these instruments is the omission to provide a template form for estimates with respect to drug manufacture. To facilitate the estimating work of manufacturers and to help the competent authority to collect necessary data for nation-wide estimates, the *Addictive and Psychotropic Drug Control Regimes* should create a form that can be uniformly used for drug manufacture estimating.

Finally, existing Vietnamese regulations on the obligations of enterprises and persons to keep records of various transactions relating to precursors are merely a framework. Detailed guidance is needed, including data to be recorded. Specifically, for the purpose of practical application, the requirement for drug transporters to keep records on the qualities of precursors that have been transported should be removed.

6 CRIMINALIZATION OF DRUG-RELATED OFFENSES

6.1 Drug-Related Offenses

6.1.1 Overview

6.1.2 Supply-Related Offenses

6.1.2.1 Supply-Related Offenses under the 1961 Convention

6.1.2.2 Supply-Related Offenses under the 1971 Convention

6.1.2.3 Supply-Related Offenses under the 1988 Convention

6.1.2.4 Supply-Related Offenses under Vietnamese Legislation

6.1.3 Consumption-Related Offenses

6.1.3.1 Consumption-Related Offenses under the 1961 Convention

6.1.3.2 Consumption-Related Offenses under the 1971 Convention

6.1.3.3 Consumption-Related Offenses under the 1988 Convention

6.1.3.4 Consumption-Related Offenses under Vietnamese Legislation

6.1.4 Inchoate and Accessory Offenses

6.1.4.1 Inchoate and Accessory Offenses under the 1961 Convention

6.1.4.2 Inchoate and Accessory Offenses under the 1971 Convention

6.1.4.3 Inchoate and Accessory Offenses under the 1988 Convention

6.1.4.4 Inchoate and Accessory Offenses under Vietnamese Legislation

6.2 Penalties

6.2.1 Penalties under the UN Drug Control Conventions

6.2.1.1 Overview

6.2.1.2 Penalties under the 1961 Convention

6.2.1.2.1 Punishments and Alternative Measures

6.2.1.2.2 Aggravating Factors

6.2.1.3 Penalties under the 1971 Convention

6.2.1.3.1 Punishments and Alternative Measures

6.2.1.3.2 Aggravating Factors

6.2.1.4 Penalties under the 1988 Convention

6.2.1.4.1 Punishments and Alternative Measures

6.2.1.4.2 Aggravating Factors

6.2.2 Penalties under Vietnamese Legislation

6.2.2.3 Overview

6.2.2.4 Punishments and Alternative Measures

6.2.2.5 Aggravating Factors

6.3 Conclusion

In Chapter 5, one half of the two-fold international drug control mechanism, i.e. the control of licit drug activities, was examined. In the following Chapters, the other half, i.e. the control of illicit drug activities (or ‘penal control’), is analyzed, starting with the criminalization of drug-related offenses. Due to the importance of the subject, this Chapter is one of the central parts of this thesis.

Chapter 6 is structured in two parts. The first examines drug-related offenses, while the second focuses on penalties for them. Within each part, the study of the DCC provisions is followed by an analysis of Vietnamese criminal law as a specific case study concerning the criminalization of drug-related crimes under domestic law.

6.1 Drug-Related Offenses

6.1.1 Overview

To achieve the ultimate objective of limiting the use of drugs liable to abuse to medical and scientific needs, the DCCs oblige Parties, on the one hand, to monitor their licit drug economies, on the other hand, to suppress illicit drug activities through criminal laws. All three Conventions try to overcome differences existent in various domestic criminal laws to create certain degrees of uniformity in

criminalizing drug-related offense.¹ Interestingly, each of them has taken a different formula.

The *1961 Convention* prescribes a list of specific forms of offenses that Parties have to criminalize within the bounds of their constitutional limitations. To avoid any gaps that may exist in the enumerative list,² it additionally provides ‘a sweeping clause’ requiring them to treat as criminal offenses ‘any other action’ that may, in their opinion, be ‘contrary’ to the Convention’s provisions.³ This added clause makes the list of proscribed conduct non-exhaustive. Its approach can be summarized as follows:

Specific list of criminal conduct + general formula

Unlike the *1961 Convention*, the *1971 Convention* does not provide a list of specific criminal offenses. It provides only a general formula requiring that each Party treats ‘any action’ contrary to a law or regulation adopted in pursuance of its obligations under this Convention as a criminal offense.⁴ Thus, it leaves Parties with great discretion to define specific types of drug-related offenses. Consequently, it produces ‘little international standardization’ in the drug-related criminalization.⁵

General formula

In comparison with a general formula, the specific list of offenses creates more harmony among varying national criminal laws.⁶ Therefore, to strengthen international cooperation in the suppression of illicit drug trafficking that became particularly serious in the 1980s,⁷ the *1988 Convention*, similar to the *1961*

¹ In this Thesis, the terms ‘offense’ and ‘crime’ are used synonymously. The phrase ‘drug-related offenses’, rather than ‘drug offenses’ is selectively used by the writer because the range of offenses that falls under the cover of the DCCs is broad, i.e. not only conduct that directly relates to drugs but also money laundering and other forms of conduct relating to equipment and tools involved in the illicit drug traffic and also because that term is officially used in the *Criminal Code of Vietnam 1999*.

² See United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961* (1973) 427.

³ See *Single Convention on Narcotic Drugs*, opened for signature 30 March 1961, art 36(1)(a) (entered into force 13 December 1964).

⁴ See *Convention on Psychotropic Substances*, opened for signature 21 February 1971, art 22(1)(a) (entered into force 16 August 1976).

⁵ See Neil Boister, *Penal Aspects of the UN Drug Conventions* (2001) 73.

⁶ Ibid.

⁷ See Joanne Greig, ‘Combating Money Laundering’ (1997) 8(3) *Criminal Law Forum* 485, 487 and Duncan E Alford, ‘Anti-Money Laundering Regulations: A Burden on Financial Institutions’ (1994) 19 *International Law & Commercial Regulation* 437, 441-2 and Philip S Russel, ‘Money Laundering: A Global Challenge’ (2004) 5 *American Academy of Business* 259, 261.

Convention, provides a list of specific offenses to be criminalized. However, in contrast to the *1961 Convention*, it does not include a sweeping catch-all clause but provides a closed list of criminal offenses. Its approach can be briefly described as follows:

Specific list of criminal conduct

In comparison with the earlier Conventions, the *1988 Convention* takes an innovative step towards the criminalization of drug-related offenses. It criminalizes varying new forms of drug-related conduct to attack different angles of illicit traffic, especially related money laundering.⁸ Additionally, it establishes a number of mandatory offenses that Parties are not allowed to refuse to criminalize regardless of their constitutional limitations. As a result, this Convention should produce the greatest uniformity in the area of criminalizing drug-related offenses.

Although seeking to impose a certain degree of uniformity in the criminalization of illicit drug activities, the three Conventions do not attempt to define substantive criminal offenses themselves. Offenses enumerated under the DCCs are merely varying ‘key words’.⁹ The detailed definition of their elements is left to contracting Parties. For this reason, the DCC provisions are not ‘self-executing’. Drug-related offenses must be defined, prosecuted and punished in conformity with domestic laws of the Parties.¹⁰ This view reflects the ‘classic pattern’ of international law that regards it as not directly applicable to individuals.¹¹

To facilitate the analysis of drug-related offenses under the DCCs, they are grouped here into three categories, namely supply-related offenses, consumption-related offenses, and inchoate and accessory offenses. It is important to note that the *1961*

⁸ The *1988 Convention* is the first multilateral instrument dealing with money-laundering offenses. See, eg, Alford, above n 7, 441; Greig, above n 7, 487; Russel, above n 7, 261 and United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988: Done at Vienna on 20 December 1988* (1998) 65.

⁹ According to Boister, the ‘offenses’ listed under the UN DCCs are merely ‘terms’ used to require the Parties to combat certain criminal conduct. See Boister, above n 5, 71-2. According to Chatterjee, drug-related offenses under the international conventions are only different ‘verbs’. See S D Chatterjee, *Legal Aspects of International Drug Control* (1981) 173.

¹⁰ *1961 Convention*, above n 3, art 36(4); the *1971 Convention*, above n 4, art 22(5) and *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988, art 3(11) (entered into force 11 November 1990).

and *1971 Conventions*, however, do not explicitly require Parties to criminalize consumption-related offenses. (This issue is discussed in Sections 6.1.3.1 and 6.1.3.2 below.)

6.1.2 Supply-Related Offenses

6.1.2.1 Supply-Related Offenses under the 1961 Convention

Article 36(1)(a) of the *1961 Convention* (as amended) provides a list of traditional drug-related offenses that were previously enumerated under Article 2(a) of the *Geneva Convention on the Suppression of Illicit Traffic in Dangerous Drugs 1936*. Those offenses include the following forms of conduct:

- (i) the cultivation of opium poppy, cannabis plant and coca bush¹²
- (ii) the production, manufacture, extraction and preparation of drugs
- (iii) the possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs.¹³

The listed conduct is to be criminalized in national law only when ‘contrary to the provisions of this Convention’.¹⁴ In other words, the Convention’s provisions are used as standards against which the unlawfulness of the offenses is determined.¹⁵ The phrase ‘contrary to the provisions of this Convention [the 1961 Convention]’ used in the wording of Article 36(1)(a) has been criticized for being not strictly technically appropriate.¹⁶ The convention provisions, in general, regulate the obligations of Parties but ‘do not in themselves prohibit any conduct by an individual or group of

¹¹ See Wilhelm Henrichs, 'Problems of Competence in International Law with regard to the Punishment of Narcotic Drug Offenses and the Extradition of Narcotic Offenses' (1960) (1) *Bulletin on Narcotics* 1 <http://www.unodc.org/unodc/en/bulletin/bulletin_1960-01-01_1_page002.html>.

¹² Article 36(1)(a) only uses the general term ‘cultivation’ and does not explicitly indicate the types of plants that fall under its ambit, but pursuant to Article 1(1)(i), the term ‘cultivation’ used in the Convention acquires the specific meaning of ‘the cultivation of opium poppy, coca bush and cannabis plant’. See 1961 Convention, above n 3, art 1(1)(i).

¹³ 1961 Convention, above n 3, art 36(1) (i.e. the amended 1961 Convention, art 36(1)(a)).

¹⁴ 1961 Convention, above n 3, art 36(1) (i.e. the amended 1961 Convention, art 36(1)(a)).

¹⁵ See 1988 UN Commentary, above n 8, 51. The *1961 Convention* provides a framework for the control of licit drug activities, viz. limiting production, manufacture, international and domestic trade in drugs for legitimate medical and scientific purposes (see Chapter 5). Therefore, to define the unlawfulness of drug-related offenses, it is necessary to contrast them with the requirements of licit drug activities, such as manufacture of drugs without license or purchase of drugs without authorized medical prescriptions and so on. According to Boister, in order to decide ‘what is unlawful supply and so forth Parties must first, using the rest of the Convention for guidance, define what is lawful supply’. See Boister, above n 5, 75.

¹⁶ See Boister, above n 5, 76.

individuals'.¹⁷ Drug-related offenses committed by individuals or corporations, therefore, must be defined against the domestic laws and regulations that transform the convention provisions. Thus, subsequently, the corresponding phrase under Article 22(1)(a) of the *1971 Convention* was revised as follows: 'contrary to a law or regulation adopted in pursuance of [the Party's] obligations under this Convention'.¹⁸ Additionally, it is worth noting that the *1961 Convention* obliges Parties to incriminate only conduct committed 'intentionally'.¹⁹ It does not require for the criminalization of illicit drug activities that are not knowingly perpetrated.²⁰

It is observed that the Parties to the *1961 Convention* are vested with a wide range of discretion in implementing their criminalization responsibilities. First, they are not obliged to treat illicit drug activities as criminal offenses if their constitutional principles do not allow them to do so. The opening safeguard clause, 'subject to its constitutional limitations', which is included for the purpose of harmonizing differences among various legal systems and of promoting easier acceptance of the Convention,²¹ makes the whole penal provisions of this Convention 'soft' in nature.²² Secondly, as mentioned above, the *1961 Convention* only provides some 'key words' concerning different forms of conduct to be criminalized and Parties are entirely left with the interpretation of those terms and with the description of the elements of substantive offenses.²³ Thirdly, in addition to the list of proscribed conduct, Parties can treat as criminal offenses 'any other action' that is contrary to the Convention's provisions.²⁴

¹⁷ 1988 UN Commentary, above n 8, 52.

¹⁸ 1971 Convention, above n 4, art 22(1)(a).

¹⁹ 1961 Convention, above n 3, art 36(1) (i.e. the amended 1961 Convention, art 36(1)(a)).

²⁰ The mental requirements of an offense are left to be defined within domestic criminal laws. See 1961 UN Commentary, above n 2, 85.

²¹ That safeguard clause is inserted into the penal provisions of the *1961 Convention* for the purpose of encouraging the wide acceptance of the Convention, against the background that the previous *1936 Convention on the Suppression of Illicit Traffic of Dangerous Drugs* was not widely accepted. See, eg, 1961 UN Commentary, above n 2, 426 and Chatterjee, above n 9, 434.

²² See Alford, above n 7, 443.

²³ The official UN Commentary on the *1961 Convention* provides explanations of varying terms used in the Convention. However, those explanations are only served as guidelines for Parties in shaping their domestic laws.

²⁴ Differences between various domestic legal systems in relation to criminalization of other actions may lead to difficulties in inter-state cooperation in extradition and mutual legal assistance due to the lack of dual criminality. See Boister, above n 5, 85.

6.1.2.2 *Supply-Related Offenses under the 1971 Convention*

As earlier mentioned, taking a very generalized approach, the *1971 Convention* does not provide a specific list of criminal offenses but requires Parties to criminalize ‘any action’ contrary to their domestic laws and regulations that give effect to the Convention. Thus, it vests Parties with full discretion to proscribe specific forms of drug-related criminal conduct, including supply-related offenses. This approach, on the one hand, provides Parties with the broadest room to accommodate varying principles and notions in their criminal laws and, on the other hand, potentially leads to the situation in which specific conduct to be criminalized in one country might not be established as a crime in others. The resulting lack of ‘dual criminality’ may obstruct international cooperation in extradition and mutual legal assistance.

The criminality of drug-related offenses is defined as being ‘contrary’ to national laws and regulations of a Party ‘adopted in pursuance of its obligations under this Convention [the 1971 Convention]’.²⁵ In other words, domestic laws and regulations in relation to the control of licit drug activities serve as standards against which the unlawfulness of drug-related offenses is determined. Similar to Article 36(1)(a) of the *1961 Convention* (as amended), Article 22(1)(a) of the *1971 Convention* provides Parties with the safeguard of constitutional limitations as regards their criminalization obligation and only requires the criminalization of offenses that are committed with intention.²⁶

6.1.2.3 *Supply-Related Offenses under the 1988 Convention*

As the *1988 Convention* provides for certain offenses that Parties are not allowed to refuse to criminalize, supply-related offenses under this Convention can be categorized into two groups, i.e. mandatory offenses and offenses subjected to constitutional principles and basic concepts of domestic legal systems (see Figure 6.1 below).

²⁵ 1971 Convention, above n 4, art 22(1)(a).

²⁶ 1971 Convention, above n 4, art 22(1)(a).

Figure 6.1 Supply-Related Offenses under the 1988 Convention

Mandatory offenses	Offenses subjected to constitutional principles, basic concepts of national legal systems
<ul style="list-style-type: none"> - Traditional trafficking offenses listed under Article 3(1)(a)(i),(ii) and (iii) - Manufacture, transport or distribution of equipment, materials or of precursors and essential chemicals, knowing that they are to be used in or for the illicit cultivation, production or manufacture of controlled substances (Article 3(1)(a)(iv)) - Organization, management or financing of drug-related offenses (Article 3(1)(a)(v)) - Money-laundering offenses (Article 3(1)(b)) 	<ul style="list-style-type: none"> - Possession of equipment, materials or of precursors and essential chemicals, knowing that they are to be used in or for the illicit cultivation, production or manufacture of controlled substances (Article 3(1)(c)(ii)) - Acquisition, possession or use of property, knowing at the time of receipt that such property was derived from drug-related offenses (Article 3(1)(c)(i))

Following the general rule of the earlier Conventions, the *1988 Convention* only requires Parties to criminalize conduct committed intentionally. The question of definition and ambit of the ‘intention’ are left to domestic laws.²⁷

6.1.2.3.1 Mandatory Offenses

As the United Nations Secretariat did not recognize any constitutional limitations that might possibly obstruct Parties from criminalizing various forms of illicit drug trafficking conduct,²⁸ the *1988 Convention* creates the following mandatory offenses.

Traditional offenses under Article 3(1)(a)(i), (ii) and (iii) The first category of mandatory offenses under the *1988 Convention* may be called ‘traditional offenses’ because it is composed of various forms of conduct that were previously listed under Article 36(1)(a) of the *1961 Convention*.²⁹ Noteworthy is that only offenses concerning the cultivation of drug-producing plants³⁰ for the purpose of producing narcotic drugs contrary to the *1961 Convention* and the *Amended 1961*

²⁷ The Convention, however, further explains that the mental state of the accused, i.e. knowledge, intent or purpose of the conduct in question, can be ‘inferred from objective actual circumstances’. See 1988 Convention, above n 10, art 3(3).

²⁸ 1961 UN Commentary, above n 2, 429; 1971 UN Commentary, above n 25, 353 and 1988 UN Commentary, above n 8, 50.

²⁹ Bassiouni uses this term when describing varying forms of drug-related offenses that is defined as ‘illicit traffic’. See Cherif M Bassiouni, ‘International Drug Control System’ in Bassiouni M C (ed), *International Criminal Law* (1999) vol 1, 905, 928.

³⁰ Those plants are opium poppy, coca bush and cannabis plants.

Convention are established as mandatory offenses.³¹ Similarly, Parties only have a strict obligation to punish the possession or purchase of drugs for the purpose of committing a trafficking offense listed under Article 3(1)(a)(i).³² The criminalization of drug cultivation and possession exclusively for personal consumption is not mandatory, but subject to the Parties' constitutional principles and to the basic concepts of their domestic legal systems.³³

The illicit nature of the conduct in question is defined as being 'contrary to the provisions of the 1961 Convention, the Amended 1961 Convention or the 1971 Convention'.³⁴ Thus, the *1988 Convention* makes an express reference to the earlier Conventions for defining the unlawfulness of the listed conduct and, by this technique, it is 'integrated without contradiction into the existing international drug control system'.³⁵

Offenses of manufacturing, transporting or distributing equipment, materials or precursors and essential chemicals, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances under Article 3(1)(a)(iv) This type of offense is an innovative feature of the *1988 Convention*. The criminalization of conduct relating to equipment, materials and substances imperative to illicit drug production and manufacture provides law enforcement authorities with a necessary tool to attack an important link in the illicit drug trafficking chain. These offenses amount to preparatory acts of illicit drug production and manufacture.³⁶ They require that criminals, when manufacturing, transporting or distributing equipment, materials, precursors or essential chemicals, must have known those objects are 'to be used in or for the illicit production or manufacture of narcotic drugs or psychotropic

³¹ 1988 Convention, above n 10, art 3(1)(a)(ii).

³² 1988 Convention, above n 10, art 3(1)(a)(iii).

³³ 1988 Convention, above n 10, art 3(2).

³⁴ 1988 Convention, above n 10, art 3(1)(a)(i).

³⁵ See Boister, above n 5, 100. A shortcoming is that the penal provisions of the *1988 Convention* follow the pattern of the *1961 Convention* in contrasting the illicit nature of criminal offenses directly with the international provisions, therefore, being not strictly technically appropriate.

³⁶ In their nature, they are only a specific type of inchoate offense under Article 3(1)(c)(iv). Nonetheless, the criminalization of these offenses is mandatory. In contrast, the criminalization of other forms of inchoate and accessory offenses under Article 3(1)(c)(iv) is not mandatory. See Boister, above n 5, 105.

substances’.³⁷ In other words, prior knowledge of the illicit purpose for which the objects are manufactured, transported or distributed is a requirement concerning the mental state of criminals.

Offenses of the organization, management or financing of any of the abovementioned offenses (Article 3(1)(a)(v)) Under the earlier Conventions, Parties are required to criminalize ‘financial operations’ in connection with drug-related offenses within the bounds of their constitutional limitations. The *1988 Convention* continues that principle but strengthens it by establishing a mandatory offense. Additionally, as the organization and management are of importance for illicit drug trafficking to operate on a large scale and in an organized manner, the Convention establishes these types of conduct as mandatory offenses to combat the leadership of drug trafficking groups.³⁸ It should be noted that the offenses of organization, management or financing of drug-related offenses are accessory in their nature, however, the *1988 Convention* does not treat them as other forms of accessory offenses (see Section 6.1.4.3 for analysis of accessory offenses).³⁹

Money laundering offenses under Article 3(1)(b) Illicit drug trafficking is a business that is highly lucrative.⁴⁰ Laundering ill-gotten gains therefore has become an essential part of drug trafficking.⁴¹ In an innovative approach to fight the financial power of drug traffickers,⁴² the *1988 Convention* obliges Parties to criminalize two types of money laundering conduct, namely ‘the conversion or transfer of property’ derived from trafficking offenses for the purpose of concealing or disguising its illicit origin or of assisting any person to evade the legal consequences of his criminal actions and ‘the concealment or disguise of the true nature, source, location,

³⁷ 1988 Convention, above n 10, art 3(1)(a)(iv).

³⁸ See 1988 UN Commentary, above n 8, 58. According to Boister, Article 3(1)(a)(iv) appears ‘to view the illicit traffic as a monolithic structure with a clearly defined leadership, when in fact it may operate as a chain of connected small-scale cells’. See Boister, above n 5, 107.

³⁹ According to Boister, the discussed offenses are accessory in their nature, because they depend on other drug trafficking offenses. Thus, they also fall under the scope of inchoate offenses and complicity under Article 3(1)(c)(iv). Nonetheless, the criminalization of other forms of inchoate and accessory offenses listed under the Article 3(1)(c)(iv) is not mandatory. See Boister, above n 5, 107.

⁴⁰ See, eg, Russel, above n 7, 259 and Bassiouni, above n 29, 926.

⁴¹ See Alford, above n 7, 439.

⁴² See Bassiouni, above n 29, 927.

disposition, movement, rights with respect to, or ownership of property’ derived from trafficking offenses.⁴³

In addition to the general rule of intention, money laundering offenses require some special mental state on the part of the offenders. First, they must have prior knowledge of the illicit source of the property, viz. they must have known that the property in question was derived from an offense enumerated under Article 3(1)(a) or an act of participation in such an offense. Secondly, offenders must have committed the proscribed conduct for specific laundering purposes, viz. to conceal or to disguise the illicit origin of the relevant property or to assist ‘any person’ in that purpose.⁴⁴

6.1.2.3.2 Offenses subjected to the Constitutional Principles and Basic Concepts of Domestic Legal Systems

Although trying to impose uniformity in criminalizing drug-related offenses, the *1988 Convention* takes into account differences between various criminal legal systems. To overcome difficulties faced by some Parties in criminalizing certain types of offenses⁴⁵ and to dampen controversy among them as regards the nature of

⁴³ 1988 Convention, above n 10, art 3(1)(b). Although Article 3(1)(b) deals with two types of money laundering offenses specified under separate subparagraphs (i.e. conversion or transfer and concealment or disguise), there are some overlaps between them. ‘Transfer’ generally refers to the movement of the property from one person or one place to another without changing the state of the property and, ‘conversion’ under this subparagraph refers to the change of the state of the property (see 1988 UN Commentary, above n 8, 64 and Boister, above n 5, 110). Thus, the concealment and disguise of the location, source or ownership of the property under sub-paragraph (ii) of Article 3(1)(b) appear to encompass the ‘transfer’ of the property prescribed under sub-paragraph (i) of that Article and, the concealment and disguise of the true nature or the disposition of the property under sub-paragraph (ii) of Article 3(1)(b) cover the ‘conversion’ of the property under sub-paragraph (i) of that Article. The term ‘location’ refers to ‘the site or place where the trafficking derived property is located’ and the term ‘source’ includes ‘the origin of the property in trafficking or its physical origin’ (see 1988 UN Commentary, above n 8, 64). The term ‘true nature’ of the property may refer to the ‘essential quality of the property’ and the term ‘disposition’ may be interpreted as ‘the transfer, alienation or giving up of the property’ (see Boister, above n 5, 111). According to the 1988 UN Commentary, at 64, ‘any conversion or transfer of property may have the effect of concealing or disguising the origins of the property’.

⁴⁴ See 1988 UN Commentary, above n 8, 64. In practice, under the criminal laws of some states, a person who commits the predicate offense cannot be criminally responsible for laundering the fraudulent proceeds derived from that offense, while in other countries, the offender who launders proceeds derived from his predicate trafficking offense is criminally liable for the commission of two crimes, i.e. the predicate trafficking offense and the money laundering offense (see Boister, above n 5, 108-9). In recent practice, Parties punish money laundering offenses that take place in their countries, even when the drug trafficking offenses from which the fraudulent property was derived were committed in other countries. See 1988 UN Commentary, above n 8, 63.

⁴⁵ For example, some legal systems are not familiar with the criminalization of the offense of conspiracy. See 1988 UN Commentary, above n 8, 72.

some criminalized conduct,⁴⁶ it provides a range of offenses that are subject to constitutional principles and basic concepts of legal systems of the Parties.

The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offense or offenses established in accordance with Article 3(1)(a) or from an act of participation in such offense or offenses (Article 3(1)(c)(i))

This type of offense is newly introduced into the international drug control system under the *1988 Convention*. It requires that the offenders have acknowledged the illicit source of the property at the time they received it, i.e. *bona fide* receivers of the property are not subjected to criminal liability. The term ‘acquisition’ may refer to ‘taking possession’.⁴⁷ With that interpretation, the ‘acquisition’ covers the meaning of ‘possession’ and ‘use’, and therefore, the later terms are not necessary. Nonetheless, it is explained that the offense may become known because ‘the offender is to be found in possession of, or to be using, the goods; but proof that he or she acquired the goods with the relevant knowledge will itself be sufficient to establish an offense’.⁴⁸

The possession of equipment, materials or of precursors and essential chemicals, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances (Article 3(1)(c)(ii))

It is noteworthy that the manufacture, transport and distribution of equipment, materials or precursors and essential chemicals for illicit trafficking are mandatory offenses. In contrast, the criminalization of the possession of those objects is not mandatory. This offense requires that offenders know that the objects in question are intended for illicit drug trafficking. But that knowledge need not necessarily exist at the time the offenders receive the objects. It may be formed later in the course of possessing them, viz. *bona fide* receivers of the objects may later attract criminal liability. Due to controversy regarding the criminalization of *bona fide* receivers of the property, the criminalization of this offense is left to the

⁴⁶ An example of such conduct is the possession of the equipment and materials to be used in illicit traffic. See Boister, above n 5, 120.

⁴⁷ See 1988 UN Commentary, above n 8, 73.

⁴⁸ Ibid.

discretion of the Parties in accordance with their constitutional principles and the basic concepts of their legal systems.⁴⁹

6.1.2.4 Supply-Related Offenses under Vietnamese Legislation

The *Criminal Code of Vietnam 1999* (CCV 1999)⁵⁰ has one separate chapter entitled ‘Drug-Related Crimes’ that deals with drug-related criminal offenses. This Chapter, nonetheless, does not address the laundering of proceeds generated from drug-related crimes. Under the CCV 1999, a single money laundering offense is created to deal with fraudulent proceeds from all crimes.⁵¹

Drug-related crimes under the CCV 1999 are neither fiscal nor political offenses. Their illicit nature is defined as being contrary to Vietnamese drug control laws and regulations and, therefore, also infringements of the government drug control regime.⁵² Almost all Vietnamese drug-related offenses must be committed with intention. Pursuant to Article 9 of the CCV 1999, intention exists in two forms, i.e. direct intention and indirect intention. The concepts of ‘*direct intention*’ and ‘*indirect intention*’ under Vietnamese criminal law correspond to ‘actual intention’ and ‘constructive intention’ in some criminal legal systems.⁵³ In Vietnamese domestic

⁴⁹ 1988 UN Commentary, above n 8, 74.

⁵⁰ The *Criminal Code of Vietnam* is the only Vietnamese legislation that defines crimes and punishments. Other laws, including the *Law 29/2001/QH10 on Customs 2001* and the *Law 23/2000/QH10 on Narcotics Prevention and Suppression 2000*, do not address criminal issues. Vietnamese legislation, as a whole, is characterized by the main features of European civil law. Therefore, judicial precedents are not a feature of the legal system. Nevertheless, the People’s Supreme Court sitting in Council can issue resolutions that have binding effect for lower courts. In addition, the Ministry of Interior (Ministry of Public Security today), People’s Supreme Court and People’s Supreme Procuracy can enact joint circulars to guide the implementation of the *Criminal Code*. See the text at Section 2.4 for cross-reference.

⁵¹ Under the 1988 Convention, Parties are only obliged to criminalize the laundering of proceeds derived from drug trafficking offenses. In practice, if an offender is involved in many criminal offenses, it is difficult to prove which particular proceeds are derived from drug-related offenses. For that reason, it is recommended that the Parties extend the laundering offense to ‘an all-crimes basis’ (1988 UN Commentary, above n 8, 66). Thus, Vietnam is one of the countries that follow this pattern.

⁵² See Ngoc Hoa Nguyen (ed), *Giao Trinh Luat Hinh Su Viet Nam* (2001) 491-2 [trans: Ngoc Hoa Nguyen (ed), *Textbook on the Criminal Law of Vietnam* (2001)]. See also Van Luyen Tran, *Trach Nhiem Hinh Su doi voi cac Toi Pham ve Ma Tuy* (1998) 42 [trans: Van Luyen Tran, *Criminal Liability for Drug-Related Crimes* (1998)].

⁵³ A person commits a crime with *direct intention* when that person foresees that his or her conduct is harmful and prohibited and that a certain result will follow his or her conduct and, nevertheless, he or she commits the conduct for the purpose of bringing that result about. A person commits a crime with *indirect intention* when that person foresees that his or her conduct is harmful and prohibited and that a certain result will follow his or her conduct but he or she commits the conduct without the purpose of bringing that result about but with the acceptance of its occurrence. For example, murder is a crime committed with direct intention. Manslaughter is a crime committed with indirect intention. See *Bo*

law, drug-related offenses can also be committed unintentionally, i.e. when a person foresees that his or her conduct is risk-producing but, in his or her perception, the risk is not likely to occur or can be prevented⁵⁴ or that person does not foresee that his or her conduct is risk-producing although he or she should have foreseen that risk (viz. an ordinary person in his or her ‘shoes’ will foresee the possibility of that risk).⁵⁵

In the discussions below, the physical and mental elements of the Vietnamese standard supply-related offenses are examined.⁵⁶ At the outset, it should be noted that the *CCV 1999* criminalizes various supply-related offenses set out under the *1988 Convention* but substantially restructures them. It combines several distinct convention offenses into single Vietnamese offenses. In addition, it establishes some offenses which deal with both drug trafficking and personal consumption. In the following paragraphs, drug-supply related offenses under the *CCV 1999* are analyzed, including these offenses.

Cultivating opium poppy or other kinds of plants bearing narcotic substances (Article 192) This offense targets the cultivation of plants from which narcotic substances may be obtained, such as opium poppy, coca bush and cannabis plant.⁵⁷ The term ‘cultivating’ is not defined, leaving the courts a broad power to elaborate it. Generally, cultivating is seen as an activity which begins with the preparation of the soil before planting of seeds and stretches to harvesting of the plant. The commission of a part of that process, such as harvesting of opium fruits, is sufficient to be convicted of this offense.⁵⁸ In practice, a person who is not actually involved in cultivating activities but hires other persons to cultivate the prohibited

Luat Hình Sự Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam năm 1999 (Quoc Hoi) art 9(1) and (2) [trans: *Criminal Code of Vietnam 1999* (National Assembly)] (hereinafter *CCV 1999*).

⁵⁴ *CCV 1999*, above n 53, art 10(1).

⁵⁵ *CCV 1999*, above n 53, art 10(2).

⁵⁶ The term ‘standard offense’ refers to the offense committed without aggravating factors and is subject to the basic penal scale. Several ascending penal scales are designed for aggravated offenses.

⁵⁷ The fact that opium poppy is specifically listed reflects the strong focus of Vietnamese lawmakers on the fight against the tradition of opium cultivation by ethnic populations. See Van Que Dinh, *Binh Luan Khoa Học Bộ Luật Hình Sự Phan Các Tôí Phạm: Các Tôí Phạm về Ma Túy* (2004) 22 [trans: Van Que Dinh, *Commentary on Specific Types of Crimes in the Second Part of the Criminal Code 1999: Drug-Related Crimes* (2004)].

⁵⁸ See Van Que Dinh, above n 57, 26 and Minh Huong Tran, *Tim Hieu Bộ Luật Hình Sự Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam: Binh Luan va Chu Giai* (2002) 346 [trans: Minh Huong Tran, *Studying the Criminal Code of Vietnam: Comments and Annotations* (2002)].

plants is also caught by this offense.⁵⁹ This crime is committed with direct intention, i.e. a cultivator knows his or her activities are prohibited. It also requires that the specific purpose of the cultivators is to obtain the controlled substances for either drug trafficking or personal consumption or both. The cultivation of prohibited plants merely for enjoying the beauty of their flowers is not an offense.⁶⁰ The mental state of the accused is inferred from the circumstances surrounding the commission of the offense and also from statements made by the offender.⁶¹

The cultivation of drug-producing plants is strictly prohibited in Vietnam. However, due to the fact that the cultivation of opium poppy has long been a tradition of ethnic populations and even their subsistence,⁶² criminal liability is only imposed on a person who has relapsed into the cultivation after he or she has been the subject of several non-custodial measures, including official education, financial and technical support for alternative cultivation and the imposition of a fine or warning, i.e. having a record of administrative sanction.⁶³ Pursuant to the *Ordinance on Administrative Sanctions 2002*, the record of administrative sanctions is expunged after one year, counting from the date the sanction was imposed.⁶⁴ Thus, it can be very difficult to prosecute cultivators of drug-producing plants. For instance, a person who was subject to an administrative sanction at an early stage of the previous crop may be involved in the next crop without threat of being punished because of the cleaning of his or her record.⁶⁵ As a result, it appears that habitual cultivators are provided with a gateway to escape from prosecution and punishment.

⁵⁹ See Minh Huong Tran, above n 58, 348.

⁶⁰ But in those cases, a cultivator is imposed administrative sanctions, because the cultivation of the plants in question is strictly prohibited. See Van Que Dinh, above n 57, 26.

⁶¹ See *Bo Luat To Tung Hinh Su cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2003* (Quoc Hoi) art 6 [trans: *Criminal Procedure Code of Vietnam 2003* (National Assembly)].

⁶² See Section 3.2 for cross-reference. See also Chung Luu Uong, 'Phap Luat va Chinh Sach Hinh Su trong Dau Tranh Phong Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998), 34 [trans: Chung Luu Uong, 'Law and Criminal Policy in the Combat against Narcotics in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

⁶³ CCV 1999, above n 53, art 192(1).

⁶⁴ See *Phap Lenh so 44/2002/PL-UBTVQH10 Xu Ly Vi Pham Hanh Chinh 2002* (Uy Ban Thuong Vu Quoc Hoi) art 11(1) [trans: *Ordinance 44/2002/PL-UBTVQH10 on Administrative Sanctions 2002* (National Assembly)].

⁶⁵ In the northern mountainous areas of Vietnam, opium poppy is cultivated in only one crop per year. Therefore, the sanction that was imposed for cultivation of the previous crop will be expunged when the next crop comes. See Van Hoa Do, *Xac Dinh Mo Hinh Co Cau Cay Trong Thich Hop Tren Dat Doc Vung Cao Mien Nui Phia Bac Gop Phan Bo Sung Cac Giai Phap cho Chuong Trinh Thay The*

Unlawful manufacturing of narcotic substances (Article 193) The exhaustive list of narcotic substances involved in this offense is provided in the *Drug Schedule Decree 2001* and its revisions. These were analyzed above in Section 4.2.2, where it was pointed out that in Vietnam's nomenclature 'narcotic substances' includes both narcotic drugs under the *1961 Convention* and psychotropic substances under the *1971 Convention*. The term 'manufacturing' is broadly defined, covering all activities from which the controlled substances are obtained. For example, separating or extracting them from natural plant products, transforming their status, collecting them from their mixtures, refining or compounding them.⁶⁶ The Vietnamese offense of unlawful manufacture of narcotic substances encompasses various distinct forms of criminal conduct listed under the *1961* and *1988 Conventions*, namely 'production', 'extraction', 'preparation' and 'manufacture'. The amount of drugs manufactured is immaterial to the conviction but is relevant to sentencing, i.e. the larger the amount of drugs manufactured, the harsher the punishment imposed.⁶⁷

This offense must be committed with direct intention, i.e. the offender knows that he or she has been involved in the illicit manufacture and foresees that his or her

Cay Thuoc Phien (D Phil thesis, Vien Khoa Hoc Ky Thuat Nong Nghiep Vietnam, 1996) 65 [trans: Van Hoa Do, *Finding a Suitable Cultivation Structure for Northern Mountainous and Upland Areas as a Contribution to the Opium Poppy Alternatives Program* (D Phil Thesis, Technical Agriculture Institution, 1996)]; Quang Vinh Vu, *Hoat Dong Phong Ngua cac Toi Pham ve Ma Tuy cua Luc Luong Canh Sat Nhan Dan* (D Phil thesis, Hoc Vien Canh Sat Nhan Dan, 2003) 138-9 [trans: Quang Vinh Vu, *People's Police and Drug-Related Crime Prevention* (D Phil Thesis, Police Institution, 2003)] and Quang Vinh Vu, 'Hoan Thien He Thong Phap Luat co Lien Quan den Cong Tac Phong, Chong Toi Pham ve Ma Tuy' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002), 9 [trans: Quang Vinh Vu, 'Improving the Legal Framework for Narcotics Suppression and Prevention' (Paper presented at the Law-enforcement in Drug Control and Several Issues of Improving the Legal Framework for Drug Control, Hanoi, 2002)].

⁶⁶ See *Thong Tu Lien Tich so 01/TTLT/TANDTC/VKSNDTC/BNV Huong Dan Ap Dung Bo Luat Hinh Su 1985, Sua Doi Bo Sung nam 1997, 1998* (Toa An Nhan Dan Toi Cao, Vien Kiem Sat Nhan Dan Toi Cao, Bo Noi Vu) pt B(II)(2)(a) [trans: *Joint Circular 01/TTLT/TANDTC/VKSNDTC/BNV Guiding the Application of the 1985 Criminal Code, amended in 1997, 1998* (People's Supreme Court, People's Supreme Procuracy and Ministry of Interior)] (hereinafter JC 1998). See Van Que Dinh, above n 57, 42-3, Van Luyen Tran, above n 52, 49-50 and Ngoc Hoa Nguyen, above n 52, 497-8. The terms 'production', 'preparation', 'extraction' and 'manufacture' under the Vietnamese criminal law have similar meanings as defined under the DCCs. For the definitions of those terms, see 1961 Convention, above n 3, art 1(1)(t) and (n) and 1961 UN Commentary, above n 2, 53-4.

⁶⁷ CCV 1999, above n 53, arts 193(1),(2)(e), 3(c) and 4(d).

conduct is harmful to society but has intentionally acted against the law.⁶⁸ The purpose of drug manufacturing is immaterial to the conviction of this offense that is a criminal may manufacture narcotic substances for illicit trafficking or for personal consumption or for both purposes.

Unlawful stockpiling, transporting, trading or appropriating narcotic substances (Article 194); unlawful stockpiling, transporting, trading or appropriating precursors to be used for the illicit manufacture of narcotic substances (Article 195) and unlawful manufacturing, stockpiling, transporting, trading or appropriating equipment or tools to be used for the illicit manufacture of narcotic substances or for the illegal use of narcotic substances (Article 196):

Articles 194, 195 and 196 of the *CCV 1999* deal with three distinct crimes that differ in targeted objects (viz. narcotic substances, precursors, equipment and tools to be used for illicit drug manufacture or illegal drug use) but otherwise have a similar *actus reus*. The statutory list of narcotic substances and precursors⁶⁹ is specified under *Drug Schedule Decree 2001* and its revisions. Pursuant to the *Joint Circular 01/TTLT/TANDTC/VKSNDTC/BNV guiding the Application of the 1985 Criminal Code, amended in 1997, 1998* (JC 1998), ‘equipment’ and ‘tools’ are things ‘that have been produced specifically for illicit drug manufacture or unlawful drug use or that have been produced for everyday use but have been involved in illicit drug manufacture or unlawful drug use’.⁷⁰ Given that meaning, things that are used in everyday life, such as pots, syringes or smoking pipes can also be equipment and tools.⁷¹ The manufacturing, stockpiling and trading of those things, however, are not criminal offenses, unless for illegal purposes. (The mental element of the offenses is analyzed below.)

Each of the offenses in question includes several forms of criminal conduct, the execution of one of which is sufficient to be convicted of the crime.

⁶⁸ See, eg, Ngoc Hoa Nguyen, above n 52, 498.

⁶⁹ The list of precursors is also provided in *Drug Schedule Decree 2001* and its revisions. It is worth remembering that the term ‘precursors’ under Vietnamese law covers both precursors and essential chemicals under the *1988 Convention*. See Section 4.2.3 for cross-reference.

⁷⁰ See JC 1998, above n 66, pt B(II)(1)(c). Although this joint circular was enacted for the purpose of providing guidance on the implementation of the previous Criminal Code of Vietnam 1985, it is still in effect.

⁷¹ Pots are used for distilling cannabis resin. See Van Luyen Tran, above n 52, 73.

‘Stockpiling’ refers to the actual physical control of the objects or the power and intention to later take control over them. Thus, locations of the stockpiled objects are immaterial to the conviction, so that knowledge and control of the objects at a distance attracts criminal liability.⁷² ‘Stockpiling’ under the *CCV 1999* encompasses the offenses of drug ‘possession’ and ‘acquisition’ under the DCCs.⁷³

‘Transporting’ refers to the carrying or moving of the objects in question by any means from one location to another, including cross-border moving or dispatching them for international shipment.⁷⁴ The carriage of drugs in human bodies (e.g. swallowing narcotic drugs) in order to move them from one place to another is also included in this offense.⁷⁵ Thus, the Vietnamese crime of transporting narcotic substances corresponds to various drug-related offenses listed under the *1961* and *1988 Conventions*, including ‘delivery on any terms whatever’, ‘dispatch’ and ‘dispatch in transit’ and ‘transport’.⁷⁶

Pursuant to the *CCV 1999*, the quantity of substances is immaterial to the conviction of unlawful drug stockpiling or transporting offenses. However, the *JC 1998* states that the stockpiling or transporting of narcotic substances in less than the minimum amount specified in that instrument is not subject to criminal liability, for example, not less than 0.1 gram of heroin or cocaine, 2 grams of other narcotic substances in solid form or 1 gram of opium resin.⁷⁷ This Circular has been criticized as contradictory to the provisions of the *CCV 1999* but, on the other hand, it is considered necessary for practical law enforcement as well as to protect persons who merely stockpile or transport a very minor amount of drugs for personal consumption.⁷⁸ It is this author’s contention that the specification in question is necessary because an omission to specify the threshold quantity of drugs to constitute

⁷² JC 1998, above n 66, pt B(II)(2)(b). See Van Que Dinh, above n 57, 86, Van Luyen Tran, above n 52, 55 and Minh Huong Tran, above n 58, 361.

⁷³ The official UN Commentaries provide explanations on the meaning of the mentioned terms. For example, see 1988 UN Commentary, above n 8, 74 and 1971 UN Commentary, above n 25, 351.

⁷⁴ The cross-border transportation of the objects in question establishes an aggravating offense that entails harsher punishments. *CCV 1999*, above n 53, arts 194(2)(d), 195(2)(e) and 196(2)(e).

⁷⁵ JC 1998, above n 66, pt B(II)(2)(c). See also Ngoc Hoa Nguyen, above n 52, 500 and Van Luyen Tran, above n 52, 59.

⁷⁶ See the explanation of those terms in the official UN Commentary on the 1988 Convention at 55-6.

⁷⁷ See JC 1998, above n 66, pt B(II)(4)(b).

⁷⁸ See Van Que Dinh, above n 57, 89 and Van Hien Nguyen, ‘Mot So Van De ve Trach Nhiem Hinh Su doi voi cac Toi Pham Ma Tuy theo Phap Luat Viet Nam tu 1945 den nay’ (1998) 3 *Toa An Nhan*

the offense may lead to a situation where a person detected in the course of carrying a drug home is inevitably imprisoned. In contrast, that person may escape criminal punishment if detected while actually using that drug because a person who illegally uses narcotic substances is not convicted of the offense, unless he or she has been educated by local governments many times and compulsory treatment has been imposed.⁷⁹ To ensure fair and consistent prosecution for stockpiling and transporting and to avoid any argument regarding the legal base of the *JC 1998*, it is necessary that the *CCV 1999* directly address the minimum quantity of narcotic substances involved to be criminally liable.

The *actus reus* of the offense of unlawful ‘trading’ in narcotic substances, precursors or equipment and tools for illicit drug manufacture broadly covers national and international,⁸⁰ wholesale and retail selling, and purchasing/buying and exchanging them.⁸¹ The acts of middlemen or negotiators on behalf of others to make bargains or contracts as accessory participators in trade are also covered by this offense. Consequently, the Vietnamese offense of unlawful trading in narcotic substances meets the requirements of the DCCs to criminalize the ‘sale’, ‘distribution’ and ‘brokerage’ of drugs. But, some confusion exists as to whether the Vietnamese offense also addresses the convention requirements to criminalize ‘offering’ and ‘offering for sale’. It is arguable that those activities solely amount to acts preparatory to trade⁸² and are, therefore, only criminalized in Vietnamese law when the circumstances are sufficient to amount to a serious offense.⁸³ To create consistency, further explanation and guidance is necessary.

Dan 11, 14-5 [trans: Van Hien Nguyen, 'Some Issues on Criminal Liability for Drug-Related Crimes under Vietnamese Law and Regulations since 1945 to the Present' (1998) 3 *People's Court* 11].

⁷⁹ *CCV 1999*, above n 53, art 199(1).

⁸⁰ Similar to the cross-border transportation of the objects, their international trade constitutes an aggravating offense and therefore are subjected to higher penalties.

⁸¹ See *Thong Tu Lien Tich so 02/TTLT/TANDTC/VKSNDTC/BNV Huong Dan Ap Dung Mot so Quy Dinh tai Chuong VIIA 'Cac Toi Pham ve Ma Tuy' cua Bo Luat Hinh Su 1985, 1998* (Toa An Nhan Dan Toi Cao, Vien Kiem Sat Nhan Dan Toi Cao, Bo Noi Vu) art 1 [trans: *Joint Circular guiding the Application of Chapter VIIA titled 'Drug-Related Crimes' of the Criminal Code 1985, 1998* (People's Supreme Court, People's Supreme Procuracy and Ministry of Interior)] (hereinafter *JC 1998* on Chapter VIIA). See also Ngoc Hoa Nguyen, above n 52, 501 and Van Luyen Tran, above n 52, 63.

⁸² See Van Luyen Tran, above n 52, 63.

⁸³ Under the *CCV 1999*, preparation to commit only a very serious or particularly serious offense is subject to punishment. See also Section 6.1.4.4 for an analysis of the offense of the preparation of a crime.

As for the crimes of stockpiling and transporting narcotic substances, the *CCV 1999* does not prescribe a minimum quantity for trading to attract criminal liability. However, in relation to trading, nor does the *JC 1998*. Thus, all trade in narcotic substances is punishable. This may result in the situation where a person who is detected in the course of trading in a minor amount of a narcotic substance faces an unavoidable criminal charge, whereas he or she may be exempted from such a charge only because the detection has taken place during the course of the stockpiling or transporting of that drug.

‘Appropriating’ involves all forms of unlawful taking or removing of the objects that are under the control of another, such as by theft, robbery or fraud.⁸⁴ Noteworthy is that the DCCs do not require Parties to criminalize this form of conduct.

The ‘manufacturing’ of equipment or tools to be used in illicit drug manufacture or drug consumption covers all activities that produce those things. It covers also the repairing of existing things so that they can properly function for the intended purposes.⁸⁵

All offenses in question are crimes of direct intention. At the time of executing the proscribed conduct, the criminals must have known the existence and nature of the objects in question. The physical control of things without knowing they are narcotic substances or precursors cannot lead to a conviction for unlawful stockpiling. Similarly, a person cannot be convicted for unlawfully appropriating narcotic substances or precursors if he or she has not specifically sought to obtain those

⁸⁴ See *JC 1998*, above n 66, pt B(II)(2)(d). See also Van Que Dinh, above n 57, 97 and Ngoc Hoa Nguyen, above n 52, 501. Pursuant to Articles 133, 138 and 139 of the *CCV 1999*, ‘theft’ is the unlawful taking or removing of things that are under the control of another in a secret manner; ‘robbery’ is the unlawful taking or removing of things that are under the control of another with violence (i.e. physical force) or the immediate threat of violence; and ‘fraud’ is the unlawful taking or removing of things that are under the control of another by deception.

⁸⁵ See Ngoc Hoa Nguyen, above n 52, 507. A person who prepares tools for himself or herself for unauthorized drug consumption may be simultaneously charged with two crimes, i.e. unlawful manufacture of tools to be used for illicit drug use and unlawful drug consumption. It has been argued that this can result in double jeopardy because preparing suitable tools is merely a necessary step in the drug use process (see Van Que Dinh, above n 57, 172). Under the *Joint Circular guiding the Application of Chapter VIIA of the 1985 Criminal Code, 1998*, a person who is involved in the manufacture of equipment or tools for personal illicit drug use for the first time is exempted from criminal liability but subjected to administrative sanctions. Penalties are imposed if a person has perpetrated the manufacture after being fined or warned. See *JC 1998* on Chapter VIIA, above n 81, art 7(b).

substances.⁸⁶ In relation to unlawful stockpiling, transporting and trading in precursors, the offenders must have prior knowledge that they are to be used for illicit manufacture of narcotic substances. As regards the offense relating to equipment or tools, they must have known that those things are to be used for one of the two purposes, i.e. for illicit manufacture of narcotic substances or for their illegal use. Nonetheless, whether the purpose was trafficking or personal consumption is immaterial.

It is worth mentioning that, in the previous *Criminal Code of Vietnam 1985* (CCV 1985), unlawful stockpiling, transporting and trading in narcotic substances were distinct offenses. The penalties applicable for stockpiling and transporting illicit narcotic substances were less severe than penalties imposed on trading. In practice, as most cases involved arrests made during the course of drug transportation, criminals were able to deny possession of those drugs for trading.⁸⁷ To facilitate the prosecution as well as to ensure fairness, the *CCV 1999* combined those separate offenses and imposed the same penalties on them (i.e. the current combined offence is 'Unlawful stockpiling, transporting, trading or appropriating narcotic substances').

The Vietnamese offenses discussed above correspond to various supply-related offenses listed under Article 3(1)(a)(i),(iii),(iv) of the *1988 Convention*. Unfortunately, it is a matter of regret that the *CCV 1999* omits to establish the unlawful manufacture of precursors that are to be used in illicit drug manufacture as a crime. This omission makes the Vietnamese criminalization of drug-related offenses not fully in line with Article 1(iv) of that Convention.

Breaching of the regulations on management and use of addictive drugs or other narcotic substances (Article 201): This is a special crime because it only applies to those who are authorized to conduct or to control licit drug activities but

⁸⁶ A person who appropriates the belongings of others for money but later discovers those belongings contain narcotic substances is not criminally responsible for the offense of unlawful appropriation of narcotic substances. Nonetheless, if after becoming aware of the presence of narcotic substances in the appropriated belongings, that person continues to possess them, he or she may be accused of unlawful stockpiling of narcotic substances. A person who intends to appropriate narcotic substances but later discovers that the substances have been appropriated are not narcotics can still be punished for the discussed offense. See, eg, Van Que Dinh, above n 57, 97-8 and Ngoc Hoa Nguyen, above n 52, 502.

⁸⁷ See Thi Thoa Le, 'Ban ve Dinh Toi Danh doi voi Mot So Toi Pham ve Ma Tuy theo Quy Dinh cua Bo Luat Hinh Su nam 1999' (2004) 9 *Tap Chi Kiem Sat* 38, 39 [trans: Thi Thoa Le, 'Some Discussions

who then breach drug control regulations.⁸⁸ There is currently no statutory guidance on the physical and mental elements for this offense. Therefore, the courts have a broad power to interpret it. It is seen as covering a wide range of conduct, such as selling or distributing drugs without medical prescriptions or in amounts greater than prescribed; storing drugs in breach of safety standards thereby leading to their loss; and, importing, manufacturing or trading in drugs in quantities more than authorized.⁸⁹ It is argued that this offense differs from unlawful manufacturing of narcotic substances and unlawful stockpiling, transporting and trading in narcotic substances because of both the special identity of the offenders and the required mental element. Whereas this offense encompasses lack of intention, the others require direct intention.⁹⁰ Nonetheless, there is still an inconsistency regarding the mental element of this offense.⁹¹ Thus, to avoid ambiguity, official guidelines are needed.⁹²

Money-Laundering Offenses (Article 251)

‘Legalizing money or property generated from a crime’ is an offense that was newly inserted under the *CCV 1999* to address the laundering of money or other types of proceeds derived from any offense, including drug-related crimes. Although the term ‘laundering’ is not used, this offense corresponds to money laundering offenses in domestic legal systems of other countries.⁹³ It involves activities that integrate illegally obtained money or property into legitimate assets *through financial and/or banking operations, or through other business and investigation transactions* that obscure their true source.⁹⁴ This is an offense of direct intention. The offenders know that they engage in prohibited conduct and foresee and intend the result that will follow. Additionally, they must have prior knowledge of the illicit source of money and

on Determining the Type of Drug-Related Crimes under the Criminal Code 1999’ (2004) 9 *Procuracy’s Journal* 38].

⁸⁸ See Van Luyen Tran, above n 52, 92; Van Que Dinh, above n 57, 295 and Ngoc Hoa Nguyen, above n 52, 515.

⁸⁹ See Van Luyen Tran, above n 52, 92 and Van Que Dinh, above n 57, 302.

⁹⁰ See Van Que Dinh, above n 57, 305.

⁹¹ There is, on the other hand, an argument that the offense in question can only be committed with intention (see Ngoc Hoa Nguyen, above n 52, 515). Other more compromised views argue that the offense in question can be committed either with intention or without intention. See Van Luyen Tran, above n 52, 92 and Minh Huong Tran, above n 58, 379.

⁹² It should be noted that in practice, the number of prosecutions of the offense in question is relatively minor (see Van Que Dinh, above n 57, 18). Probably, due to that fact the official guidance has not been provided.

⁹³ See Ngoc Hoa Nguyen, above n 52, 566.

property involved.⁹⁵ A person who launders money or property derived from his or her commission of a crime can also be convicted of this offense. Thus, in general, the Vietnamese offense of legalizing money or property generated from the commission of a crime corresponds to the money laundering offense under Article 3(1)(b) of the *1988 Convention*.

Haboring or consuming illicit property that others obtained from the commission of a crime (Article 250)

It is worth mentioning that under the *CCV 1999*, hiding, possessing or using property generated from the commission of a crime is subjected to a distinct offense that is titled ‘Haboring or consuming illicit property that others obtained from the commission of a crime’.⁹⁶ In marked contrast to the money laundering offense, a person who uses or sells property derived from an offense committed by himself or herself is not convicted of this offense. ‘Haboring’ is seen as allowing the offender who committed an offense to hide or as assisting in hiding ill-gotten property (i.e. to put it in a place that it cannot be seen or found). ‘Consuming illicit property’ covers various forms of conduct, including buying (or exchanging) the ill-gotten property for personal use, or for re-selling it for profit, or assisting the criminal in selling it.⁹⁷ This offense is executed with intention and offenders must have knowledge of the illicit source of the property at the time of they receive it. This Vietnamese crime appears to correspond to the offense of acquisition, possession or use of property, knowing at the time of receipt that such property was derived from drug-related offense under Article 3(1)(c)(i) of the *1988 Convention*. The Vietnamese offense, however, is wider in terms of the forms of conduct that fall under its ambit.

6.1.3 Consumption-Related Offenses

6.1.3.1 Consumption-Related Offenses under the 1961 Convention

While enumerating varying forms of drug-related conduct that Parties are obliged to criminalize within the bounds of their constitutional limitations, the *1961 Convention* does not clearly state whether it requires them to criminalize conduct committed

⁹⁴ CCV 1999, above n 53, art 251(1).

⁹⁵ See, eg, Huu Thanh Nguyen, 'Ve Hanh Vi "Rua Tien" theo Quy Dinh cua Phap Luat Hinh Su Viet Nam' (2001) 6 *Luat Hoc* 36, 37-9 [trans: Huu Thanh Nguyen, 'Discussion on "Money Laundering Activities" under Vietnamese Criminal Law' (2001) 6 *Law Study* 36].

⁹⁶ CCV 1999, above n 53, art 250.

⁹⁷ See, eg, Ngoc Hoa Nguyen, above n 52, 565.

exclusively in respect of personal consumption. In other words, this Convention is silent on the criminalization of consumption-related offenses. Among varying enumerated forms of illicit conduct which Parties are bound to criminalize, 'possession' is included, whereas, 'use' and 'consumption' of narcotic drugs are not,⁹⁸ raising a question whether Parties are bound to criminalize the 'possession' of drugs for personal consumption.

Pursuant to the strict construction of the language used in Article 36(1)(a) of the *1961 Convention* (as amended), Parties have to criminalize all drug possession. However, from the way the Convention is drafted, it is widely understood that Parties are not obliged to criminalize the possession of drugs exclusively for personal consumption,⁹⁹ because the penal provisions of this Convention are principally intended to fight illicit trafficking.¹⁰⁰ Parties, nonetheless, are not prevented from criminalizing conduct related to personal consumption.

6.1.3.2 Consumption-Related Offenses under the 1971 Convention

Similar to the *1961 Convention*, the *1971 Convention* does not explicitly state whether it requires Parties to criminalize conduct in respect of psychotropic substances undertaken exclusively for personal consumption. As the penal provisions under the *1971 Convention* are principally designed to attack illicit trafficking, those provisions are arguably not intended to criminalize the 'use' and 'consumption' of psychotropic substances as well as the possession of those substances exclusively for personal consumption.¹⁰¹ Again, Parties are not prevented from criminalizing this category of offenses.

⁹⁸ See Boister, above n 5, 80 and Alfons Noll, 'International Treaties and the Control of Drug Use and Abuse' (1977) 6 *Contemporary Drug Problems* 17 25.

⁹⁹ 1961 UN Commentary, above n 2, 428. See also Boister, above n 5, 81 and Noll, above n 98, 24-5. However, the Parties can extend criminal liability to the unauthorized use or possession of drugs for personal consumption. In practice, many countries punish the use and possession of drugs for personal consumption but that offense is normally subjected to a lesser penalty than trafficking. Due to difficulties in proving the mental state of the accused, viz. the intention of possessing drugs merely for personal consumption rather than for trafficking, the quantity of drugs involved is used in various legal systems as an objective factor for differentiating between the two offenses. See, eg, Dusan Cotic, *Drugs and Punishment: An Up-To-Date Interregional Survey on Drug-Related Offenses* (1988) 46, 59, 65 and 69. The official UN Commentary advises the Parties to provide 'a legal presumption that any quantity exceeding a specified small amount is intended for distribution'. See 1988 UN Commentary, above n 8, 113.

¹⁰⁰ 1961 UN Commentary, above n 2, 428; Boister, above n 5, 81 and Noll, above n 98, 25.

¹⁰¹ 1971 UN Commentary, above n 25, 349 and Boister, above n 5, 351.

6.1.3.3 *Consumption-Related Offenses under the 1988 Convention*

In marked contrast to the earlier Conventions, the *1988 Convention* provides clear policies on criminalizing and penalizing conduct related to personal consumption. Pursuant to Article 3(2), Parties are bound to criminalize the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the DCC provisions. Due to controversy between the drug-producer and -consumer Parties, the criminalization of these offenses is non-mandatory.¹⁰²

It is worth noting that Parties are required to criminalize the possession, purchase and cultivation of illicit drugs but not their ‘use’ or ‘consumption’. The illicit nature of the conduct in question is again defined by its being contrary to the provisions of the earlier *1961* and *1971 Conventions*. Thus, the same comment in Section 6.1.2.1 as regards the strict technical appropriateness is applied here.

6.1.3.4 *Consumption-Related Offenses under Vietnamese Legislation*

As analyzed earlier in Section 6.1.2.4, under the *CCV 1999*, cultivating opium poppy or other plants bearing narcotic substances for personal use; unlawful manufacture of narcotic substances for personal use; unlawful stockpiling, transporting, trading or appropriating narcotic substances; and unlawful manufacturing, stockpiling, transporting, trading or appropriating equipment or tools connected with the illegal use of narcotic substances are criminal offenses. Thus, compared to the *1988 Convention*, the *CCV 1999* criminalizes several forms of consumption-related conduct that are not required by the Convention. They include the unlawful manufacturing, transporting and appropriating of narcotic substances for personal use, and the unlawful manufacturing, stockpiling, transporting, trading or appropriating equipment or tools to be used for illegal drug use.

Further, going beyond the Convention’s compliance, the *CCV 1999* criminalizes the unauthorized use or consumption of narcotic substances, the organizing or harboring of illegal use of narcotic substances, and the forcing or inducing another into illegal drug use.

¹⁰² According to Boister, the provisions of the *1988 Convention* on criminalizing consumption related offenses is a compromised result from the dispute between the producer and consumer states and appears to be a victory of the producer states. See Boister, above n 5, 124.

Illegal use of narcotic substances (Article 199) Under the *CCV 1999*, although the illegal use of narcotic substances is a crime, a person who unlawfully uses narcotic substances is first subjected to education by local governments and, later, to administrative sanctions (i.e. compulsory medical treatment). That person is only punished if those measures have already been imposed but he or she has relapsed into illegal drug use.¹⁰³ The ‘use’ of narcotic substances involves taking narcotic substances by any means, such as swallowing, injecting or smoking. A person who does not administer narcotic substances by himself but asks another person to help him with the administration, for example by giving him or her an injection, can still be convicted of the offense.¹⁰⁴ This offense must be committed with direct intention.

Organizing of the illegal use of narcotic substances (Article 197) This offense broadly covers: (i) arranging accommodation for the purpose of administering narcotic substances to others, (ii) commanding and managing the administration of narcotic substances to others, (iii) supplying but not selling narcotic substances to others so that they illegally use them, (iv) manufacturing, lending, buying or stockpiling narcotic substances for the purpose of administering them to others, (v) seeking out drug users, (vi) arranging equipment and tools, such as manufacturing, buying or stockpiling them, for the purpose of administering narcotic substances to others and, (vii) other activities that assist others with illegal drug use, such as giving or lending money to buy narcotic substances.¹⁰⁵ This offense is committed with direct intention, i.e. the offenders know that their conduct is prohibited and foresee the harm that follows. The commission of any one of the listed forms of conduct is sufficient to be convicted of the offense. Due to its very broad ambit, difficulty occurs distinguishing between this offense and others.¹⁰⁶ The *Joint Circular guiding*

¹⁰³ *CCV 1999*, above n 53, art 199(1).

¹⁰⁴ JC 1998 on Chapter VIIA, above n 81, art 3 and see also Tuyet Mai Nguyen, 'Toi Su Dung Trai Phep Chat Ma Tuy trong Bo Luat Hinh Su Viet Nam nam 1999' (2006) 5 *Ban Tin Phong Chong Ma Tuy* 6, 7 [trans: Tuyet Mai Nguyen, 'The Crime of Illegal Use of Narcotic Substances under the Criminal Code of Vietnam 1999' (2006) 5 *Bulletin on Narcotics Prevention and Suppression* 6].

¹⁰⁵ See JC 1998 on Chapter VIIA, above n 81, art 2. A person who commits activities listed in Point vi is only convicted of the offense in question if he or she has a record of administrative sanctions or a criminal record in relation to drug-related crimes or has been educated by local governments.

¹⁰⁶ See Thanh Binh Le, 'Thuc Tien Xet Xu cac Toi Pham ve Ma Tuy o Ha Noi - Nhung Vuong Mac trong Thuc Tien Xet Xu va cac Kien Nghi' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) 154-5 [trans: Thanh Binh Le, 'The Current State of Trials for Drug-Related Crimes in Hanoi: Difficulties in Practice and Recommendations for Revision' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for

the Application of Chapter VIIA of the Amended 1985 Criminal Code 1998 stipulates that if the actions of a person satisfy the elements of this offense, as well as other drug-related offenses, then several offenses may be simultaneously charged at the discretion of the court that has jurisdiction over the case.¹⁰⁷ Thus, the application of the offense depends on the interpretation of very particular factual situations.

Harboring of the illegal use of narcotic substances (Article 198) This offense incriminates the lending of property, with or without payment, to others for illegal use of narcotic substances. The property involved may belong to the offenders or simply be under their control.¹⁰⁸ The offense requires intention and the offender must therefore have been aware that the property was to be used for illegal drug consumption. That knowledge may exist at the time of lending the property or may be formed later. There is some ambiguity in differentiating between this offense and the offense of organizing illegal drug use, particularly in relation to the active and passive mental elements of the offender. Some have argued that if the offenders actively seek to support the illegal use of drugs, the charge of organizing illicit drug use should be laid. If they passively lend a hand to unlawful drug users, the offense of harboring illegal drug use should be charged.¹⁰⁹ Additionally, it is an arguable

Drug Control, Hanoi, Vietnam, 2002)] and Van Nhu Tu, 'Cong Tac Xet Xu cac Vu An ve Ma Tuy va nhung Kien Nghi Hoan Thien Phap Luat' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) 142-3 [trans: Van Nhu Tu, 'Trials for Drug-Related Crimes: Recommendations for Improving Laws and Regulations' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]. It is argued that the dividing line between the offense of organizing the illegal use of narcotic substances and other offenses is vague, including unlawful manufacturing of narcotic substances, unlawful stockpiling, transporting or trading in narcotic substances and, unlawful manufacturing, stockpiling, transporting or trading in equipment and tools to be used in illegal drug use under Articles 193, 194 and 196. Some scholars note that the offense in question differs from others in the sense that it requires a specific purpose on the part of the offenders, viz. administering narcotic substances to drug users (see Van Que Dinh, above n 57, 206-7). However, this seems to be a weak argument because under Article 2(c) of the Joint Circular guiding the Application of Chapter VIIA of the 1985 Criminal Code 1998, supplying narcotic substances for drug addicts to administer by themselves is sufficient to be charged with this offense. Some other scholars (see, eg, Ngoc Hoa Nguyen, above n 52, 508 and Van Luyen Tran, above n 52, 78) do not consider that specific purpose as an element of this offense.

¹⁰⁷ JC 1998 on Chapter VIIA, above n 81, art 2(g).

¹⁰⁸ In addition to the conduct of lending property with or without interest for illegal drug use, Article 198 of the *CCV 1999* indicates that 'other forms' of conduct of a person who lets their property be used for illegal drug use are also punished. Nonetheless, in practice, there is no other form of conduct that is convicted of this offense. See Van Que Dinh, above n 57, 239.

¹⁰⁹ See Van Luyen Tran, above n 52, 83-4; Dang Doanh Le, 'Ve Hanh Vi Pham Toi To Chuc Su Dung Trai Phep Chat Ma Tuy' (1999) 2 *Luat Hoc* 3, 4 [trans: Dang Doanh Le, 'Organizing the Illegal Use of Narcotic Substances' (1999) 2 *Law Study* 3]; Duc Thin Tran, 'Nhung Dang Hanh Vi cua Toi To Chuc Su Dung Trai Phep Chat Ma Tuy' (2002) 10 *Nha Nuoc va Phap Luat* 46, 51 [trans: Duc Thin Tran,

defense that a person who unlawfully sells narcotic substances to another is only guilty of the crime of harboring illegal use if he or she actively suggests and provides a place for the subsequent use of the narcotic substances. That is, a passive response to a customer's demand to use drugs at the place of sale remains only the crime of selling narcotic substances.¹¹⁰ To avoid inconsistencies in the interpretation by local courts, the Supreme People's Court officially instructs that a person who unlawfully sells narcotic substances to others and lets them illegally use drugs at their place is simultaneously convicted of the offenses of unlawful trade in narcotic substances and of harboring the illegal use of narcotic substances.¹¹¹

Forcing or inducing another to use narcotic substances illegally (Article 200) The DCCs do not oblige Parties to criminalize these forms of conduct.¹¹² This Vietnamese- conceived crime criminalizes conduct that seeks to influence the mind of another, causing that person to use narcotic substances illegally. 'Forcing' covers both physical and mental influence, such as using violence or threats. 'Inducing' involves various activities of inciting, promoting or persuading.¹¹³ This is an offense of direct intention.

It should be noted that inducing illegal drug use is also a manifestation of organizing illegal use of narcotic substances. The vague borderline between these two offenses

"Various Forms of the Criminal Offense of "Organizing the Illegal Use of Narcotic Substances"" (2002) 10 *State and Law* 46].

¹¹⁰ See Duc Duat Van, 'Can Giai Quyet Kip Thoi mot so Vuong Mac khi Ap Dung Phap Luat trong viec Giai Quyet cac Vu An Ma Tuy' (1998) 4 *Tap Chi Kiem Sat* 27 and 33, 33 [trans: Duc Duat Van, 'The Need for a Timely Solution to Entanglements in the Application of Laws and Regulations in Drug-Related Cases' (1998) 4 *Procuracy's Journal* 27] and Minh Duc Nguyen, *Hoan Thien Khung Phap Luat Hinh Su doi voi Toi Pham ve Ma Tuy o Viet Nam* (D Phil thesis, Hoc Vien Canh Sat Nhan Dan, 2003) 134-5 [trans: Nguyen, Minh Duc, *Improving Criminal Legal Framework Dealing with Drug-Related Crimes* (D Phil Thesis, Politics Institution, 2003)] and Thanh Binh Le, above n 106, 158-9. There are also other arguments which point out that the offenses in question differ in *actus reus* rather than *men rea*. The offenders who administer narcotic substances to others should be charged with harboring illegal drug use. See Van Que Dinh, above n 57, 236.

¹¹¹ *Nghi Quyet so 02/HDTP Huong Dan Bo Sung Nghi Quyet 02/HDTP ngay 5 thang 1 nam 1986 cua Hoi Dong Tham Phan Toa An Nhan Dan Toi Cao 1988* (Hoi Dong Tham Phan Toa An Nhan Dan Toi Cao) pt II(2)(e) [trans: *Resolution 02/HDTP Providing Supplementary Guidance for the Resolution 02/HDTP dated 5 January 1986 of the Council of Judges of the People's Supreme Court 1988* (Council of Judges of the People's Supreme Court)].

¹¹² The 1988 *Convention* obliges Parties to criminalize the public induction of others to commit any drug-related offenses. However, because it does not establish illegal use of drugs as a crime, the induction of others to use drugs illegally appears to be beyond the ambit of that offense.

¹¹³ JC 1998 on Chapter VIIA, above n 81, arts 5 and 6.

leads to inconsistent interpretation by local courts.¹¹⁴ Some arguments suggest that inducing *non-drug users* into illegal drug use is the crime of inducing illegal drug use, whereas inducing *drug users* into illegal drug use is the crime of organizing illegal drug use.¹¹⁵ In marked contrast, others claim that being a user or a non-user is immaterial to differentiating between the two offenses in question but that the difference lies in whether the user induced in fact demanded drugs. If that person has demanded the illegal use, then the offense of organizing illegal drug use should be charged. Vice versa, if the induced person has not asked for illegal use, then inducement plays a key role in causing him or her illegally to use the controlled substances.¹¹⁶ It is this author's submission that it is very difficult to prove whether a person has actually demanded illegal drug use because the term 'demand' is very abstract and flexible. Using it to distinguish between those offenses may obstruct prosecutions. Therefore, to differentiate these offenses, the test regarding whether the induced person is a non-drug user or drug user should be applied.

6.1.4 Inchoate and Accessory Offenses

6.1.4.1 Inchoate and Accessory Offenses under the 1961 Convention

The *1961 Convention* has made efforts to criminalize also incomplete drug-related offenses and secondary participation in the commission of an offense. Pursuant to Article 36(2)(a)(ii) of the *1961 Convention*, Parties are required to criminalize the 'intentional participation in, conspiracy to commit and attempts to commit, any of such offenses, and preparatory acts and financial operations in connection with the offenses...'.¹¹⁷

¹¹⁴ See Minh Duc Nguyen, 'Can Co Mot Thong Tu Lien Tich Moi Huong Dan Ap Dung Mot So Dieu Luat Thuoc Chuong "Cac Toi Pham ve Ma Tuy" (2000) 7 *Tap Chi Kiem Sat* 20, 20 [trans: Minh Duc Nguyen, 'The Need for a New Joint Circular on the Application of Several Articles in Chapter "Drug-Related Crimes"' (2000) 7 *Procuracy's Journal* 20]; Thanh Binh Le, above n 106, 154-5 and Van Nhu Tu, above n 106, 146.

¹¹⁵ See Dang Doanh Le, above n 109, 4.

¹¹⁶ See Duc Thin Tran, above n 109, 52.

¹¹⁷ 1961 Convention, above n 3, art 36(2)(a)(ii). Some overlaps are observed in the listed forms of preliminary and accomplice conduct under Article 36(2)(a)(ii) of the *1961 Convention*. The term 'participation in' appears to cover 'all kinds of complicity and accessory acts, which may in different countries be divided into different categories'. Moreover, the conduct of 'financial operations', in its nature, simply amounts to preliminary or accessory act. Some reasons can be explained for the existing pattern of the relevant provisions. On the one hand, to overcome variations in domestic criminal laws, the Convention uses some generic terms that best facilitate the interpretation of the Parties, such as 'the participation in'. On the other hand, the Convention tries to provide some particular forms of inchoate and accessory conduct which serve as a strong guide for the Parties in shaping their criminal laws on those offenses, such as 'attempts' and 'conspiracy'. However, the

Because of different views between national criminal laws on various forms of participation in offenses and on various stages of the commission of offenses,¹¹⁸ Parties are left with greater discretion in criminalizing these types of offenses. They do not have to proscribe the offenses in question if the criminalization is incompatible with their ‘constitutional limitations’, ‘legal systems’ and ‘domestic law’.¹¹⁹ Further, the provisions in question only have a recommendatory character.¹²⁰

Similar to principal offenses, Parties are left to describe varied elements of the inchoate and accessory offenses, such as the degree and nature of participation in principal offenses and the different *actus reus* for attempts, preparatory acts and the actual perpetration of the offenses.¹²¹ Additionally, Parties are only required to punish inchoate and accessory acts committed intentionally.¹²² Again, the issue of definition of the mental intention of the accused is left to domestic criminal laws.

6.1.4.2 *Inchoate and Accessory Offenses under the 1971 Convention*

The provision of the *1971 Convention* on inchoate and accessory offenses mirrors the model of the provisions of the *1961 Convention*. It repeats the exact wording of the earlier Convention. For that reason, similar comments are applicable here. Parties are required to criminalize varying categories of incomplete and secondary involvement in the commission of drug-related offenses, such as participation in, conspiracy,

inclusion of ‘financial operations’ in the list reflects the particular consideration of international lawmakers on the dark, hidden side of drug-related offenses that allows illicit trafficking to acquire a transnational scale. The Parties are called for attention on that form of secondary involvement in illicit drug traffic. See 1961 UN Commentary, above n 2, 432 and Boister, above n 5, 89.

¹¹⁸ 1961 UN Commentary, above n 2, 425. The criminalization of some forms of preliminary and accomplice conduct, for example attempts and conspiracy to commit an offense and financial operations, is not familiar to a number of legal systems, especially Continental ones. The model of categorizing inchoate forms of conduct into separate forms, namely conspiracy, attempts and preparatory acts is mainly based on the common law system. See Boister, above n 5, 87. See also Chatterjee, above n 9, 437. In practice, after the convention came into force, these categories of offenses have become more familiar to many Parties and they have followed the recommendations of the Convention. See Cotic, above n 99, 98-9 and 114.

¹¹⁹ See 1961 Convention, above n 3, the opening clause of Article 36(2). The phrases ‘legal system’ and ‘domestic law’ are argued to be duplicative (see Chatterjee, above n 9, 436). ‘Legal systems’ that refers to ‘the basic principles governing the law’, however, has a broader meaning than ‘domestic law’. See 1961 UN Commentary, above n 2, 430.

¹²⁰ See 1961 UN Commentary, above n 2, 430.

¹²¹ The ambit of conspiracy, attempts and preparatory acts is defined differently in various legal systems. For example, in some countries, an attempt is defined ‘to have begun when the stage of execution of the offense has actually been reached’, when in other countries, attempt may extend to include ‘actions taken prior to this stage’. See Boister, above n 5, 88.

¹²² 1961 Convention, above n 3, art 36(2)(a)(ii).

attempts and preparatory acts. The criminalization of those offenses is subject to the constitutional limitations of Parties, their legal systems and domestic laws.¹²³

6.1.4.3 *Inchoate and Accessory Offenses under the 1988 Convention*

Similar to the earlier Conventions, the *1988 Convention* requires Parties to criminalize inchoate and accessory offenses within the bounds of their constitutional principles and basic concepts of their legal systems.¹²⁴ But stepping further than the earlier Conventions, the *1988 Convention* lists various forms of accessory conduct, namely the ‘participation in, and aiding, abetting, facilitating and counseling the commission’ of any drug-related offense (including consumption related offenses).¹²⁵ That list serves as a guideline for Parties as to varying manifestations of the secondary participation. In its extended meaning, the generic term ‘participation in’ appears to cover all these listed forms of secondary involvement in the commission of offenses.

In a separate provision, Parties are required to criminalize the ‘public’ incitement and induction of others to commit any drug-related offenses.¹²⁶ This offense, however, is inchoate in its nature because the offenders do not commit drug-related offenses by themselves but ‘seek to influence the mind of another to the commission of a crime’.¹²⁷ The term ‘public’ used in the wording of the provision causes some confusion¹²⁸ and its interpretation is left to domestic criminal laws of Parties.

6.1.4.4 *Inchoate and Accessory Offenses under Vietnamese Legislation*

The *CCV 1999* creates several distinct offenses that deal with incomplete commission of an offense, namely ‘Preparing the commission of a crime’ and

¹²³ 1971 Convention, above n 4, art 22(2)(a)(ii).

¹²⁴ It should be noted that in the earlier Conventions, the phrase ‘constitutional limitations’ and ‘legal system and domestic law’ are used. During the drafting of the *1988 Convention*, those phrases were carefully revised. Hence, the phrase ‘constitutional principles’ is used to refer to ‘written or unwritten basic principles that amount to something less than constitutional limitations’. Instead of legal system and domestic law, the phrase ‘basic concepts of its legal system’ is used to reflect differences between civil and common law systems. See Boister, above n 5, 118 and William C Gilmore, *Combating International Drugs Trafficking: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1991) 7-8.

¹²⁵ 1988 Convention, above n 10, art 3(1)(c)(iv).

¹²⁶ 1988 Convention, above n 10, art 3(1)(c)(iii).

¹²⁷ See Boister, above n 5, 121 and 1988 UN Commentary, above n 8, 75.

‘Attempt’. It also criminalizes various forms of accessory participation in the commission of a crime. These offenses are applicable to all types of crimes, including drug-related offenses. Thus, Vietnamese criminal law complies with the requirements of the DCCs.

Preparing the commission of a crime (Article 17) A person who prepares to commit an offense must be criminally responsible for his or her conduct. Preparatory acts generally include gathering or producing equipment or tools necessary for the commission of a crime, or other activities that create suitable conditions or that facilitate the commission of a crime, but those activities must not commence the *actus reus* of the intended crime.¹²⁹ The offense of preparing the commission of a crime is always committed with direct intention, viz. the offender foresees and intends certain results that follow his or her conduct. Note that under the *CCV 1999*, preparation to commit only a very serious or particularly serious offense is subject to punishment.¹³⁰ As standard drug-related offenses do not belong to those categories, preparations for their commission are not punishable.

Attempt (Article 18) ‘Attempt’ is another type of incomplete offense in which a person actually commenced the *actus reus* of the offense but could not complete it due to causes beyond his or her control. Intentional attempts at all crimes are criminalized.¹³¹ Therefore, any attempt to commit a drug-related crime entails

¹²⁸ For example, whether the criminalization covers only the incitement or induction committed at meetings and gatherings open to the public, or also expands to the incitement or induction perpetrated at private meetings. See 1988 UN Commentary, above n 8, 74.

¹²⁹ See Truong Dai Hoc Phap Ly Ha Noi, *Giao Trinh Luat Hinh Su Viet Nam Phan Chung* (1992) 127 [trans: The Law University of Hanoi, *Textbook on the Criminal Law of Vietnam: General Part* (1992)] and Ngoc Hoa Nguyen, above n 52, 122. See also Van Do Tran, 'Hoan Thien cac Quy Dinh cua Bo Luat Hinh Su ve Cac Giai Doan Thuc Hien Toi Pham' (1999) (5) *Toa An Nhan Dan* 4, 4 [trans: Van Do Tran, 'Improving the Provisions of the Criminal Code in respect of the Different Stages of Crime Commission' (1999) (5) *People's Court* 4].

¹³⁰ Pursuant to Article 8(3) of the *Criminal Code 1999*, Vietnamese offenses are categorized into four groups based on the maximum punishment that is specified in each penal scale applicable to them: (i) less serious offenses (the maximum applicable penalty is 3 years' imprisonment); (ii) serious offenses (the maximum applicable penalty is 7 years' imprisonment); (iii) very serious offenses (the maximum applicable penalty is 15 years' imprisonment) and, (iv) particularly serious offenses (the maximum applicable penalty is over 15 years' imprisonment, life imprisonment or death sentence). It is necessary to note that, as mentioned earlier in footnote 79, each offense under the *CCV 1999* is subjected to several penal scales. A standard offense which is subject to the lowest penal scale may belong to the category of less serious offenses, but that offense committed in aggravating circumstances (aggravated offenses) may fall into the categories of serious offenses or particularly serious offenses.

¹³¹ *CCV 1999*, above n 53, art 18. See also Law University of Hanoi, above n 129, 127; Ngoc Hoa Nguyen, above n 52, 123 and Van Do Tran, above n 129, 5.

criminal liability. The borderlines between preparatory acts and attempts, as well as between attempts and complete offenses, must be defined within the context of each particular case. Generally, the courts conduct a case-by-case interpretation.

Accessory offenses (Article 20)

The *CCV 1999* criminalizes various forms of secondary participation in the commission of an offense, including (i) organizing, managing or commanding the commission of a crime, (ii) inciting, inducing, encouraging or persuading others to commit a crime, and (iii) physically or mentally assisting others to commit a crime.¹³² Under Vietnamese criminal law, the second category, inciting, inducing, encouraging or persuading, must target a specific person or a specific group of persons. Incitement by radio or television programs or at meetings open to the public is not sufficient to convict for this offense. For that reason, this domestic offense bears some differences from the *1988 Convention* offense of ‘publicly’ inciting or inducing others to commit a drug-related offense.¹³³ It is also worth mentioning that the *CCV 1999* does not establish organization, management or financing of drug-related crimes under Article 3(1)(a)(v) of the *1988 Convention* as distinct offenses. They are solely treated as other secondary participations.

6.2 Penalties

6.2.1 Penalties under the UN Drug Control Conventions

6.2.1.1 Overview

Penal sanctions imposed on drug-related offenses considerably vary across national penal laws.¹³⁴ Taking those differences into account, the DCCs do not attempt any uniform penal scales but solely provide some general rules on punishments for drug-related offenses. As a whole, the DCC fundamental idea is that adequate punishment needs to be imposed on drug-related offenses due to their grave nature¹³⁵ and that

¹³² *CCV 1999*, above n 53, art 20.

¹³³ *1988 Convention*, above n 10, art 3(1)(c)(iii).

¹³⁴ The study of various national criminal laws discloses that countries ‘vary in severity of sanctions and in their definition of milder and more serious forms of these criminal acts [illegal production and illicit trafficking of drugs]’. Death penalties may be imposed upon drug traffickers in some countries, while other countries do not apply that type of penalty. There are also differences in scales of penalties in relation to quantities and specific types of drugs. See Cotic, above n 99, 22, 56 and 71-2.

¹³⁵ *1961 Convention*, above n 3, art 36(1); *1971 Convention*, above n 4, art 22(1)(a) and *1988 Convention*, above n 10, art 3(4)(a) and 3(5).

more severe punishments need to be imposed on supply-related as oppose to consumption-related offenses.¹³⁶

6.2.1.2 *Penalties under the Amended 1961 Convention*

This Section examines the *1961 Convention* provisions on penalties, including measures that may be applied to addicted criminals as alternatives or in addition to penal sanctions.

6.2.1.2.1 *Punishments and Alternative Measures*

Similar to the provisions on offenses, the *1961 Convention* provisions on penalties are ‘soft’ in nature as Parties may refer to their constitutional limitations in implementing their obligations. Pursuant to Article 36(1)(a) of the *1961 Convention* (as amended), they have to take either legislative or administrative measures¹³⁷ to ensure all enumerated drug-related offenses punishable.¹³⁸ In addition, they are required to impose ‘adequate’ punishments on ‘serious’ offenses, especially imprisonment or other penalties of liberty deprivation.¹³⁹ Nonetheless, the terms ‘adequate’ and ‘serious’ are vague and subjective, therefore, ‘different Parties may apply different punishments for essentially the same offenses or essentially the same punishments for different offenses’.¹⁴⁰

The *1961 Convention* reflects a narrow view of the type of punishments that may be imposed on drug-related offenses. Seeking harsh penal sanctions on drug traffickers (i.e. imprisonment and other forms of deprivation of liberty),¹⁴¹ it omits to mention

¹³⁶ See, e.g., 1988 Convention, above n 10, arts 3(4)(a) and 3(7). In practice, many countries have considered illicit drug production and trafficking as most serious offenses that are subjected to harshest punishments (see Cotic, above n 99, 116). This perhaps originates from the fact that drug traffickers cause wider harm to society, whereas drug addicts cause harm principally to themselves. See Chatterjee, above n 9, 65. See also Adelheid Puttler, 'Extraterritorial Application of Criminal Law: Jurisdiction to Prosecute Drug Traffic Conducted by Aliens Abroad' in Karl M. Meessen (ed), *Extraterritorial Jurisdiction in Theory and Practice* (1996) 103, 103.

¹³⁷ See Boister, above n 5, 139-40.

¹³⁸ 1961 Convention, above n 3, art 36(1).

¹³⁹ 1961 Convention, above n 3, art 36(1).

¹⁴⁰ See Boister, above n 5, 140 and see also Chatterjee, above n 9, 438 and 445. In the context of drafting the *1961 Convention*, there was a common understanding that the Parties ought to impose ‘severe’ penalties upon drug traffickers. However, due to differences in national views, especially as to the degree of severity, the more generic term ‘adequate’ is used. It is worthwhile to remember that the *1961 Convention* does not expressly criminalize the possession of drugs for personal consumption. However, if the Parties penalize that offense, they are recommended not to treat it as a ‘serious’ offense. See 1961 UN Commentary, above n 2, 428-9.

¹⁴¹ See Noll, above n 98, 24.

other non-custodial punishments that are also useful to attack the criminal motives of traffickers, such as pecuniary sanctions and confiscation of proceeds of drug trafficking.¹⁴² Moreover, it is also inadequate in providing alternative measures for addicted criminals,¹⁴³ such as innovative social and medical treatments introduced in the 1970s.¹⁴⁴ Following the pattern of Article 22(1)(b) of the *1971 Convention*, Article 14 of the *1972 Protocol* amending Article 36 of the *1961 Convention* introduces several educational measures and treatments applicable to addicted criminals as alternatives or in addition to punishments. (The *1971 Convention* provisions are analyzed below).

The overall penal rule laid down by the *1961 Convention* on inchoate and accessory offenses is similar to that applicable to principal offenses. All inchoate and accessory offenses must be ‘punishable’.¹⁴⁵ Except for that general rule, it does not provide any details on the relationship between penalties imposed on principal offenses and on their inchoate offenses and complicity. It also does not differentiate between punishments on various categories of inchoate and accessory offenses, leaving those issues to domestic criminal laws.¹⁴⁶

6.2.1.2.2 *Aggravating Factors*

It is widely accepted in national criminal laws that ‘recidivism’ of habitual criminals is one of the factors constituting aggravation of the offense and subjected to heavier penalties.¹⁴⁷ Further strengthening that already common practice, the *1961 Convention* obliges Parties to take into account ‘foreign convictions’¹⁴⁸ for the

¹⁴² Article 37 of the *1961 Convention* requires the seizure and confiscation of drugs, substances and equipment used in or intended for the commission of drug-related offenses. However, because the issue of confiscation is regulated by different provisions that are separate from the penal provisions, the *1961 Convention* mainly envisages confiscation as a method used in law enforcement rather than as a punishment. See *1961 Convention*, above n 3, art 37.

¹⁴³ Article 38 of the *1961 Convention* that is titled ‘Measures against the abuse of drugs’ deals with general addicts but not drug abuse offenders.

¹⁴⁴ See Boister, above n 5, 149. See also Noll, above n 98, 26.

¹⁴⁵ *1961 Convention*, above n 3, art 36(2)(a)(ii).

¹⁴⁶ To provide some guidance to the Parties, the official UN Commentary recommends that if inchoate and accessory offenses relate to serious offenses, they must be subjected to ‘adequate punishment’, i.e. imprisonment or other penalties of deprivation of liberty’. See *1961 UN Commentary* 434.

¹⁴⁷ See Boister, above n 5, 142 and *1961 UN Commentary*, above n 2, 434.

¹⁴⁸ According to Boister, the term ‘conviction’ used in the wording of Article 36(2)(a)(iii) of the *1961 Convention* must be understood in a broad sense, viz. it includes both ‘conviction and sentence in Parties, where these are two separate processes and proof of both conviction and sentence is required to establish recidivism’. See Boister, above n 5, 142.

purpose of establishing recidivism.¹⁴⁹ This obligation, however, is of a recommendatory character because it is subject to the ‘constitutional limitations of a Party, its legal system and domestic law’.¹⁵⁰

6.2.1.3 Penalties under the 1971 Convention

6.2.1.3.1 Punishments and Alternative Measures

The penal provisions of the *1971 Convention* are based on the model of the earlier Convention and, therefore, require Parties to establish as punishable offenses all drug-related criminal conduct, including incomplete and secondary participation in that conduct. They also oblige Parties to impose ‘adequate’ punishments on ‘serious’ offenses, especially imprisonment and other penalties of liberty deprivation.¹⁵¹ However, different from the *1961 Convention*, the *1971 Convention* broadens the types of punishments that may be applied to criminals who are drug addicts.

Article 22(1)(b) of this Convention provides a wide range of non-custodial measures that Parties can apply to addicted criminals as alternatives to conviction or punishment or in addition to conviction or punishment, including treatment, education, aftercare, rehabilitation and social reintegration.¹⁵² This provision was regarded as an innovation of the *1971 Convention*.¹⁵³ However, in retrospect, shortcomings were still evident, i.e. it omits to clarify conditions for applying those measures. As a result, that provision may be employed as an excuse for those who are intentionally involved in drug use and traffic.¹⁵⁴

6.2.1.3.2 Aggravating Factors

Based on the pattern of the *1961 Convention*, the *1971 Convention* also requires Parties to take into account foreign convictions for establishing recidivism.¹⁵⁵ Regretfully, it does not elaborate. Thus, the two Conventions present a bare framework on aggravating circumstances relating to punishing drug-related offenses.

¹⁴⁹ 1961 Convention, above n 3, art 36(2)(a)(iii).

¹⁵⁰ 1961 Convention, above n 3, opening phrase of Article 36(2).

¹⁵¹ 1971 Convention, above n 4, art 22(1)(a).

¹⁵² 1971 Convention, above n 4, art 22(1)(b).

¹⁵³ See Boister, above n 5, 147.

¹⁵⁴ According to the official UN Commentary, it is expected that Parties only apply those measures as alternatives to conviction and punishments in minor offenses. See 1971 UN Commentary, above n 25, 353.

¹⁵⁵ 1971 Convention, above n 4, art 22(2)(a)(iii).

6.2.1.4 Penalties under the 1988 Convention

6.2.1.4.1 Punishments and Alternative Measures

Not only taking an innovative approach towards drug-related offenses, the *1988 Convention* also markedly improves the penal framework applicable to them. Departing from the former Conventions, it significantly expands the types of punishments applicable to drug-related offenses. In addition to the traditional types of punishments (i.e. imprisonment or other types of deprivation of liberty), it inserted other non-custodial sanctions, namely pecuniary sanctions and confiscation.¹⁵⁶ The criminalization of money laundering offenses and the imposition of proceeds confiscation reflect the strong focus of the *1988 Convention* on the financial aspects of the illicit drug traffic.

Most notably, the *1988 Convention* remedied weaknesses in the provisions of the earlier Conventions regarding the application of education and treatment measures to addictive criminals. Pursuant to Article 3(4)(c) and (d) of the *1988 Convention*, those measures can be applied either as an alternative or as an addition to punishments for consumption-related offenses.¹⁵⁷ However, they are applicable only as alternatives to supply-related offenses of a minor nature.¹⁵⁸ Note also that the *1988 Convention* extends the application of those measures beyond medical treatment, as Parties can apply them not only to addicted but also to non-addicted criminals.¹⁵⁹

6.2.1.4.2 Aggravating Factors

Like the *1961* and *1971 Conventions*, the *1988 Convention* requires Parties to consider ‘prior convictions’ (including foreign convictions) as an aggravating circumstance.¹⁶⁰ Further, it lists a number of aggravating factors that are to be taken

¹⁵⁶ 1988 Convention, above n 10, art 3(4)(a). Whereas under the earlier Conventions, confiscation is mainly envisaged as a method used in law enforcement, under the *1988 Convention*, it functions not only as a method used in law enforcement but also as a punishment.

¹⁵⁷ 1988 Convention, above n 10, art 3(4)(d).

¹⁵⁸ 1988 Convention, above n 10, art 4(b) and (c).

¹⁵⁹ See 1988 UN Commentary, above n 8, 87 and Boister, above n 5, 180-1. Another noticeable improvement of the *1988 Convention* is to oblige the Parties to ensure that their law enforcement authorities, courts and other justice bodies maximize their effectiveness by applying plea-bargains, bail, early release and parole so that drug-related offenders are not able to escape from appropriate punishments (Article 3(6)(7) of the *1988 Convention*). Those provisions mainly relate to the issue of ensuring effective implementation by national authorities rather than to the national legal framework for drug control, therefore, do not fall within the scope of this research.

¹⁶⁰ 1988 Convention, above n 10, art 3(5)(h).

into account in sentencing and granting parole,¹⁶¹ including the involvement of the offender in organized criminal groups or other international organized criminal activities or in other illegal activities facilitated by commission of a drug-related offense; the use of violence and arms; the use or victimization of minors; the connection of a crime with a public office; and the fact that the offense is committed in special locations reserved for education and social activities.¹⁶²

The *1961* and *1971 Conventions* use the phrase ‘serious offenses’ but unfortunately they do not identify ‘aggravating circumstances which point to the seriousness of an offense’.¹⁶³ The list of specific factors under the *1988 Convention* therefore illuminates the earlier provisions, serving as guidelines for Parties to weigh the grave nature of drug-related offenses. However, as the *1988 Convention* is mainly intended to combat illicit traffic, those factors are applicable only to supply-related offenses under Article 3(1) and not to consumption-related offenses.¹⁶⁴ National domestic laws are generally familiar with the enumerated aggravating factors in the *1988 Convention*.¹⁶⁵ Nonetheless, the factor that ‘the offense is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities’¹⁶⁶ has been criticized as ‘unusual’ because it links the location of the offense with its seriousness.¹⁶⁷ In addition, although the quantity of drugs involved is an important objective factor in assessing the seriousness of offenses, the *1988 Convention* omits to mention it.¹⁶⁸ That omission, however, may originate from the fact that it has long been applied in practice by the Parties.¹⁶⁹

¹⁶¹ The aggravating factors specified under Article 3(5) are understood to have been envisaged for the purpose of sentencing, although this is not expressly indicated (see Boister, above n 5, 166). In addition to sentencing, Article 3(7) of the *1988 Convention* explicitly requires that Parties ensure their national authorities take into account the listed aggravating factors when considering early release or parole of convicted persons.

¹⁶² 1988 Convention, above n 10, art 3(5). The list is non-exhaustive and the Parties can extend to other circumstances that they deem appropriate. See 1988 UN Commentary, above n 8, 90 and Boister, above n 5, 166.

¹⁶³ See 1988 UN Commentary, above n 8, 90.

¹⁶⁴ 1988 Convention, above n 10, the opening clause of Article 3(5).

¹⁶⁵ See Boister, above n 5, 170.

¹⁶⁶ 1988 Convention, above n 10, art 3(5)(g).

¹⁶⁷ See Boister, above n 5, 168.

¹⁶⁸ Ibid 170.

¹⁶⁹ See, eg, Cotic, above n 99, 56 and Ivan Potas and Patrizia Poletti, *Sentencing Drug Offenders: An Analysis of Sentences Imposed in the Higher Courts of New South Wales: 1 January 1992 to 31*

6.2.2 Penalties under Vietnamese Legislation

6.2.2.1 Overview

Responding to the call of the DCCs regarding the adequacy of punishments for drug-related offenses relative to their grave nature, except for the offense of breaching the regulations on management and use of addictive drugs or other narcotic substances, gaol is the principal penalty for Vietnamese drug-related offenses.¹⁷⁰ Life imprisonment and the death penalty are imposed in major cases.

The *CCV 1999*, however, designs several penal scales¹⁷¹ applicable to each type of drug-related offense corresponding to various aggravating factors. The basic scale is applied to a standard offense, whereas, higher scales with harsher punishments are imposed on cases committed in aggravating circumstances. In addition to the principal punishment, the *CCV 1999* prescribes a range of additional penalties that may be imposed on convicts.¹⁷²

6.2.2.2 Punishments and Alternative Measures

As abovementioned, the DCCs encourage Parties to take into account the application of education, treatment and rehabilitation as alternatives or in addition to punishments. The *Criminal Code of Vietnam 1999*, however, does not incorporate those measures into the penal system. Nonetheless, it is worth noting that criminal convicts in general and drug related offenders in particular are provided with various programs of education, treatment and rehabilitation while they are serving their sentences.¹⁷³ Concerning unlawful cultivation of drug-related plants and illegal drug

December 1997, Monograph Series Number 19 (1999) 8-9 and Quang Vinh Vu, 'Improving the Legal Framework for Narcotics Suppression and Prevention', above n 65, 10-1.

¹⁷⁰ In terms of the offense of 'breaching regulations on management and use of addictive drugs or other narcotic substances', two types of principal penalties are provided, i.e. fine or gaol. Courts may apply one of them.

¹⁷¹ Each scale specifies the minimum as well as maximum penalties that can be imposed for the offense.

¹⁷² Pursuant to Article 28(3) of the *CCV 1999*, a conviction can entail one principal penalty and one or more additional penalties. Criminal liability is imposed only upon natural persons. A child under the age of 14 years is exempted from criminal responsibility. A child who is aged at least 14 years and under the age of 16 years is criminally responsible for very serious crimes committed with intention and for all particularly serious crimes but not for offenses of a less serious or a serious nature. See *CCV 1999*, above n 53, arts 8(1) and 12 and footnote 130 for categories of offenses.

¹⁷³ See, eg, *Thong Tu Lien Tich so 07/2004/TTLT-BCA-VKSNDTC Huong Dan Thuc Hien Mot so Quy Dinh ve Thi Hanh Hinh Phat doi voi Pham Nhan Chap Hanh Hinh Phat tai Nha Tam Giu 2004* (Bo Cong An va Vien Kiem Sat Nhan Dan Toi Cao) arts 2 and 3 [trans: *Joint Circular 07/2004/TTLT-*

use, such programs must be applied to a wrongdoer before he or she is criminally convicted.

Figure 6.2 below summarizes principal and additional penalties applicable to drug-related offenses. The principal penalties are broken down into scales. The first and lowest scale (also called the standard or basic scale) is applicable to standard offenses, the higher scales are imposed on aggravated offenses. While principal penalties are structured into several scales, only one scale of additional penalties applies to standard as well as aggravated offenses.

In relation to a number of offenses, fines and prohibition on holding certain posts or practicing certain occupations or on doing certain jobs can be imposed on the convicts as additional penalties. Responding to the requirement of the DCCs as regards confiscating proceeds of drug-related crimes, under the *CCV 1999*, a person who is convicted of a serious, very serious or particularly serious drug-related crime,¹⁷⁴ can be subjected to confiscation of all proceeds generated from the commission of that crime and, additionally, a part or whole of his or her property.¹⁷⁵

BCA-VKSNDTC Guiding the Application of a Number of Provisions on Serving Custodial Sentences at Custodial Places 2004 (Ministry of Public Security and People's Supreme Procuracy)]

¹⁷⁴ I.e. a person who is convicted of a less serious offense with a penalty not exceeding a maximum of 3 years is exempted from confiscation. See *CCV 1999*, above n 53, art 40.

¹⁷⁵ See, for example, Articles 193(5), 194(5), and 197(5) of the *CCV 1999*.

Figure 6.2 Drug-Related Crimes and Punishments under the Criminal Code of Vietnam 1999

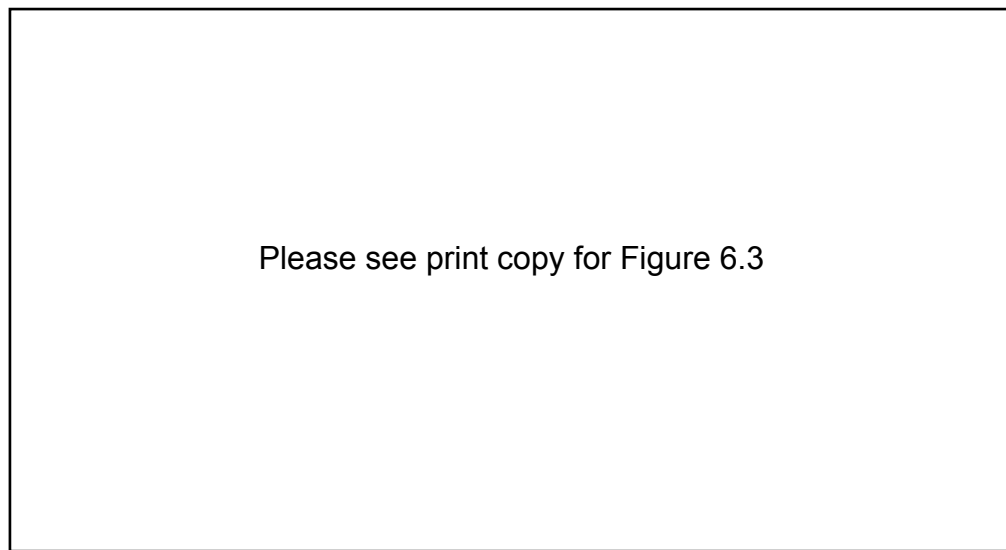
Please see print copy for Figure 6.2

Please see print copy for Figure 6.2 (cont)

Please see print copy for Figure 6.2 (cont.)

For several drug-related offenses,¹ the quantities of drugs involved are described as an objective factor in sentencing. However, the *CCV 1999* omits to specify the actual amounts of drugs corresponding to the twenty-year imprisonment, life imprisonment or death sentences (see the fourth penal scale in Figure 6.2).² To cover that omission, the Council of Judges of the People's Supreme Court has issued a resolution providing guidance for local courts, as summarized in Figure 6.3.

Figure 6.3 Penalties Applicable to Drug-Related Offenses in Relation to the Quantities of



Source: Resolution 01/2001/NQ-HDTP of the Council of Judges of the Supreme People's Court on Guiding the Application of Articles 139, 193, 194, 278, 279 and 289 of the Criminal Code of Vietnam 1999.

Further, as can be seen from Figure 6.3, proportional relationships between penalties and drug quantities have been established only for those narcotic substances most commonly trafficked in Vietnam, such as heroine, cocaine and opium. Uncertainty remains as to proportional penalties for other kinds of trafficked narcotics, such as

¹ I.e. "Unlawful manufacturing of narcotic substances" (Article 193), "Unlawful stockpiling, transporting, trading or appropriating of narcotic substances" (Article 194), "Unlawful stockpiling, transporting, trading or appropriating of precursors used in the illicit manufacture of narcotic substances" (Article 195).

² See Van Luyen Tran, 'Ve Dinh Luong cac Chat Ma Tuy trong Luat Sua Doi, Bo Sung Mot So Dieu cua Bo Luat Hinh Su' (1998) 11 *Toa An Nhan Dan* 15, 17 [trans: Van Luyen Tran, 'The Issue of Specifying the Quantity of Narcotic Substances Involved in Drug-Related Crimes under the Law Amending Some Articles of the Criminal Code' (1998) 11 *People's Court* 15].

addictive and psychotropic drugs.³ In addition, the relationships between penalties and quantities are established only for precursors in solid form, leaving uncertainty and a need for further guidelines regarding precursors in liquid form. For a case involving trafficking in a variety of narcotic drugs, the *CCV 1999* requires that, for the purpose of calculating the quantity of all drugs involved, the different drugs be recalculated as a quantity of one selected type. However, it does not provide any conversion rates between types. This resulted in discrepancies in conversion approaches between different local courts until the People's Supreme Court determined that base rates for conversion should be based on the respective minimum penalties laid down under for each narcotic substance in the *CCV 1999*.

The *CCV 1999* also lays down some rules for sentencing on conviction for incomplete and accessory offenses. First, the principal punishment imposed on preparatory acts and attempts must not exceed one half and three quarters of the penalty scale prescribed for the intended offense. If the penalty for the intended offense is life imprisonment or a death sentence, the penalty imposed on preparing the commission of a crime must not exceed 20 years' imprisonment, although life imprisonment and death sentences can be imposed on attempts that are committed in particularly grave circumstances.⁴ The *CCV 1999*, however, does not provide any proportions for additional penalties in terms of incomplete offenses to complete offenses. Secondly, in respect of complicity, sentencing for each accomplice must take into account the nature of the offense as a whole and the specific involvement of each person in a crime.⁵ Pursuant to Vietnamese penal policy, severe punishments must be imposed upon organizers, managers and directors of a crime.⁶

³ See, eg, Quang Vinh Vu, People's Police and Drug-related Crimes Prevention, above n 65, 138-9 and Improving the Legal Framework for Narcotics Suppression and Prevention, above n 65, 10.

⁴ *CCV 1999*, above n 53, art 52(2) and (3).

⁵ *CCV 1999*, above n 53, art 53. Generally, cohesive complicity with advanced arrangements (i.e. conspiracy) is more serious than simple complicity. See, eg, Law University of Hanoi, above n 129, 146-7.

⁶ *CCV 1999*, above n 53, art 3(2).

6.2.2.3 Aggravating Factors

For the purpose of providing sentencing guidelines,⁷ the *CCV 1999* enumerates various factors that aggravate the seriousness of offenses. A number of them directly correspond to aggravating circumstances enumerated under Article 3(5) of the *1988 Convention*, namely, the commission of drug-related offenses in organized crime,⁸ the fact that the offender holds an official position and employs that position to facilitate the commission of a crime,⁹ the use and victimization of minors,¹⁰ the use of dangerous means capable of causing harm to many persons,¹¹ and prior convictions.¹² The commission of drug-related offenses in those circumstances entails compulsory penalties on an ascending scale.¹³ The unlawful use of arms under the *CCV 1999* is not an aggravating factor but a distinct offense.¹⁴

The *CCV 1999* does not include several factors that are listed under the *1988 Convention*, such as the general involvement of the offender in other international organized criminal activities (except offenders who have been convicted of involvement in the commission of a specific offense, i.e. prior conviction) or in other illegal activities which are facilitated by the commission of an offense and the

⁷ Aggravating factors are not taken into account in granting parole. The granting of parole is principally based on progress made by convicts while serving sentences. See *CCV 1999*, above n 53, art 58.

⁸ *CCV 1999*, above n 53, art 48(1)(a). Pursuant to *Resolution 02/HDTP 1988 of the Council of the People's Supreme Court*, the involvement in the offense of an organized criminal group is one manifestation of the commission of an offense in an organized manner. Therefore, this factor directly corresponds to Article 3(5)(a) of the *1988 Convention*. See *Resolution 02/HDTP Supplementing the Resolution 02/HDTP dated 5 January 1986 of the Council of Judges of the People's Supreme Court 1988*, above n 111, pt I(3)(a).

⁹ *CCV 1999*, above n 53, art 48(1)(c).

¹⁰ 'Minors' are person who are under 16 years of age. See *Luat so 25/2004/QH11 ve Bao Ve, Cham Soc va Giao Duc Tre Em 2004* (Quoc Hoi) art 1 [trans: *Law 25/2004/QH11 on Protecting, Taking Care of and Educating Minors 2004* (National Assembly)]. The use of minors is an aggravating factor in relation to the offense of stockpiling, transporting and trading narcotic substances. See *CCV 1999*, above n 53, art 194(2)(e).

¹¹ *CCV 1999*, above n 53, art 48(1)(m). It should be noted that only the use of violence that can cause harm to multiple persons falls into the ambit of this factor.

¹² Under Article 49 of the *CCV 1999*, prior convictions are counted towards establishing recidivism and serious recidivism. 'Recidivism' is the commission of an offense with intention or, the commission of a very serious or particularly serious offense without intention while having a record of prior conviction. 'Serious recidivism' is either (i) the commission of a very serious or particularly serious offense with intention while having a prior conviction record of a very serious or particularly serious offense committed with intention, or (ii) having been previously charged with recidivism but continuing to commit an offense with intention.

¹³ I.e. Articles 193(2), 194(2), 195(2) and 196(2) of the *CCV 1999*.

circumstance that the offense is committed in special locations. Although not themselves aggravating factors, some of them are also indirectly taken into account for sentencing. For instance, Vietnamese courts are required to consider personal records in imposing sentences.¹⁵ Thus, the involvement of the offender in other international organized criminal activities or in other illegal activities facilitated by commission of the offense can be counted.

6.3 Conclusion

The DCCs have made many efforts to harmonize the criminalization of drug-related offenses in various domestic criminal laws of Parties to provide an essential precondition for inter-state cooperation in suppressing illicit drug traffic. In comparison with the *1961* and *1971 Conventions*, the *1988 Convention* criminalizes varying new forms of drug-related conduct. Especially, it is the first international instrument to attack related money laundering.¹⁶ It also establishes a number of mandatory drug-related offenses that Parties are not allowed to refuse to criminalize, even despite their constitutional limitations. Regarding criminal liabilities, the *1988 Convention* also provides clear policies on punishments and alternative measures on drug-related convictions.

The Vietnamese criminalization of drug-related offenses, in general, has corresponded well to the penal requirements of the DCCs for suppressing illicit drug traffic. The *CCV 1999* provides an effective tool for national authorities to attack various aspects of illicit drug activities, including supply-related, consumption-related and, inchoate and accessory activities. It criminalizes a wide range of offenses that are newly prescribed under the *1988 Convention*, including offenses relating to precursors and those concerning equipment and materials used for illicit drug manufacture. It also attacks through confiscation the fraudulent proceeds of drug trafficking. A summary of comparisons between the convention offenses and

¹⁴ A person who illegally uses arms can be convicted of unlawful use of military weapons under Article 230 or unlawful use of rudimentary weapons or supportive devices under Article 233 or unlawful using explosive materials under Article 232.

¹⁵ *CCV 1999*, above n 53, art 45.

¹⁶ The *1988 Convention* is the first multilateral instrument dealing with money-laundering offenses. See, eg, Alford, above n 7, 441; Greig, above n 7, 487; Russel, above n 7, 261 and 1988 UN Commentary, above n 8, 65.

the Vietnamese drug-related crimes is provided in Figure 6.4. The *CCV 1999* also imposes on drug traffickers severe penalties, such as long-term imprisonment, life imprisonment and death sentences. Illegal drug consumption is subjected to milder punishments.

Figure 6.4 Summary of Drug-Related Offenses under the UN Drug Control Conventions and Responses by the Criminal Code of Vietnam 1999

The 1961 Convention	The 1971 Convention	The 1988 Convention	The Criminal Code of Vietnam (CCV 1999)	Vietnamese Compliance
Supply-Related Offenses				
cultivation of opium poppy, cannabis plant and coca bush (Article 36(1)(a))	no specific offense is provided	cultivation of opium poppy, cannabis plant and coca bush for the purpose of production of narcotic drugs (Article 3(1)(a)(ii))	cultivating opium poppy or other kinds of plant bearing narcotic substances* (Article 192)	satisfactory
production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of narcotic drugs (Article 36(1)(a))		production, manufacture, extraction and preparation, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of narcotic drugs or psychotropic substances (Article 3(1)(a)(i))	<ul style="list-style-type: none"> - unlawful manufacturing of narcotic substances (Article 193) - unlawful stockpiling, transporting, trading or appropriating of narcotic substances (Article 194) 	<p>Satisfactory</p> <p>(The CCV additionally criminalizes the appropriating of narcotic substances)</p>
		possession or purchase of narcotic drugs or psychotropic substances for	unlawful stockpiling, transporting, trading or appropriating of	satisfactory

The 1961 Convention	The 1971 Convention	The 1988 Convention	The Criminal Code of Vietnam (CCV 1999)	Vietnamese Compliance
		the purpose of trafficking ((Article 3(1)(a)(iii))	narcotic substances (Article 194)	
		manufacture of precursors and essential chemicals, knowing that they are to be used in or for the illicit cultivation, production or manufacture of controlled substances (Article 3(1)(a)(iv))	not proscribed	gap
		Transport, distribution or possession of precursors and essential chemicals, knowing that they are to be used in or for the illicit cultivation, production or manufacture of controlled substances (Article 3(1)(a)(iv) and Article 3(c)(ii))	unlawful stockpiling, transporting, trading or appropriating of precursors* used for the illicit manufacture of narcotic substances (Article 195)	satisfactory (the CCV additionally criminalizes the appropriating of precursors)
		manufacture, transport, distribution or possession of equipment, materials, knowing that they are to be used in or for the illicit cultivation, production or manufacture of controlled substances (Article 3(1)(a)(iv) and Article 3(c)(ii))	unlawful manufacturing, stockpiling, transporting, trading or appropriating of equipments or tools to be used for the illicit manufacture of narcotic substances or illegal use of	satisfactory (the CCV additionally criminalizes the appropriating of

The 1961 Convention	The 1971 Convention	The 1988 Convention	The Criminal Code of Vietnam (CCV 1999)	Vietnamese Compliance
			narcotic substances (Article 196)	equipment or tools)
		organization, management or financing of any supply-related offense (Article 3(a)(v))	Accessory offenses (Article 20)	satisfactory
		Money-laundering offenses (Article 3(b))	Legalizing money or property generated from a crime (Article 251)	satisfactory
		Acquisition, possession or use of property, knowing, at the time or receipt, that such property was derived from an supply-related offense or from an act of participation in such an offense (Article 3(c)(i))	Haboring or consuming of illicit property that others obtained from the commission of a crime (Article 250)	satisfactory
Consumption-Related Offenses				
not expressly required	not expressly required	Possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption (Article 3(2))	- Cultivating opium poppy or other kinds of plant bearing narcotic substances (Article 192); - Unlawful stockpiling, transporting, trading or	satisfactory

The 1961 Convention	The 1971 Convention	The 1988 Convention	The Criminal Code of Vietnam (CCV 1999)	Vietnamese Compliance
			appropriating of narcotic substances (Article 194);	
			Illegal use of narcotic substances (Article 199)	Extra (not required by the Conventions)
			Organizing of the illegal use of narcotic substances (Article 197)	Extra (not required by the Conventions)
			Haboring of the illegal use of narcotic substances (Article 197)	Extra (not required by the Conventions)
			Forcing or inducing another to illegally use narcotic substances (Article 200)	Extra (not required by the Conventions)
Inchoate and Accessory Offenses				
international participation in, conspiracy to commit and attempts to commit, any drug-related offenses, and preparatory acts and financial operations in connection with	international participation in, conspiracy to commit and attempts to commit, any drug-related offenses, and	participation in, association or conspiracy to commit, attempt to commit and aiding, abetting, facilitating and counseling the commission of any drug-related offense (Article 3(1)(c)(iv))	- Accessory offenses (Article 20) - Attempt (Article 18) - Preparing the commission of a crime (Article 17)	satisfactory

The 1961 Convention	The 1971 Convention	The 1988 Convention	The Criminal Code of Vietnam (CCV 1999)	Vietnamese Compliance
drug-related offenses (Article 36(2)(a)(ii))	preparatory acts and financial operations in connection with drug-related offenses (Article 22(2)(a)(ii))			
		publicly inciting or inducing others, by any means, to commit any drug-related offense or to use narcotic drugs or psychotropic substances illicitly (Article 3(1)(c)(iii))	Accessory offenses (Article 20)	Some differences in the ambit of the Convention and the Vietnamese offenses.

* It should be reminded that the Vietnamese term ‘narcotic substances’ (*Chat Ma Tuy*) covers both narcotic drugs and psychotropic substances under the *1961* and *1971 Conventions*, and the Vietnamese term ‘precursors’ (*Tien Chat*) includes both precursors and essential chemicals in Tables I and II under the *1988 Convention* (see Sections 4.2.2 and 4.2.3 for cross-reference).

Although the criminal law of Vietnam has achieved many successes in criminalizing and penalizing drug-related crimes, the *CCV 1999* and its guiding regulations still need refinement.

With respect to DCC compliance, the *CCV 1999* needs to criminalize unlawful manufacture of precursors, as this is a mandatory offense under the *1988 Convention*. Thus, a new offense of ‘Unlawful manufacturing of precursors’ needs to be inserted or, to maintain the existing structure and to follow the general format, the current offense of ‘Unlawful stockpiling, transporting, trading or appropriating of precursors to be used for the illicit manufacture of narcotic substances’ should be revised to cover this form of conduct. In this way, Article 195 of the *CCV 1999* should be read as follows: ‘Unlawful *manufacturing*, stockpiling, transporting, trading or appropriating of precursors used for illicit manufacture of narcotic substances’.

Not concerning DCC compliance but national legislation on drug-related crimes in general, the *CCV 1999* should settle the issue concerning the minimum amount of narcotic substances subjected to the offenses of stockpiling, transporting and trading, to avoid unnecessary arguments relating to the legal base of the *JC 1998*. Articles 193, 194 and 195 of the *CCV 1999* on ‘Unlawful manufacturing of narcotic substances’, ‘Unlawful stockpiling, transporting, trading or appropriating of narcotic substance’ and ‘Unlawful stockpiling, transporting, trading or appropriating of precursors’ should include a new provision regarding the threshold amount of drugs involved to be criminally liable. Addressing this issue is also important to ensure fair treatment for persons who possess or purchase a small amount of the controlled substances for personal use.

The *CCV 1999* does not criminalize the production of counterfeit narcotic substances for the simple purpose of committing a fraud. This omission leads to doubts whether such counterfeit is a crime of fraud or of unlawful drug manufacture.¹ To create a consistent interpretation of the law in this case, further explanation and guidance by the People’s Supreme Court is necessary. Additionally, guidance concerning physical and mental elements of the crimes of organizing and harboring the illegal use of narcotic substances is also needed to avoid inconsistencies in interpretation. It is

suggested here that the test used to differentiate between these two offenses should be whether an induced person is already a drug user or is not.

In regard to penalties, although it is laudable that Vietnamese legislation establishes punishments for drug trafficking offenses in direct proportion to the quantities of drugs involved, its omission to provide for proportional penalties for various types of narcotic substances and for precursors in solid form regrettably leads to discrepancies in approaches between different local courts.² Due to the large number of controlled substances, it may be impractical to tailor such proportion in terms of each substance. Therefore, it is recommended here that a penal relationship be established for each group of substances set out in the Schedules. In addition, the omission of the *CCV 1999* to specify proportional penal relationships in pecuniary penalties imposed on incomplete and complete offenses also results in little uniformity. Thus, Article 52 of the *CCV 1999* should be revised with a view to extending the application of the currently specified proportion for gaol sentences (termed ‘principal penalties’) to cover also fines (termed ‘additional penalties’).

¹ See Minh Duc Nguyen, ‘The Need of a New Joint Circular on Application of Several Articles in Chapter “Drug-related Crimes”’, above n 114, 21 and Van Nhu Tu, above n 106, 148.

² See Manh Cuong Bui, ‘Can Huong Dan Xu Ly Cac Vu An Ma Tuy co Lien Quan den Thuoc Gay Nghien, Thuoc Huong Than’ (2004) 23 *Toa An Nhan Dan* 25, 25-6 [trans: Manh Cuong Bui, ‘A Need of Implementing Regulations on Trials for Criminal Offenses Relating to Addictive and Psychotropic Drugs’ (2004) 23 *People’s Court* 25].

7 JURISDICTION AND EXTRADITION

7.1 Jurisdiction over Drug-Related Offenses

7.1.1 Jurisdiction over Drug-Related Offenses under the UN Drug Control Conventions

7.1.1.1 Overview

7.1.1.2 Jurisdiction under the 1961 Convention

7.1.1.3 Jurisdiction under the 1971 Convention

7.1.1.4 Jurisdiction under the 1988 Convention

7.1.2 Jurisdiction over Drug-Related Offenses under Vietnamese Legislation

7.1.2.1 Mandatory Territorial Jurisdiction

7.1.2.2 Optional Extraterritorial Jurisdiction

7.2 Extradition of Drug-Related Offenders

7.2.1 Extradition under the UN Drug Control Conventions

7.2.1.1 Overview

7.2.1.2 Extradition under the 1961 Convention

7.2.1.3 Extradition under the 1971 Convention

7.2.1.4 Extradition under the 1988 Convention

7.2.2 Extradition under Vietnamese Legislation

7.2.2.1 Reservation to the Extradition Provisions under the UN Drug Control Conventions

7.2.2.2 Extradition of Drug-Related Offenders on the Basis of Bilateral Treaties

7.3 Conclusion

According to the oldest conception of sovereignty, a state is a supreme authority with absolute and exclusive power over all offenses committed within its territorial boundaries. As drug trafficking has become a transnational problem not confined within one state's territory, to ensure punishment of transnational drug traffickers, states have gradually agreed cooperatively to extend their criminal jurisdiction over extraterritorial drug offenses. They have also generally agreed to extradite drug-related offenders for prosecution or for imposition or enforcement of sentences. Furthermore, to avoid transnational drug-related offenders escaping from prosecution and punishment, the *aut dedere aut judicare* principle, i.e. prosecute or extradite, has been established. This rule is best-developed under the *1988 Convention*.

This Chapter analyzes the DCC provisions on jurisdiction and extradition. It is structured in two parts. The first part studies jurisdiction over drug-related offenses and the second part examines the DCC framework for drug-related extradition. Within each part, the analysis of the Conventions' provisions serves the purpose of examining the response by Vietnam through its national legislation.

7.1 Jurisdiction over Drug-Related Offenses

7.1.1 Jurisdiction over Drug-Related Offenses under the UN Drug Control Conventions

7.1.1.1 Overview

The DCC penal provisions, as analyzed in Chapter 6, reflect the international recognition of certain types of drug-related offenses. These offenses, however, are not seen as 'international' crimes to which universal jurisdiction is applicable. Parties are simply obliged to prosecute offenses committed within their territorial borders and, additionally, in specified circumstances, to take jurisdiction over offenses committed extraterritorially. Thus, under the DCCs, the territorial principle is central to the establishment and exercise of jurisdiction over drug-related crimes. It is supplemented by other grounds, including the principle of nationality (i.e. active personality) and the principle of effects (i.e. objective territoriality).¹ The Parties can, at their discretion, exercise extraterritorial jurisdiction on other grounds that are not

¹ For example, see *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988, arts 1(b) and 2 (entered into force 11 November 1990).

prescribed by the Conventions but allowed by their domestic laws.² While allowing Parties to claim extraterritorial jurisdiction, the DCCs, however, do not address the issue of competing concurrent jurisdiction.³

7.1.1.2 Jurisdiction over Drug-Related Offenses under the 1961 Convention

7.1.1.2.1 Territorial Jurisdiction

The Parties to the *1961 Convention* are under an obligation to establish jurisdiction over drug-related offenses committed in their territories.⁴ The territoriality principle is first and foremost invoked because it has been firmly applied in practice and presents the closest connection between offenses and the state.⁵ Although the principle of territoriality is very well-known and universally applied, the establishment of territorial jurisdiction under this Convention is not strictly required. The safeguard of constitutional limitations, legal systems and domestic laws is provided.⁶ Additionally, the Convention does not require its Parties to establish criminal jurisdiction in their quasi-territory (i.e. ships or airplanes registered under their laws). Moreover, it only obliges them to exercise jurisdiction over ‘serious offenses’, leaving the prosecution of less serious offenses committed within the

² See, e.g., 1988 Convention, above n 1, art 4(3). Article 4(3) of the *1988 Convention* reads as follows: ‘The Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law’. Thus, if domestic laws of the Parties prescribe other grounds for establishing jurisdiction, for example, passive nationality (nationality of the victim), then they can invoke those grounds to establish and to exercise jurisdiction over extraterritorial drug-related offenses.

³ As the DCCs allow Parties to assume extraterritorial jurisdiction over drug-related offenses, this may lead to the case of more than one state claiming jurisdiction over a transnational criminal. For example, a person who has transported narcotic drugs from his country to another may be subject to the jurisdiction of both the country of his nationality and the country into which he has imported. In such a case, the issue of competing claims of jurisdiction is left to the domestic laws of the concerned states, or multilateral and bilateral instruments/agreements concluded between them, or, simply left to a direct arrangement between the states concerned on a case-by-case basis. See, eg, United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988: Done at Vienna on 20 December 1988* (1998) 105.

⁴ *Single Convention on Narcotic Drugs*, opened for signature 30 March 1961, the first clause of Article 36(2)(a)(iv) (entered into force 13 December 1964).

⁵ See Adelheid Puttler, ‘Extraterritorial Application of Criminal Law: Jurisdiction to Prosecute Drug Traffic Conducted by Aliens Abroad’ in Karl M. Meessen (ed), *Extraterritorial Jurisdiction in Theory and Practice* (1996) 103, 106. The territorial principle is universally recognized and applied. See Division of Narcotic Drugs, *Extradition for Drug-Related Offenses - A Study of Existing Extradition Practices and Suggested Guidelines for Use in Concluding Extradition Treaties* (1985) 59; Cherif M Bassiouni, *International Extradition and World Public Order* (1974) 205; Cherif M Bassiouni, *International Extradition: United States Law and Practice* (4th ed, 2002) 316 and 1988 UN Commentary, above n 3, 102.

⁶ 1961 Convention, above n 4, the opening clause of Article 36(2).

territorial boundaries of the Parties fully to their discretion.⁷ As the term ‘serious’ is not defined in the Convention, it may be used by the Parties as a reason for refusing to submit certain cases for trial.

To ensure each Party within whose jurisdiction a transnational offense has occurred has a right to establish territorial jurisdiction over drug-related offenses, the *1961 Convention* prescribes that ‘each of the offenses enumerated in paragraph 1 [of Article 36], if committed in different countries, shall be considered as a distinct offense’.⁸ This provision allows Parties to prosecute accessory acts committed within their territorial boundaries without requiring a prosecution for principal acts in others.⁹ This provision potentially causes double jeopardy,¹⁰ therefore, its application is made subject to constitutional limitations, legal systems and the domestic laws of the Parties.¹¹

7.1.1.2.2 Extraterritorial Jurisdiction

Under Article 36(2)(a)(iv) of the *1961 Convention*, the Parties in whose territory drug-related offenders are present are under an obligation to exercise jurisdiction or to extradite the offenders to other competent countries for prosecution.¹² This provision is relatively ambitious because it attempts to establish jurisdiction over drug-related offenses on the principle of ‘subsidiary universality’.¹³ Pursuant to this requirement, the Parties which refuse to grant extradition are bound to enforce their

⁷ Although Article 36(2)(a)(iv) of the *1961 Convention* does not provide any explanation of the phrase ‘serious offenses’, it implies that the Parties are not bound to punish ‘minor offenses’, such as offenses committed merely for personal use. See Neil Boister, *Penal Aspects of the UN Drug Conventions* (2001) 216 and see also United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961* (1973) 428.

⁸ 1961 Convention, above n 4, art 36(2)(a)(i).

⁹ See 1961 UN Commentary, above n 7, 431 and Boister, above n 7, 214-5. For example, the state in which conspiracy to export drugs illegally to another country or financial support for those actions has occurred can exercise jurisdiction over the crimes without dependence on the prosecution of the principal offense by the state that illicit drugs have been imported into. Another example is that transit states can prosecute the transportation of illicit drugs independently from the states of origin or destination.

¹⁰ See Boister, above n 7, 216. The official 1961 UN Commentary (above n 7, 432) explains that the provision in question is not intended either to violate double jeopardy or to deal with cumulative or concurrent punishments. Nonetheless, it still presents the potential violation of that principle and therefore is excluded from the *1988 Convention*.

¹¹ 1961 Convention, above n 4, the opening clause of Article 36(2).

¹² 1961 Convention, above n 4, the second clause of Article 36(2)(a)(iv).

¹³ According to Boister, this term was invented by A. R. Carnegie in ‘*Jurisdiction over Violations of The Laws and Customs of War*’ (1963). As drug-related offenses are not international crimes under customary international law, universal jurisdiction is not applicable to them. Therefore, the term

criminal rules over the offenders even when they are not their nationals and the offenses have neither been committed inside their boundaries nor brought about effects in their territory. The Parties may find it difficult to exercise jurisdiction over such cases because they have difficulty finding a connection between themselves and the offenders, on the principles of nationality, objective territoriality or effects. The lack of a necessary connection between the states and the offenders or the offenses causes some Parties reluctance in exercising jurisdiction to prosecute over those cases.¹⁴

This obligation to prosecute, however, is subjected to a number of limitations. First, it is confined to only ‘serious offenses’ under the jurisdiction of the requesting and requested states. The limitation to ‘serious offenses’, again, may be used as a reason to refuse to submit certain drug-related cases for trial. Secondly, Parties are only obliged to prosecute offenders for extraterritorial crimes if an extradition request is formally made but another Party extradition is not granted.¹⁵ This specification reflects the *aut dedere aut judicare* principle.¹⁶ Thirdly, to avoid double jeopardy, Parties are only bound to exercise jurisdiction if the offenders have not been previously prosecuted or judged.¹⁷ Fourthly, the establishment of jurisdiction over these offenders is fully subject to constitutional limitations, legal systems and domestic laws of concerned Parties.¹⁸ Thus, in brief, the jurisdiction provisions under the *1961 Convention* are very ‘soft’ in nature and present a number of shortcomings.

7.1.1.3 Jurisdiction over Drug-Related Offenses under the 1971 Convention

The jurisdiction provisions of the *1971 Convention* follow strictly the model of the *1961 Convention*. They reintroduce the language of the corresponding provisions of the earlier Convention, as a result of which the comments above are applicable here. Their resemblance allows Parties to have the same approach to the establishment of

‘subsidiary universality’ is more suitable to refer to jurisdiction which is established over them through the application of the *aut dedere aut judicare* principle. See Boister, above n 7, 200.

¹⁴ See, Boister, above n 7, 217.

¹⁵ 1961 Convention, above n 4, Article 36(2)(a)(iv) and see also 1961 UN Commentary, above n 7, 435. Extraditions might not be granted because domestic laws of the Parties do not allow them to extradite their nationals or because they require extradition treaties as a legal basis for extradition.

¹⁶ The relevant provision, however, omits to cover the case where the Parties apprehend offenders but no extradition request is made, i.e. the Parties are under no obligation to prosecute apprehended offenders if there is no extradition request in respect of them. The *1961 Convention* also does not impose any strict obligation upon the Parties to make extradition requests.

¹⁷ 1961 Convention, above n 4, Article 36(2)(a)(iv) and the 1961 UN Commentary, above n 7, 436.

jurisdiction over offenses relating to narcotic drugs as well as psychotropic substances.

7.1.1.4 Jurisdiction over Drug-Related Offenses under the 1988 Convention

The *1988 Convention* markedly improves the jurisdiction provisions in the earlier Conventions. As the principle of territoriality has been firmly established in practice, the *1988 Convention* removes completely the safeguard of constitutional limitations, legal systems and domestic laws provided under the earlier Conventions and strictly obliges Parties to establish territorial jurisdiction over drug-related crimes. Additionally, it specifies several optional grounds for establishing jurisdiction over extraterritorial drug-related offenses. Unlike the earlier Conventions, it does not use the undefined phrase ‘serious offenses’ which allows a subjective interpretation. Instead, it explicitly relates the jurisdictional provisions to drug-trafficking offenses that are listed under Article 3(1). Although making improvements, the jurisdiction provisions under the *1988 Convention*, however, do ‘not represent a massive departure from the existing practice’.¹⁹

7.1.1.4.1 Mandatory Territorial Jurisdiction

The *1988 Convention* obliges Parties to establish jurisdiction over drug-related offenses that occur within their territory and quasi-territory, including vessels flying their flags and aircraft registered under their laws.²⁰ That establishment is mandatory.²¹ Domestic criminal laws of the Parties are to define conditions in which an offense is considered to have been committed within their territory. In practice, most states already extend their criminal jurisdiction to ships flying with their flags and aircraft registered in their countries.²² Under some national legal systems, a ship registered in one state can fly the flag of another state. In accordance with the strict construction of this provision, in those cases, the flag state as opposed to the state in

¹⁸ 1961 Convention, above n 4, the opening phrase of Article 36(2).

¹⁹ See Boister, above n 7, 251.

²⁰ 1988 Convention, above n 1, art 4(1). It is worth mentioning that the exercise of jurisdiction is dependent on whether the alleged offenders are in the custody of the Parties and, therefore, the *1988 Convention* requires the Parties to establish but not to exercise jurisdiction over the alleged offenders. In addition, that deliberate omission of the requirement to exercise jurisdiction enables the Parties, at their option, to extradite the alleged drug-related offenders to the state that is more competent to exercise prosecutions. See 1988 UN Commentary, above n 3, 102.

²¹ See 1988 UN Commentary, above n 3, 102 and Boister, above n 7, 239.

²² See William C Gilmore, *Combating International Drugs Trafficking: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1991) 10.

whose territory the ship is located is given jurisdiction over the offenses.²³ With respect to aircraft, as joint and multiple registration is acceptable, an aircraft may have dual or multiple nationality.²⁴ This can lead to competing claims of territorial jurisdiction.²⁵ However, the *1988 Convention* does not seek to address this issue.

7.1.1.4.2 *Optional Extraterritorial Jurisdiction*

While the establishment of territorial jurisdiction under the *1988 Convention* is mandatory, that of extraterritorial jurisdiction remains optional. The Convention provides several grounds upon which Parties can select to assume jurisdiction over extraterritorial offenses. One of those discretionary grounds is the principle of nationality. Pursuant to Article 4(1)(b)(i), Parties may establish jurisdiction over the offense committed extraterritorially ‘by one of its nationals or by a person who has his habitual residence in its territory’.²⁶ Although the nationality principle is universally acknowledged and widely used by civil law states,²⁷ common law states find it hard to prosecute an offense committed outside their territory and tend to grant extradition to the territorially competent states. Thus, this principle is an optional basis for extraterritorial jurisdiction.²⁸ The concepts of ‘nationality’ and ‘habitual residence’ are defined by domestic laws. Cases of dual or multiple nationality potentially bring about competing claims of jurisdiction.²⁹

On the basis of an agreement with the flag state, the state which boarded and searched a suspect vessel that exercises freedom of navigation can then also establish jurisdiction over the offenses.³⁰ This optional ground must be read with Article 17 of the *1988 Convention* that introduces an innovative law enforcement strategy against vessels involved illicit drug traffic.³¹ In accordance with Article 17(4), a Party that has reasonable grounds to suspect a vessel is involved in illicit drug traffic while

²³ See also 1988 UN Commentary, above n 3, 102.

²⁴ Ibid 103.

²⁵ The concurrence may also occur when a crime is committed in a ship flying with the flag of one state but is sailing in the territorial water of another state. Ibid 105.

²⁶ 1988 Convention, above n 1, art 4(1)(b)(i).

²⁷ 1988 UN Commentary, above n 3, 108. See also Bassiouni, *International Extradition and World Public Order*, above n 5, 251. Although this principle is universally acknowledged, it is not universally accepted. See Division of Narcotic Drugs, above n 5, 60.

²⁸ See Satya Deva Bedi, *Extradition in International Law and Practice* (1968) 97; Gilmore, above n 22, 11 and Boister, above n 7, 242.

²⁹ See, eg, Boister, above n 7, 243.

³⁰ 1988 Convention, above n 1, art 4(1)(b)(ii). See also 1988 UN Commentary, above n 3, 107 and Gilmore, above n 22, 11.

exercising freedom of navigation can, based on the agreement with the flag state, take appropriate action in relation to the vessel, persons and cargo on board.³² Under Article 4(1)(b)(ii), that Party can further establish extraterritorial jurisdiction over alleged crimes on board by agreement with the flag state. Noteworthy is that Article 17(2) also provides for the interdiction of vessels without nationality involved in international illicit traffic,³³ although Article 4(1)(b)(ii) omits to provide Parties with grounds for establishing criminal jurisdiction over them.³⁴

The final optional ground for establishing extraterritorial jurisdiction is the ‘effects’ principle. Article 4(1)(b)(iii) allows Parties to assume jurisdictional power over alleged offenses committed outside their territorial boundaries with the aim of committing a drug-related crime in their territory.³⁵ Based on this ground, Parties can have jurisdiction over inchoate and accessory drug-related offenses executed abroad even when no overt act has been committed in their territory. Those offenses may also fall under the jurisdiction of Parties in whose territory they were executed;³⁶ thus, more than one state may have jurisdiction over the same offense. The *1988 Convention*, again, does not provide any guidelines on concurrent jurisdiction.

7.1.1.4.3 The Principle of Aut Dedere Aut Judicare

Like the earlier Conventions, the *1988 Convention* requires Parties in whose territory the alleged drug-related offenders are present to establish jurisdiction if they refuse to extradite them. It strengthens that principle by laying a number of specific obligations on the Parties. First, under Article 4(2)(a), if the Parties refuse to grant extradition for the reason that the offense has been committed in their territory or committed by one of their nationals, they are obliged to establish jurisdiction over the alleged offender.³⁷ In other words, if the principles of territoriality or nationality are invoked for the refusal, the establishment of jurisdiction over the apprehended

³¹ See Gilmore, above n 22, 11.

³² 1988 Convention, above n 1, art 17(4).

³³ 1988 Convention, above n 1, art 17(2).

³⁴ See 1988 UN Commentary, above n 3, 110 and Boister, above n 7, 244. According to Bassiouni, stateless vessels are customarily subject to jurisdiction of any state who wishes to exercise its jurisdiction over them. See Bassiouni, *International Extradition: United States Law and Practice*, above n 5, 335.

³⁵ 1988 Convention, above n 1, art 4(1)(b)(iii).

³⁶ See Boister, above n 7, 244-5.

³⁷ 1988 Convention, above n 1, art 4(2)(a).

offender is mandatory. This rule, however, is not applicable to a case where the parties refuse to extradite because the alleged person is their habitual resident.³⁸

Secondly, pursuant to Article 4(2)(b), if Parties refuse to extradite an offender who is present in their territory on grounds other than territoriality and nationality,³⁹ they are, at their discretion, to establish jurisdiction over that person. The establishment of jurisdiction in these cases is non-mandatory. The reason for this non-obligatory jurisdiction is that the common law states are reluctant to apply subsidiary jurisdiction over drug-related offenses.⁴⁰

In brief, the principle of territoriality is first invoked under the three DCCs as a ground for establishing jurisdiction over drug-related crimes. This principle is given priority over other bases, including nationality, intended effects and subsidiary universality. The establishment of jurisdiction on this ground is mandatory, whereas the establishment of jurisdiction on other bases is only discretionary.⁴¹

7.1.2 Jurisdiction over Drug-Related Offenses under Vietnamese Legislation

7.1.2.1 Mandatory Territorial Jurisdiction

Originating from the concept of territorial sovereignty, Vietnam asserts criminal jurisdiction over all crimes committed within its national territorial boundaries, including drug-related offenses. Article 5(1) of the *Criminal Code of Vietnam 1999* (CCV 1999) expressly stipulates that Vietnam establishes territorial jurisdiction against offenders of all nationalities and stateless persons,⁴² except persons who are entitled to diplomatic or consular privileges and immunities.⁴³ This domestic

³⁸ See 1988 UN Commentary, above n 3, 113.

³⁹ The grounds of refusal may include the lack of dual criminality, double jeopardy, excessive severity or lenience of punishment, discrimination of race, religion, nationality or political opinions. See, eg, Division of Narcotic Drugs, above n 5, 31, 51, 53 and 56-7 and Bedi, above n 28, 171, 193, 203 and 206.

⁴⁰ The civil law states called for the imposition of the principle of *aut dedere aut judicare* regardless of the grounds for refusing extradition, i.e. the Parties are obliged to exercise jurisdiction in all cases in which they refuse to extradite the requested offenders, whereas, this conception was not supported by the common law states, because ‘common law delegates to the 1988 Convention would not accept anything closer to an obligation to establish subsidiary universality over drug offenses...’. See Boister, above n 7, 250-1.

⁴¹ 1988 Convention, above n 1, art 4(3).

⁴² See *Bo Luật Hình Su Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1999* (Quoc Hoi) art 5(1) [trans: *Criminal Code of Vietnam 1999* (National Assembly)] (hereinafter CCV 1999). Generally, those persons include heads of states, ambassadors, counselors, attaché, their spouse and juveniles.

⁴³ CCV 1999, above n 42, art 5(2).

provision directly corresponds to the DCC requirements regarding mandatory territorial jurisdiction over drug-related offenses.

Vietnam also customarily extends its territorial jurisdiction over offenses committed on board ships and aircrafts registered under its law.⁴⁴ In accordance with Article 12(3) of the *Maritime Code of Vietnam 2005*, only ships that have Vietnamese nationality can fly its flag.⁴⁵ Ships registered under foreign laws cannot fly the flag of Vietnam, unless the other registration has been temporarily terminated or eliminated.⁴⁶ Thus, ships flying the Vietnamese flag always have a single registration, that is, Vietnamese nationality. This helps to prevent concurrent criminal jurisdiction of both the state of registration and the flag state. Taking a similar approach, under Article 13(2) of the *Law on Aviation of Vietnam 2006*, aircraft are only entitled to be registered as of Vietnamese nationality if, at the time of registering, they have not yet been registered elsewhere or their previous registration has been eliminated.⁴⁷ Thus, under this Law, an aircraft cannot acquire dual or multiple nationalities. Competing claims of territorial jurisdiction over them, therefore, are avoided.

The *CCV 1999* does not provide any rule to determine when a crime is considered as having been committed in the territory of Vietnam. Generally, Vietnam assumes territorial jurisdiction when one or more constituent elements of a crime have taken place in its territory.⁴⁸ The question of whether this requirement has been met depends on the exact facts of individual cases and no general formula is prescribed. The *CCV 1999* is also silent on the principle of effects, viz. when all parts of the offense have been committed outside the national territory but an effect was intended in its physical borders. Thus, Vietnamese courts have no jurisdiction over inchoate

⁴⁴ See, eg, Dai Hoc Luat Ha Noi, *Giao Trinh Luat Hinh Su Viet Nam* (1998) 23 [trans: The Law University of Hanoi, *Textbook on the Criminal Law* (1998)] and Ngoc Hoa Nguyen (ed), *Giao Trinh Luat Hinh Su Viet Nam* (2001) 25 [trans: Ngoc Hoa Nguyen (ed), *Textbook on the Criminal Law of Vietnam* (2001)].

⁴⁵ See *Bo Luat Hang Hai Viet Nam so 40/2005/QH11 2005* (Quoc Hoi) art 12(3) [trans: *Maritime Code of Vietnam 40/2005/QH11 2005* (National Assembly)] (hereinafter *Maritime Code of Vietnam 2005*).

⁴⁶ *Maritime Code of Vietnam 2005*, above n 45, art 14(1)(b).

⁴⁷ See *Luat Hang Khong Dan Dung Viet Nam so 66/2006/QH11 2006* (Quoc Hoi) art 13(2)(a) [trans: *Law on Aviation of Vietnam 66/2006/QH11 2006* (National Assembly)].

⁴⁸ Law University of Hanoi, above n 44, 23 and Ngoc Hoa Nguyen, above n 44, 25.

and accessory offenses committed by foreign nationals outside the borders of Vietnam even if they are intended to have effects within its territory.

7.1.2.2 *Optional Extraterritorial Jurisdiction*

Generally, nationality is ‘a legal and political tie which binds individuals to a state and renders them subject to its jurisdiction’.⁴⁹ Based upon the relationship between a state and its citizens,⁵⁰ Vietnam asserts the right to enforce its criminal law against its nationals even when they have committed offenses in foreign countries, i.e. it assumes criminal jurisdiction upon the principle of nationality (or active personality). Article 6(1) of the *CCV 1999* expressly stipulates that ‘Vietnamese citizens who have committed offenses outside the territory of Vietnam may be subjected to criminal liability in Vietnam in conformity with this Code’.⁵¹ This rule is applicable to all extraterritorial crimes, including drug-related offenses. However, the word ‘may’ used in its language means that the establishment of Vietnamese jurisdiction on the ground of nationality under the *CCV 1999* is only optional.

Pursuant to the *Law on Nationality of Vietnam 1998*, Vietnamese nationality can be acquired in several ways, such as by descent, place of birth, registration or by naturalization. Primarily, the rule of descent is applied. Children acquire Vietnamese nationality irrespective of their place of birth if, at the time of birth, their parents are Vietnamese citizens. They also acquire Vietnamese nationality irrespective of their place of birth if one of their parents is a Vietnamese citizen and another is a stateless person or is unknown.⁵² In addition to the principle of descent, the *Law on Nationality of Vietnam 1998* specifies that children born in the territory of Vietnam are Vietnamese citizens if, at the time of birth, both parents are stateless persons who have permanently resided in Vietnam or both are unknown.⁵³ The same rule is applicable to children whose mother is a stateless person with permanent residence in Vietnam but whose father is unknown.⁵⁴ Vietnamese nationality can also be obtained

⁴⁹ Bedi, above n 28, 86-7.

⁵⁰ See Law University of Hanoi, above n 44, 24 and Ngoc Hoa Nguyen, above n 44, 26.

⁵¹ *CCV 1999*, above n 42, art 6(1).

⁵² In the case of the other parent being a foreign citizen, their acquisition of Vietnamese nationality must be based on the agreement of both parents. See *Luat Quoc Tich Viet Nam so 07/1998/QH10 1998* (Quoc Hoi) arts 16 and 17 [trans: *Law on Nationality of Vietnam 07/1998/QH10 1998* (National Assembly)] (hereinafter *Law on Nationality of Vietnam 1998*).

⁵³ *Law on Nationality of Vietnam 1998*, above n 52, arts 18(1) and 19(1).

⁵⁴ *Law on Nationality of Vietnam 1998*, above n 52, art 19(2).

by registration with respect to adopted children⁵⁵ and by naturalization. To be naturalized, stateless persons or citizens of foreign countries must satisfy conditions specified under the *Law on Nationality of Vietnam 1998*.⁵⁶

In addition to extraterritorial jurisdiction over its citizens, Article 6(1) of the *CCV 1999* stipulates that Vietnam also assumes jurisdiction over extraterritorial offenses that have been committed by stateless persons who permanently reside in its territory.⁵⁷ The establishment and exercise of jurisdiction on this ground, similar to the principle of nationality, remains discretionary. Thus, as a whole, Article 6(1) of the *CCV 1999* corresponds to Article 4(1)(b)(i) of the *1988 Convention* which provides that Parties may establish jurisdiction over offenses committed extraterritorially ‘by one of its nationals or by a person who has his habitual residence in its territory’.⁵⁸

Under Article 6(2) of the *CCV 1999*, an alien who has committed a crime in a foreign country may be subject to criminal liability in Vietnam in conformity with its criminal law, if that crime is universal.⁵⁹ That universal jurisdiction, however, is limited to international crimes under customary international law, such as war crimes.⁶⁰ Offenses under the DCCs are not customary international crimes and therefore universal jurisdiction is not created. Thus, pursuant to the relevant domestic provision, Vietnam does not enforce its criminal law against non-resident aliens who commit drug-related offenses outside its national boundaries.

⁵⁵ Vietnamese children adopted by foreign citizens retain Vietnamese nationality unless they surrender it in accordance with their will when they reach 15 years of age. Foreign citizens adopted by Vietnamese citizens acquire the nationality of Vietnam from the date that the adoption application is approved by the Vietnamese government authorities. If one adopting parent is a Vietnamese citizen and another is a citizen of a foreign country, adopted children with foreign citizenship can obtain Vietnamese nationality based on the registration of their parents. See *Law on Nationality of Vietnam 1998*, above n 52, art 30.

⁵⁶ Those conditions include: (i) being at least 18 years of age, (ii) being of good character, (iii) having a sufficient knowledge of Vietnamese language, (iv) being resident in Vietnam for the period of at least 5 years and, (iv) being able to earn living in Vietnam. See *Law on Nationality of Vietnam 1998*, above n 52, art 20(1).

⁵⁷ Note that Vietnam does not assume jurisdiction over offenses committed extraterritorially by a person who permanently resides in its territory but is a citizen of another country. This omission originates from the respect by Vietnam for the sovereignty of other states as regards their jurisdiction relationship with their citizens.

⁵⁸ See Section 7.1.1.4 for cross-reference.

⁵⁹ *CCV 1999*, above n 42, art 6(2).

⁶⁰ *CCV 1999*, above n 42, art 6(2).

In brief, in accordance with domestic criminal law, Vietnam exercises jurisdiction over drug-related crimes committed within its physical territory and its registered vessels. That territorial jurisdiction is established against individuals of all nationalities and stateless persons. With respect to extraterritorial offenses, Vietnam only exercises criminal jurisdiction against its citizens and stateless persons who have permanently resided in its territory.

7.2 *Extradition of Drug-Related Offenders*

7.2.1 *Extradition under the UN Drug Control Conventions*

7.2.1.1 *Overview*

Extradition is an important tool to combat transnational crimes because it allows one state to access an alleged or convicted offender present in the territory of another state. The DCCs make drug-related offenses extraditable.⁶¹ However, under the *1961* and *1971 Conventions*, Parties are authorized to decline extradition in cases where the offenses are not ‘sufficiently serious’.⁶² This discretion enables them to avoid administrative and financial burdens in less serious cases, such as personal consumption.⁶³ As the phrase ‘sufficiently serious’ is fully subject to the interpretation of Parties, it may be employed by them as a reason for refusing to cooperate with other states. To close that gap, the *1988 Convention* explicitly applies its extradition provisions to the offenses enumerated under Article 3(1).⁶⁴

Noteworthy is that under the DCCs, Parties are under no obligation to make requests for extradition or to extradite drug-related offenders present in their territory. The three Conventions simply try ‘to make extradition possible by using existing domestic legislation and existing or future bilateral and multilateral extradition treaties’.⁶⁵

⁶¹ See, eg, 1961 Convention, above n 4, art 36(2)(b); *Convention on Psychotropic Substances*, opened for signature 21 February 1971, art 22(2)(b) (entered into force 16 August 1976) and 1988 Convention, above n 1, art 3(10) and 6(2). For the purpose of international cooperation (i.e. including extradition), Article 3(10) of the 1988 Convention obliges the Parties not to treat drug-related offenses as fiscal or political offenses or as politically motivated offenses. Thus, money-laundering offenses are also subjected to extradition. This is ‘a notable achievement’ of the 1988 Convention. See 1988 UN Commentary, above n 3, 153.

⁶² 1961 Convention, above n 4, art 2(b).

⁶³ Division of Narcotic Drugs, above n 5, 4.

⁶⁴ 1988 Convention, above n 1, art 6(1).

⁶⁵ Boister, above n 7, 252.

7.2.1.2 *Extradition under the 1961 Convention*

7.2.1.2.1 *Extradition under the Unamended 1961 Convention*

The *1961 Convention* provisions on extradition are generally ‘soft’, as they are subject to constitutional limitations, national legal systems and domestic laws of the Parties. In addition, the phrase ‘it is desirable’ makes them merely of a recommendatory character.⁶⁶ The extradition provisions of the *1961 Convention* have two important foci, i.e. legal bases for cooperation in extradition and grounds for refusal of extradition. The Convention attempts to create a legal base for extradition by recommending that Parties include drug-related offenses in extradition treaties that have been or are to be concluded between them. Parties who do not make extradition conditional on a treaty or on reciprocity are encouraged to recognize drug-related offenses as extraditable.⁶⁷ In terms of the grounds for refusal of extradition, under Article 2(b) of the *1961 Convention*, Parties can refuse to comply with an extradition request if they consider the offense is not ‘sufficiently serious’. Again, the interpretation of this term is entirely subject to their discretion. In addition, Parties can also decline extradition if the requested extradition does not conform to their domestic laws.⁶⁸ Consequently, the granting of extradition is subject completely to the domestic laws of Parties which are asked to extradite.

As observed in Section 7.1.1.2.1, under the *1961 Convention*, Parties are entitled to establish drug-related acts committed in their territory as distinct offenses. In a transnational setting, multiple rights of jurisdiction can cause multiple requests for extradition. This may result in refusal of extradition because some states do not extradite offenders once they have jurisdiction over them.⁶⁹ The application of the principle of subsidiary universality in establishing jurisdiction can also lead to situations where more than one state can claim jurisdiction and request extradition. The *1961 Convention*, however, does not provide guidelines to address multiple requests for extradition.

⁶⁶ See 1961 UN Commentary, above n 7, 437 and Boister, above n 7, 221.

⁶⁷ 1961 Convention, above n 4, art 36(2)(b).

⁶⁸ 1961 Convention, above n 4, art 36(2)(b).

⁶⁹ See Boister, above n 7, 215 and Division of Narcotic Drugs, above n 5, 9.

7.2.1.2.2 *Amendments Made by the 1972 Protocol*

As abovementioned, the extradition provisions of the *1961 Convention* are subject to the discretion of Parties and extradition cooperation is qualified as being merely ‘desirable’. To enhance international cooperation in extradition, the *1972 Protocol*, therefore, removes this qualification and makes extradition cooperation more obligatory.

Under the *1961 Convention*, the inclusion of drug-related offenses under existing bilateral and multilateral extradition treaties between the Parties is not automatic. Thus, treaties that use the enumerative method in defining extraditable offenses may need to be amended. However, piecemeal updating may be slow and cumbersome.⁷⁰ To simplify that process, the *1972 Protocol* provides for an automatic extension to drug-related offenses of all extradition treaties that have been concluded between the Parties. Article 14 of the *1972 Protocol* amends Article 36(1) and (2) of the *1961 Convention* to read as follows: ‘[e]ach of the offenses enumerated in paragraphs 1 and 2(a)(ii) of this article shall be deemed to be included as an extraditable offense in any extradition treaty existing between Parties’.⁷¹ This provision, however, does not deal with the case in which:

[o]nly one of the States bound by an extradition treaty is the Party to the Single Convention [the 1961 Convention]. Similar problems may arise when not all the Parties to a multilateral extradition Convention are Parties to the Single Convention.⁷²

Article 14 of the *1972 Protocol* also obliges Parties to include drug-related crimes in every extradition treaty to be concluded between them.⁷³ To comply with this requirement, future extradition treaties between Parties that opt to use the enumerative method in defining extraditable crimes must expressly include drug-related offenses in their enumerated list. Treaties that distinguish extraditable and

⁷⁰ See Christopher L Blakesley, *Terrorism, Drugs, International Law, and the Protection of Human Liberty* (1992) 215.

⁷¹ *Protocol Amending the Single Convention on Narcotic Drugs, 1961*, opened for signature 31 December 1972, art 14 (entered into force 8 August 1975) (i.e. the amended 1961 Convention, art 36(2)(b)(i)) (hereinafter 1972 Protocol). See also United Nations, *Commentary on the Protocol amending the Single Convention on Narcotic Drugs, 1961: done at Geneva on 25 March 1972* (1976) 79 and Division of Narcotic Drugs, above n 5, 4-5.

⁷² See Division of Narcotic Drugs, above n 5, 5.

non-extraditable offenses on the basis of severity of punishment (i.e. using the eliminative method) are regarded as being in line with this requirement because, under domestic laws of Parties, drug trafficking offenses are generally subjected to severe penalties.⁷⁴

The *1972 Protocol* also includes a new provision providing that Parties which make extradition conditional on the existence of a treaty may use the *1961 Convention* as the necessary treaty basis.⁷⁵ Parties are not bound to choose this option but, if they do not extradite the offenders requested, they are bound to prosecute them (i.e. the *aut dedere aut judicare* principle).⁷⁶ Parties who do not make extradition conditional on a treaty are obliged to recognize drug-related offenses as extraditable.⁷⁷

In brief, the *1972 Protocol* has strengthened the extradition provisions of the *1961 Convention* and has even been considered as ambitious.⁷⁸ While making extradition treaties between Parties automatically applicable to drug-related offenses, it does not provide any limitation to the categories of extraditable drug-related offenses. Consequently, offenses committed merely for the purpose of personal use may fall under their scope and, therefore, be subject to extradition. Nonetheless, Parties have the right to refuse extradition in cases where the offenses are not ‘sufficiently serious’⁷⁹ and, in general, the implementation of the Convention provisions remains explicitly subject to constitutional limitations, legal systems and domestic laws of the Parties.⁸⁰

⁷³ 1972 Protocol, above n 71, art 14 (i.e. the amended 1961 Convention, art 36(2)(b)(i)).

⁷⁴ See Division of Narcotic Drugs, above n 5, 5. In relation to enumerative and eliminative methods in defining extraditable offenses in extradition treaties, see also I a Shearer, *Extradition in International Law* (1971) 134-6 and Bassiouni, *International Extradition and World Public Order*, above n 5, 315-6.

⁷⁵ 1972 Protocol, above n 71, art 14 (i.e. the amended 1961 Convention, art 36(2)(b)(ii)).

⁷⁶ Division of Narcotic Drugs, above n 5, 6.

⁷⁷ 1972 Protocol, above n 71, art 14 (i.e. the amended 1961 Convention, art 36(2)(b)(iii)). Although, the concerned provision does not expressly obligate the Parties who do not make extradition on the existence of reciprocity to do so, the official UN Commentary recommends that, in a broader sense, that provision also covers the case under consideration. See 1972 UN Commentary, above n 71, 81 and see also Division of Narcotic Drugs, above n 5, 7.

⁷⁸ See Boister, above n 7, 231 and 233. According to Boister, those provisions should only apply to drug-related offenses that are sufficiently serious.

⁷⁹ 1972 Protocol, above n 71, art 14 (i.e. the amended 1961 Convention, art 36(2)(b)(iv)).

⁸⁰ 1961 Convention, above n 4, the opening clause of Article 36(2).

7.2.1.3 *Extradition under the 1971 Convention*

The *1971 Convention* strictly follows the model of the unamended *1961 Convention* with respect to extradition of drug-related offenders. Its provisions repeat the exact wording of the extradition provisions under the unamended *1961 Convention* and, therefore, the analysis above is equally applicable here. Since the *1972 Protocol* introduced a number of amendments to the *1961 Convention*, the regulations of the *1961 and 1971 Conventions* on extradition are varied.

7.2.1.4 *Extradition under the 1988 Convention*

The *1988 Convention* further consolidates the framework for extradition that had been created by the earlier Drug Control Conventions.⁸¹ However, with respect to legal bases for extradition, it follows the model of the *1972 Protocol* analyzed above, i.e. conditions for extradition remain subject to domestic laws of Parties or applicable extradition treaties between them, as do the grounds for refusal.⁸² Improvements made by the *1988 Convention* in comparison with the earlier Conventions are analyzed below.

First, the *1988 Convention* makes the international extradition provisions ‘stronger’ in the manner that does not provide Parties with an overall safeguard to refer to their constitutional limitations, legal systems and domestic laws in implementing the Convention requirements. This safeguard is only provided in limited circumstances, such as when Parties consider the issue of taking a person whose extradition is sought into custody.⁸³

Secondly, under Article 3(10), Parties are required not to establish drug-related offenses as fiscal or political or politically motivated offenses in order to refuse extradition, unless this prejudices their constitutional limitations and fundamental domestic laws.⁸⁴

⁸¹ However, as a whole, it does not much depart from the principles established in this field (Boister, above n 7, 252). According to Gilmore, the approach of the 1988 Convention is ‘similar to that found in other multilateral instruments dealing with criminal activity of international concern’. See Gilmore, above n 22, 18.

⁸² 1988 Convention, above n 1, art 6(5).

⁸³ See Article 6(8) of the *1988 Convention*. Article 6(2)(3)(4), however, does not include this safeguard.

⁸⁴ 1988 Convention, above n 1, art 3(10).

Thirdly, pursuant to Article 6(6), Parties can refuse to grant extradition if they have substantial grounds to believe that there would be discrimination in prosecution or punishment of extradited persons due to their race, religion, nationality or political opinions, or that extradition would cause prejudice for any of those reasons.⁸⁵ The aim of this ground for refusal is to assure a non-discriminatory or fair trial for every offender.⁸⁶

Fourthly, if Parties refuse extradition, the principle of *aut dedere aut judicare* is to be applied. Pursuant to Article 6(9)(a), if refusal of extradition is made on the grounds of nationality or territoriality, Parties are bound to submit the case to their competent authorities for the purpose of prosecution.⁸⁷ The Party from which extradition is requested, however, is exempted from this duty if it reaches a bilateral agreement with the requesting Party to take another measure, for instance, ‘to allow the requesting Party the option of waiting for the alleged offender to move to another Party which might agree to extradition’.⁸⁸ Under Article 6(9)(b), Parties refusing extradition on other grounds are also under a duty to submit the case for the purpose of domestic prosecution, ‘unless otherwise requested by the requesting Party for the purpose of preserving its legitimate jurisdiction’.⁸⁹ Here it is necessary to remember that, under Article 4(2), the assumption of jurisdiction on the basis of territoriality and nationality is mandatory, whereas jurisdiction established on other bases is only optional. Article 6(9) is designed in correspondence with that Article. Thus, if the requesting Party asks for the relevant Party to refrain from exercising jurisdiction for the reason that it may have ‘a more legitimate jurisdiction than the requested Party not only in its own view but also under international law’,⁹⁰ the requested Party may not submit the cases in question for trial. It is, however, completely open to the

⁸⁵ 1988 Convention, above n 1, art 6(6).

⁸⁶ A similar clause has been found in numerous international agreements. See, eg, 1988 UN Commentary, above n 3, 158.

⁸⁷ 1988 Convention, above n 1, art 6(9)(a). It is necessary to remember that under Article 4(2), the assumption of jurisdiction on the principles of nationality and territoriality is mandatory. Article 6(9) requires that if the civil law states do not extradite their nationals they have to exercise their criminal jurisdiction.

⁸⁸ See Boister, above n 7, 267.

⁸⁹ 1988 Convention, above n 1, art 6(9)(ii).

⁹⁰ Boister, above n 7, 268.

requested Party to choose whether to exercise criminal jurisdiction in conformity with its domestic law and ‘the requesting Party has no absolute right of veto’.⁹¹

Fifthly, the *1988 Convention* includes a new provision that establishes control over convicted offenders who have escaped before serving part or all of their sentence and have returned to the country of their nationality.⁹² Pursuant to Article 6(10), Parties in whose territory the convicted offender is present but which refuses to grant extradition on the ground of nationality must ‘consider the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof’.⁹³ This provision aims at ensuring sentence enforcement without the necessity of re-prosecution and double jeopardy. The term ‘consider’ indicates that the Parties are under obligation to take into account the possibility of its implementation but not bound to take action.⁹⁴ Thus, the provision is simply a recommendation.

Sixthly, another improvement in the *1988 Convention* is the provision under Article 6(12) that encourages Parties to conclude bilateral or multilateral prisoner transfer agreements, in general or ad hoc.⁹⁵ This provision aims at encouraging the Parties to accept extradition of their nationals who will subsequently be returned to them for enforcement of sentence.⁹⁶ It ‘enhances effective imprisonment while also serving humanitarian purposes’.⁹⁷ This concept, however, is not firmly established in practice, the provision being merely exhortatory.

Finally, with respect to technical aspects, to facilitate cooperation in respect of extradition, the *1988 Convention* encourages the Parties to simplify evidentiary requirements that may bring about difficulties with and slow down extradition.⁹⁸ Additionally, it requires them, upon a request of the requesting state and in

⁹¹ 1988 UN Commentary, above n 3, 169. The discussed provision reflects that ‘jurisdiction based on territoriality and nationality is seen by international law as more legitimate than the other unspecified grounds of jurisdiction’. See Boister, above n 7, 268.

⁹² Boister, above n 7, 269 and Gilmore, above n 22, 20.

⁹³ 1988 Convention, above n 1, art 6(10).

⁹⁴ See Gilmore, above n 22, 20 and 1988 UN Commentary, above n 3, 171.

⁹⁵ 1988 Convention, above n 1, art 6(12).

⁹⁶ Boister, above n 7, 271 and 1988 UN Commentary, above n 3, 175.

⁹⁷ See Boister, above n 7, 271. It should be noted that Article 6(12) does not indicate that the Parties should transfer the prisoners to their home country. Although the state of their nationality is normally a destination for those prisoners, the concerned provision leaves this issue opened to consideration of the Parties involved. See 1988 UN Commentary, above n 3, 173.

satisfactory conditions, to take the alleged offenders into custody or to apply other measures for the purpose of ensuring their presence at extradition proceedings.⁹⁹

In summary, the three DCCs have consistently tried to make extradition of drug-related offenders possible. To close down technical gaps regarding the necessity of a treaty for extradition, the amended *1961 Convention* and the *1988 Convention* encourage their Parties to consider these Conventions as a basis for an extradition treaty. However, as they only regulate some aspects of extradition and are not themselves ‘extradition mini-treaties’,¹⁰⁰ Parties are encouraged to enact domestic laws as well as to conclude bilateral or multilateral treaties to enable extradition for the purpose of prosecution as well as enforcement of sentences.

7.2.2 Extradition under Vietnamese Legislation

7.2.2.1 Reservation on the Extradition Provisions under the UN Drug Control Conventions

It is important to note that Vietnam placed reservations on Article 36(2)(b) of the *1961 Convention*, Article 22(2)(b) of the *1961 Convention* and Article 6 of the *1988 Convention* in relation to extradition.¹⁰¹ Up until now, its domestic legislation on extradition has still not been developed.¹⁰² Nevertheless, Vietnam is willing to cooperate with other states in this field. That willingness is reflected in a number of its normative instruments, for instance, the *Decree 05/2003/ND-CP on International Cooperation in Narcotics Prevention and Suppression 2003*. Under Article 7(2), the Ministry of Public Security is charged with international cooperation in respect of the extradition of drug-related offenders.¹⁰³ Moreover, Article 20(2) of the *Decree*

⁹⁸ 1988 Convention, above n 1, art 6(7).

⁹⁹ 1988 Convention, above n 1, art 6(8). Other provisions of the *1988 Convention* that not relate to legal aspects are not analyzed here, for instance, Article 6(7) requires the Parties to make efforts to expedite extradition procedures.

¹⁰⁰ 1988 UN Commentary, above n 3, 153.

¹⁰¹ See *Quyết Định số 798/QĐ-CTN ngày 01/09/1997 của Chủ tịch Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam Tham Gia 3 Công Ước của Liên Hiệp Quốc về Kiểm Soát Ma Túy năm 1997* art 2 [trans: *Decision 798/QĐ-CTN to Ratify the Three United Nations Drug Control Conventions 1997* (President)].

¹⁰² There is a lack of domestic implementing legislation that is necessary for Vietnam to involve in international cooperation in extradition. See Xuan Yem Nguyen, *Toi Pham Co To Chuc, Mafia va Toan Cau Hoa Toi Pham* (2003) 730 [trans: Nguyen, Xuan Yem, *Organized Crimes, the Mafia and Globalization of Crimes* (2003)].

¹⁰³ See *Nghị Định số 05/2003/ND-CP về Hợp Tác Quốc Tế trong Lĩnh Vực Phòng, Chống Ma Túy 2003* (Chính Phủ) art 7(2)(b) [trans: *Decree 05/2003/ND-CP on International Cooperation in Narcotics Prevention and Suppression 2003* (Government)].

74/2005/ND-CP on Prevention and Suppression of Money Laundering 2005 explicitly indicates the willingness of the Vietnamese Government to conclude bilateral treaties with other states to facilitate the extradition of criminals involved in money laundering.¹⁰⁴ In fact, Vietnam has concluded a number of bilateral treaties on mutual assistance in criminal matters in which extradition of criminals, including drug-related offenders, is permitted. But, unfortunately, the extradition provisions of those treaties have not been transformed into national law and treaty implementation has for a long time lacked the necessary domestic legislative basis.¹⁰⁵

Vietnamese domestic criminal law, especially the *Criminal Procedure Code 1988* (CPC 1988), was silent on the issue of extradition until recently. The *Criminal Procedure Code of Vietnam 2003* (CPC 2003) that replaced the *CPC 1988* and came into force from July 2004 included two new articles, namely Articles 343 and 344, dealing with extradition. Although it is still far from an elaborate framework for extradition, this instrument, for the first time, lays down the basic principles that are important to the development of national implementing regulations on extradition. Pursuant to Article 343, Vietnam does not require the existence of a treaty of extradition, i.e. extradition may be granted on the ground of reciprocity.¹⁰⁶ Extradition can be granted for the purpose of prosecution or enforcement of a sentence.¹⁰⁷ Article 344 specifies the mandatory and optional grounds for refusal of extradition which are analyzed below.

¹⁰⁴ See *Nghi Dinh so 74/2005/ND-CP ve Phong, Chong Rua Tien 2005 (Chinh Phu)* art 20(2) [trans: *Decree 74/2005/ND-CP on Prevention and Suppression of Money Laundering 2005* (Government)].

¹⁰⁵ Due to the lack of national framework, the procedure for extradition was not uniform. In some cases, abduction rather than extradition was applied to Vietnamese criminals who had committed offenses in the territory of another contracting Party. See Xuan Yem Nguyen, *Dan Do Toi Pham, Tuong Tro Phap Ly ve Hinh Su va Chuyen Giao Pham Nhan Quoc Te trong Phong Chong Toi Pham* (2000) 130, 135, 138 and 268 [trans: Nguyen, Xuan Yem, *Extradition, Mutual Assistance in Criminal Matters and Transfer of Transnational Criminals in Crime Prevention and Suppression* (2000)] and Xuan Yem Nguyen, 'Dan Do Toi Pham va Tuong Tro Tu Phap Hinh Su trong Dau Tranh Phong Chong Toi Pham o Viet Nam' (2000) 1 *Toa An Nhan Dan* 15, 17 [trans: Xuan Yem Nguyen, 'Extradition and Mutual Legal Assistance in Crime Prevention in Vietnam' (2000) 1 *People's Court* 15].

¹⁰⁶ See *Bo Luat To Tung Hinh Su cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2003* (Quoc Hoi) the opening clause of Article 343 [trans: *Criminal Procedure Code of Vietnam 2003* (National Assembly)] (hereinafter CPC 2003). In practice, Vietnam has cooperated with several states as regards extradition of drug-related offenders who were found in its territory on the basis of reciprocity. See Xuan Yem Nguyen, *Extradition, Mutual Assistance in Criminal Matters and Transfer of Transnational Criminals in Crime Prevention and Suppression*, above n 106, 138.

¹⁰⁷ CPC 2003, above n 106, art 343(2).

Mandatory grounds for refusal of extradition

As mentioned earlier in

Section 2.4.1, the Vietnamese legal system, as a whole, takes its character from the civil law system. Like other civil law states, Vietnam firmly adheres to the rule of not extraditing its nationals.¹⁰⁸ This rule is stated under both Article 344(1)(a) of the *CPC 2003* and Article 4(2) of the *Law on Nationality 1998*.¹⁰⁹ Secondly, Vietnam will not grant extradition if the person wanted is immune to prosecution or punishment due to lapse of time or other reasons in conformity with national criminal law,¹¹⁰ for instance, immaturity or mental disease. Thirdly, to avoid double jeopardy, pursuant to Article 344(1)(c) of the *CPC 2003*, extradition will be declined if a final judgment has been passed by Vietnamese courts upon the claimed person in respect of the offense or offenses for which extradition is requested. Refusal is also made in cases where Vietnam's competent authorities have decided to terminate criminal proceedings in respect of the same offense for which an extradition request is made.¹¹¹ Finally, extradition will be refused if there are substantial grounds to believe that extradition would lead to the prosecution and punishment of that person on account of his race, religion, nationality or political opinions.¹¹² This later Vietnamese provision directly corresponds to Article 6(6) of the *1988 Convention* regarding discrimination.

Optional grounds for refusal of extradition

Under Article 344(2),

Vietnam may refuse to grant extradition if there is a lack of dual criminality, i.e. the act or omission for which a person is requested does not amount to a crime under the *CCV 1999*.¹¹³ Extradition may also be refused if the person is under ongoing criminal processes in Vietnam in respect of the same offense or offenses for which extradition is requested. In such cases, Vietnam refuses to comply with extradition requests because it chooses to exercise its own jurisdiction.

¹⁰⁸ This rule is based on the concept of state sovereignty, viz. nationals of a state are entitled to the state's protection. See Bassiouni, *International Extradition and World Public Order*, above n 5, 251. See also Khanh Vinh Vo (ed), *Binh Luan Bo Luat To Tung Hinh Su* (2004) 939 [trans: Khanh Vinh Vo, *Commentary on the Criminal Procedure Code* (2004)].

¹⁰⁹ Law on Nationality of Vietnam 1998, above n 52, art 4(2).

¹¹⁰ CPC 2003, above n 106, art 344(1)(b).

¹¹¹ CPC 2003, above n 106, art 344(1)(c). See also Khanh Vinh Vo, above n 108, 942.

¹¹² CPC 2003, above n 106, art 344(1)(d).

¹¹³ CPC 2003, above n 106, art 344(2)(a).

In brief, the *CPC 2003* has laid down a number of important rules on conditions for extradition. The grounds for refusal of extradition in Vietnam generally follow the principles that have been established in international practice and which are also envisaged in the DCCs, such as the principles of nationality, double jeopardy, dual criminality and discrimination. However, the *CPC 2003* only touches upon key aspects of extradition. It does not address various issues of extradition procedure. In particular, it has not yet defined the range of extraditable offenses and it is also silent on the question of whether Vietnam must exercise its own criminal jurisdiction in cases where it refuses to grant extradition (i.e. whether it follows the principle of *aut dedere aut judicare*). It is a matter of regret that, up until now, Vietnam has not yet established the elaborate domestic framework necessary for extradition processes.

It is worth mentioning that, in its session of 2006, the National Assembly of Vietnam did scrutinize a draft *Law on Mutual Legal Assistance and Extradition* (Draft Law)¹¹⁴ and, pursuant to *Resolution 72/2006/QH11 on Lawmaking Program 2007*, the passage of this law is expected at the National Assembly's first meeting in March 2007.¹¹⁵ However, this program was rescheduled and the passage of this law was postponed.¹¹⁶ If this law is enacted, it will mark an important achievement in the domestic law of Vietnam concerning extradition, as it regulates in detail varying aspects of extradition. Importantly, it explicitly defines the ranges of extraditable offenses. Pursuant to Article 44(1) of the *Draft Law*, extraditable offenses are offenses punishable under the *CCV 1999* and under the criminal law of the requested

¹¹⁴ *Nghi Quyết số 49/2005/QH11 về Chương Trình Xây Dựng Luật, Pháp Lệnh năm 2006, 2005* (Quốc Hội), art 1 [trans: *Resolution 49/2005/QH11 on the Lawmaking Program for the year 2006, 2005* (National Assembly)]. It is worth noting that, under the *Resolution on Lawmaking Program for the year 2006*, the proposed name of this instrument was 'Law on Mutual Legal Assistance'. However, because it also regulates the issue of extradition, it is currently open for public comment under the name 'Law on Mutual Legal Assistance and Extradition'. See Quốc Hội Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam, *Du Thảo Luật Tương Trợ Tư Pháp và Dân Do (Lay Y Kien Nhan Dan)* <http://duthaoonline.quochoi.vn/portlet-params@uP_portlet_action%253Dtrue%2526uP_root%253D51%2526cap%253D3%2526request_type%253DChonBaiViet%2526idBaiviet%253D7219@portlet-params.tag.idempotent.render.userLayoutRootNode.target.51.uP#51> at 25 March 2007, art 44(1) [trans: National Assembly of Vietnam, Draft Law on Legal Assistance and Extradition (open to Public Suggestions)] (hereinafter Draft Law on Legal Assistance and Extradition).

¹¹⁵ *Nghi Quyết số 72/2006/QH11 về Chương Trình Xây Dựng Luật, Pháp Lệnh năm 2007, 2006* (Quốc Hội), art 1 [trans: *Resolution 72/2006/QH11 on the Lawmaking Program for the Year 2007, 2006* (National Assembly)].

¹¹⁶ Quốc Hội Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam, *Thông Tin về Các Kỳ Họp Quốc Hội* (2007) <<http://www.na.gov.vn/vietnam/index.html>> at 3 April 2007 [trans: National Assembly of Vietnam, *Information on Meetings of the National Assembly* <<http://www.na.gov.vn/vietnam/index.html>> at 3 April 2007].

Party by imprisonment for a period of one or more years or life imprisonment, or by sentence of death.¹¹⁷ This definition, however, is based on the model used in various bilateral legal assistance treaties concluded by Vietnam and contains certain shortcomings as analyzed in Section 7.2.2.2 below.

With respect to the grounds for refusing extradition, the *Draft Law* repeats all those specified under the *CPC 2003*. But, taking a different approach, it prescribes that in the case where the act or omission for which a person is requested does not amount to a crime under the criminal law of Vietnam, extradition must be refused.¹¹⁸ As, under the *CPC 2003*, this ground is only optional, the discrepancy between the two normative instruments may cause some confusion in their application. The *Draft Law* also provides for another mandatory ground that has not been prescribed under the *CPC 2003*. This reads as follows: ‘the requested person has been or would be subjected in the requesting state to torture or cruel, inhuman or degrading treatment’.¹¹⁹ Furthermore, it establishes two new optional grounds for extradition refusal, namely: (i) if the offense for which extradition is requested has been committed in whole or in part within the territory of Vietnam and, (ii) if the competent court of Vietnam, while taking into account the seriousness of the committed offense and the interests of the requesting state, considers that the extradition of the requested person would be incompatible with humanitarian considerations in view of personal circumstances of that person.¹²⁰ These grounds appear to be based on those provided by the *United Nations Model Treaty on Extradition*.¹²¹

The most important innovations of the *Draft Law* are its provisions on extradition procedures. The *Draft Law*, for the first time, describes the judicial proceedings with respect to extradition. Pursuant to Article 53, the Provincial People’s Court is responsible for extradition hearings. If a requested person does not consent to be extradited, the hearings must be organized with the attendance of three judges, a

¹¹⁷ Draft Law on Legal Assistance and Extradition, above n 114, art 44(1).

¹¹⁸ Draft Law on Legal Assistance and Extradition, above n 114, art 46(1)(e).

¹¹⁹ Draft Law on Legal Assistance and Extradition, above n 114, art 46(1)(đ).

¹²⁰ Draft Law on Legal Assistance and Extradition, above n 114, art 46(2)(a) and (c).

¹²¹ See United Nations Office on Drugs and Crime, *Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Legal Assistance in Criminal Matters* <http://www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf> at 25 March 2007, art 4(f) and (h).

prosecutor representing the Provincial People's Procuracy, the requested person and his lawyer (if any). If the requested person or the Procuracy does not agree with a decision of the Provincial People's Court, they may lodge an appeal to the Supreme People's Court.¹²² These proceedings help to ensure the rights of extradited persons to be heard and, thus, to ensure fairness and justice. It also provides for a number of circumstances that national courts must take into consideration to determine to which state a requested person is to be extradited. They are: (i) the nationality and residential location of the requested person, (ii) the legality of extradition request, (iii) the time and location of the requested offense, (iv) interests of the requesting state, (v) the seriousness of the offenses, (vi) the nationality of victims of the crime in question, (vii) the possibility of further extradition to another state, and (viii) the date on which the request was made.¹²³ The *Draft Law*, however, does not explicitly indicate the priority of the listed factors, viz. it is unclear if the first listed circumstance is given the highest priority and if the last mentioned circumstance is given the lowest priority. Consequently, the interpretation is subject to the court's discretion. Another improvement in terms of extradition procedures is contained in the *Draft Law's* detailed guidelines on (i) the content and the language of extradition requests, (ii) documents that are required, as well as (iii) channels of communication, and (iv) transmission of requests. These procedural provisions establish an elaborate framework for extradition cooperation between Vietnam and other states. As a result, if the *Law on Mutual Legal Assistance and Extradition* is passed, it marks a development milestone in the domestic criminal law of Vietnam in respect of extradition. However, as mentioned above, it would be better if the discrepancy between this document and the *CPC 2003* regarding mandatory grounds for refusal was removed.

7.2.2.2 *Extradition of Drug-Related Offenders on the Basis of Bilateral Treaties*

Despite Vietnam's reservations about the extradition provisions of the DCCs, it has concluded bilateral treaties with other states in this field. Under various bilateral treaties on mutual assistance in criminal matters,¹²⁴ Vietnam has committed to extradite persons who are present in its territory but who are wanted by another state

¹²² Draft Law on Legal Assistance and Extradition, above n 114, art 53(2),(3) and (4).

¹²³ Draft Law on Legal Assistance and Extradition, above n 114, art 55.

for the purpose of prosecution or the enforcement of sentence in conformity with the treaty provisions. Extraditable offenses under those treaties are defined on the basis of the severity of their punishment, i.e. if they are punishable under the law of both Parties by imprisonment for a period of at least one year or a more severe penalty.¹²⁵ Generally, drug-related crimes under Vietnamese criminal law are subject to the penalty of at least one year of imprisonment and,¹²⁶ therefore, fall into the range of extraditable offenses.

In general, the grounds for refusal of extradition specified in most of the bilateral mutual assistance treaties fall under the cover of Article 344 of the *CPC 2003* (see the analysis above). Nonetheless, under some treaties, other grounds for refusal are used. For example, extradition may be refused if the offense for which extradition is requested is prosecuted conditionally on the consent of victims.¹²⁷ Drug-related offenses, however, do not fall into that category. Extradition may also be refused if a part of the offense is committed in the territory of the requested Party¹²⁸ or the offense has been committed outside the territory of either Party and the law of the requested state does not provide for jurisdiction over that offense.¹²⁹ Those existing differences between domestic provisions, i.e. Article 344 of the *CPC 2003*, and the

¹²⁴ Up until 2004, Vietnam has concluded 14 bilateral treaties on mutual judicial assistance in civil and criminal matters with other countries. See Khanh Vinh Vo, above n 108, 921.

¹²⁵ With respect to extradition for the service of sentence, the remained period to be served must be at least sixth months or one year. See, eg, *Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Nuoc Cong Hoa Dan Chu Nhan Dan Lao ngay 20 thang 2 nam 2000*, art 60 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil and Criminal Matters between Vietnam and Laos*, 20 February 2000]; *Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Nuoc Cong Hoa Ba Lan ngay 22 thang 3 nam 1993*, art 52(2) and (3) [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil, Family and Criminal Matters between Vietnam and Poland*, 22 March 1993] and *Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Lien Bang Nga ngay 25 thang 8 nam 1988*, art 62(2) and (3) [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil, Family and Criminal Matters between Vietnam and Russia*, 25 August 1988].

¹²⁶ See Figure 6.2 in Chapter 6 that summarizes punishments upon drug-related crimes for cross-reference.

¹²⁷ See *Bilateral Treaty on Mutual Judicial Assistance between Vietnam and Russia*, above n 125, art 63(1)(iv).

¹²⁸ *Bilateral Treaty on Mutual Judicial Assistance between Vietnam and Russia*, above n 125 art 63(2)(i). See also *Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh, Lao Dong va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Cuba ngay 30 thang 11 nam 1984* art 59(2) [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil, Family, Labor and Criminal Matters between Vietnam and Cuba*, 30 November 1984].

¹²⁹ See *Bilateral Treaty on Mutual Judicial Assistance between Vietnam and Poland*, above n 125, art 55(2). See also Xuan Yem Nguyen, *Extradition, Mutual Assistance in Criminal Matters and Transfer of Transnational Criminals in Crime Prevention and Suppression*, above n 105, 106.

bilateral treaties' provisions have caused difficulties in the implementation of those treaties.

Most of the bilateral treaties between Vietnam and other states were concluded a long time ago (during the 1980s). Since then, the national criminal law has developed remarkably, especially with the enactments of the new *CCV 1999* and *CPC 2003*. In addition, those treaties were principally envisaged for legal assistance, as opposed to extradition and, therefore, they contain only a few extradition provisions, such as the obligation of the treaty partners to extradite and the grounds for refusal of extradition. Thus, to avoid unnecessary discrepancies between national criminal law and bilateral agreements and to further consolidate the national framework for cooperation in extradition, a revision of those mutual assistance treaties should be undertaken.¹³⁰

7.3 Conclusion

It is laudable that the national criminal law of Vietnam provides for the establishment and exercise of jurisdiction over drug-related offenses committed on its territory. However, the fact that Vietnam only assumes jurisdiction over extraterritorial drug-related offenses committed by its nationals reflects the narrow traditional view of civil law states. Vietnam should consider the possibility of establishing criminal jurisdiction based on the effects principle that is recommended by Article 4(1)(b)(iii) of the *1988 Convention*. Such jurisdiction would enable Vietnam to prosecute offenses committed by aliens outside the national territory but with the aim of carrying on with the offense inside its territory. It would also enable Vietnam to enforce criminal rules over preparatory and accessory acts committed outside its territory. Additionally, being a coastal country, Vietnam should also take into account the establishment of jurisdiction in accordance with the circumstances set out in Article 4(1)(b)(ii) of the *1988 Convention*, i.e. a country, which took law enforcement measures against a vessel exercising freedom of navigation in accordance with international law and suspected of being involved in illicit drug trafficking based on the agreement of the flag state, can further exercise jurisdiction over offenses on board, subject to the agreement of the flag state.

With respect to extradition, although Vietnam has cooperated with some other states in extraditing drug-related offenders, its reservations about the extradition provisions of the DCCs constrain that cooperation. In 2001, the International Narcotics Control Board (Board) called for Vietnam to attend to the removal of its reservation:

The Board is concerned about the fact that Vietnam continues to maintain reservations on the extradition provisions of the 1988 Convention. The Board wishes to emphasize that extradition is an important element of the 1988 Convention and is a valuable tool used by Governments worldwide to combat criminal organizations involved in drug trafficking and other illicit activities and therefore urges the Government of Vietnam to re-examine its position.¹³¹

The lack of a national legal framework for extradition during the 1990s was one of the reasons that led to Vietnam's reservation already mentioned. Recently, a domestic legal basis for extradition has been created. The *CPC 2003* laid down the basic principles on extradition, marking a milestone in the development of national law in this field. However, as its rules only serve as the basic framework, the *Law on Mutual Legal Assistance and Extradition* is still needed to address related issues, including definition of extraditable offenses, extradition requests and required documents, extradition hearings, arrest and surrender of offenders. It is to be hoped that, with the development of the national legal basis for extradition, Vietnam will be able to attend to the request mentioned above by the Board. Additionally, Vietnam needs to call the attention of its bilateral treaty partners to the need to update the treaty provisions on extradition in order to bring them into line with international standards as well as current Vietnamese criminal law. While finalizing the *Law on Mutual Legal Assistance and Extradition*, national lawmakers should take into account the existing different provisions of the *CPC 2003* and various bilateral treaties regarding mandatory and optional grounds for refusal of extradition in order

¹³⁰ See Xuan Yem Nguyen, *Extradition, Mutual Assistance in Criminal Matters and Transfer of Transnational Criminals in Crime Prevention and Suppression*, above n 105, 271.

¹³¹ See International Narcotics Control Board, *Report of the International Narcotics Control Board for 2001* (2002) [para 381] <http://www.incb.org/incb/annual_report_2001.html> at 18 August 2005.

to avoid inconsistencies between them, as they may cause confusion when they come to be applied.

8 LAW ENFORCEMENT COOPERATION

8.1 General Obligations

8.1.1 General Convention Requirements for Law Enforcement Cooperation

8.1.2 General Commitments of Vietnam

8.2 Mutual Legal Assistance

8.2.1 Mutual Legal Assistance in Accordance with Article 7 of the 1988 Convention

8.2.1.1 Mutual Legal Assistance under Article 7 of the 1988 Convention

8.2.1.2 Mutual Legal Assistance under Vietnamese Legislation

8.2.2 Confiscation

8.2.2.1 Confiscation under the UN Drug Control Conventions

8.2.2.2 Confiscation under Vietnamese Legislation

8.2.3 Transfer of Proceedings

8.2.3.1 Transfer of Proceedings under the 1988 Convention

8.2.3.2 Transfer of Proceedings under Vietnamese Legislation

8.3 Cooperation in Specific Law Enforcement Measures

8.3.1 Controlled Delivery

8.3.1.1 Controlled Delivery under the UN Drug Control Conventions

8.3.1.2 Controlled Delivery under Vietnamese Legislation

8.3.2 Prevention of the Use of Mail into Illicit Drug Traffic

8.3.2.1 Prevention of the Use of Mail for Illicit Drug Trafficking under the Drug Control Conventions

8.3.2.2 Prevention of the Use of Mail for Illicit Drug Trafficking under Vietnamese Legislation

8.4 Conclusion

As illicit drug traffic extends beyond national borders, international cooperation in law enforcement is significant. Originating from that need, the *1961* and *1971 Conventions* impose upon their respective Parties a general obligation to cooperate closely with each other in the campaign against illicit drug traffic.¹ Departing from that general provision, the *1988 Convention* prescribes a number of specific requirements for law enforcement cooperation in criminal matters. Those requirements range widely from informal cooperation, such as general police liaison, to more official cooperation, such as mutual legal assistance, confiscation of assets and transfer of judicial proceedings. They also address specific areas of transboundary movement that are vulnerable to drug trafficking, including suppression of illicit traffic within free trade zones and free ports, and suppression of illicit traffic by sea and by mail.

In this Chapter, the DCC provisions concerning law enforcement cooperation in criminal matters are compared with the corresponding national regulations of Vietnam. The convention provisions in this field, however, are very broad, covering not only legal bases necessary for such cooperation but also other aspects, such as training and education assistance, enhancing effectiveness of law enforcement operations and financial expenses. As previously stated in Chapter 1, this research is limited to the legal aspects of Vietnamese drug control, i.e. the national legislative framework for drug control. Therefore, this Chapter only examines those international provisions on law enforcement cooperation, for which Parties need to take national legislative measures.

8.1 General Obligations

8.1.1 General Convention Requirements for Law Enforcement Cooperation

Under Article 35(b) of the *1961 Convention*, Parties are required ‘to assist each other in the campaign against the illicit traffic in narcotic drugs’.² In similar language, Article 21(b) of the *1971 Convention* requires Parties to cooperate with each other to

¹ See, eg, *Single Convention on Narcotic Drugs*, opened for signature 30 March 1961, art 35(b) (entered into force 13 December 1964) and *Convention on Psychotropic Substances*, opened for signature 21 February 1971, art 21(b) (entered into force 16 August 1976).

² 1961 Convention, above n 1, art 35(b).

combat illicit traffic in psychotropic substances.³ These provisions do not define methods and procedures of assistance, with the result that their implementation is left fully to the discretion of Parties in conformity with their ‘constitutional, legal and administrative systems’.⁴ That extreme flexibility makes the provisions merely exhortatory.

Providing a more specific form of cooperation, Article 35(c) of the *1961 Convention* and Article 21(c) of the *1971 Convention* require Parties to cooperate closely with each other and with the competent international organizations ‘with a view to maintaining a coordinated campaign against illicit traffic’.⁵ Unfortunately, again, these provisions are broad generalities and all related issues, including administrative arrangements, procedures and methods of cooperation are left to the discretion of the Parties.

In contrast, the *1988 Convention* does not provide for such an overall obligation. Instead, it develops frameworks for international cooperation in varying specific areas of law enforcement, for instance: mutual legal assistance (MLA), confiscation and forfeiture, transfer of proceedings, controlled delivery and prevention of illicit traffic by mail. Within each of these areas, a general cooperation obligation is still provided but further strengthened by very specific requirements. For example, concerning general obligations, Article 7(1) of the *1988 Convention* reads as follows: ‘the Parties shall afford one another... the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offenses...’ and Article 19(1) requires Parties to cooperate with one another to suppress the use of the mail for illicit traffic.⁶ Those provisions lay down a general cooperation obligation and encourage Parties to go beyond the convention

³ 1971 Convention, above n 1, art 21(b).

⁴ 1961 Convention, above n 1, the opening phrase of Article 35 and 1971 Convention, above n 1, the opening phrase of Article 21. See also United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961* (1973), 338.

⁵ 1961 Convention, above n 1, art 35(c) and 1971 Convention, above n 1, art 21(c). The phrases ‘assist each other’ and ‘cooperate with each other’ used in the language of those provisions appear to acquire the same meaning. See United Nations, *Commentary on the Convention on Psychotropic Substances, done at Vienna on 21 February 1971* (1976) 341 and 1961 UN Commentary, above n 4, 419.

⁶ *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988, arts 7(1) and 19(1) (entered into force 11 November 1990).

formulations to assist one another with measures that are permissible under their domestic laws.⁷

8.1.2 General Commitments of Vietnam

Corresponding to the general requirements of the *1961* and *1971 Conventions* for law enforcement cooperation in the campaign against illicit drug traffic, the *Master Plan on Drug Control* of Vietnam declares that one of its objectives towards 2010 is to enhance and to broaden cooperation with international and regional organizations and other states with a view to suppressing illicit drug traffic as a whole and, particularly, to reduce drug smuggling into Vietnam.⁸ Article 46 of the *Law on Narcotics 2000* confirms that Vietnam has adopted a policy on international cooperation in the prevention and suppression of illicit drugs. It also calls for international and regional organizations as well as other states to cooperate closely with Vietnam to that end⁹ and especially to suppress drug-related crimes committed by foreigners in its territory as well as by its citizens abroad.¹⁰

Pursuant to the *Law on Narcotics 2000* and the *International Drug Control Cooperation Decree 2003*, cooperation carried out by Vietnamese law enforcement authorities in this field must be in conformity with domestic laws, especially the *Law on Narcotics 2000*, and applicable multilateral and bilateral treaties to which Vietnam is a Party.¹¹

⁷ See, eg, United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988: Done at Vienna on 20 December 1988* (1998) 178.

⁸ See *Quyết Định số 49/2005/QĐ-TTg về việc Phê Duyệt Kế Hoạch Tổng Thể Phòng Chống Ma Túy đến năm 2010* (Thu Tuong Chinh Phu) arts 1 and 2(9) [trans: *Decision 49/2005/QĐ-TTg to Approve the Master Plan on Drug Control to 2010* (Prime Minister)].

⁹ See *Luat số 23/2000/QH10 về Phòng, Chống Ma Túy năm 2000* (Quoc Hoi) art 46 [trans: *Law 23/2000/QH10 on Narcotics Prevention and Suppression 2000* (National Assembly)] (hereinafter *Law on Narcotics 2000*). It is worth mentioning that Vietnam has also committed to cooperate closely with other states in combating money laundering, including the laundering of proceeds generated from drug trafficking. See *Nghị Định số 74/2005/NĐ-CP về Phòng, Chống Rửa Tiền 2005* (Chinh Phu) art 21(1)(a) [trans: *Decree 74/2005/NĐ-CP on Prevention and Suppression of Money Laundering 2005* (Government)] (hereinafter *Anti Money Laundering Decree 2005*).

¹⁰ *Law on Narcotics 2000*, above n 9, art 46 and *Nghị Định số 05/2003/NĐ-CP về Hợp Tác Quốc Tế trong Lĩnh Vực Phòng, Chống Ma Túy 2003* (Chinh Phu) art 2(1) [trans: *Decree 05/2003/NĐ-CP on International Cooperation in Drug Control 2003* (Government)] (hereinafter *International Drug Control Cooperation Decree 2003*).

¹¹ *International Drug Control Cooperation Decree*, above n 9, art 3(1) and (6).

¹¹ *Law on Narcotics 2000*, above n 9, art 46 and *International Drug Control Cooperation Decree*, above n 9, art 2(1).

8.2 *Mutual Legal Assistance*

8.2.1 *Mutual Legal Assistance in Accordance with Article 7 of the 1988 Convention*

8.2.1.1 *Mutual Legal Assistance under Article 7 of the 1988 Convention*

International drug control instruments before the *1988 Convention*, including the *1961* and *1971 Conventions*, did not regulate MLA issues. MLA in drug control, therefore, was first dependent upon bilateral mutual legal assistance treaties (MLATs).¹² As MLATs are principally for general criminal matters, their scope may be ‘limited’ or ‘vague’ with respect to the suppression of drug-related crimes.¹³ To address difficulties arising in international legal cooperation as regards illicit drugs as well as to establish a direct link among the Parties, the *1988 Convention* introduces a distinct article dealing specifically with legal assistance aimed at drug-related crimes. Nonetheless, the provisions of this article are not applied if the terms of an existing applicable MLAT between the Parties concerned provide a greater degree of assistance.¹⁴

Scope of Mutual Legal Assistance under Article 7 In general, MLA, unlike extradition, may be granted in minor cases.¹⁵ Legal assistance under Article 7 of the *1988 Convention*, however, is only applicable to trafficking offenses proscribed under Article 3(1) but not offenses committed merely for personal consumption.¹⁶

Pursuant to Article 7, MLA is applied for the following purposes: taking of evidence or statements, effecting service of judicial documents, executing searches and seizures, examining objects and sites, providing information and evidentiary items, providing relevant documents and records, and identifying or tracing proceeds, instrumentalities or other things for evidentiary purposes.¹⁷ MLA can be applied to other purposes that are not mentioned above but are allowed by the domestic laws of

¹² Neil Boister, *Penal Aspects of the UN Drug Conventions* (2001) 300.

¹³ M C Bassiouni, 'International Drug Control System' in Bassiouni M C (ed), *International Criminal Law* (1999) vol 1, 905, 929.

¹⁴ 1988 Convention, above n 6, art 7(6); the 1988 UN Commentary, above n 7, 184 and Boister, above n 12, 304.

¹⁵ See, eg, Lorna Harris and Christopher Murray, *Mutual Assistance in Criminal Matters: International Cooperation in the Investigation and Prosecution of Crime* (2000) 7.

¹⁶ 1988 Convention, above n 6, art 7(1).

¹⁷ 1988 Convention, above n 6, art 7(2).

the Parties.¹⁸ Assistance with respect to confiscation does not fall under the scope of this article (except the procedural provisions under subparagraphs 6 to 19) because that issue is separately regulated under Article 5 of the Convention.¹⁹

Assistance prescribed under Article 7 must be relevant to a substantive offense. Parties, however, are not restrained from providing one another with assistance before the offense has been committed.²⁰ For the effectiveness of law enforcement, assistance can be started at an early stage:

The reference to investigations appears to make it clear that operational assistance can be requested at the police investigation stage prior to the actual institution of criminal proceedings ... The article contemplates assistance in the process leading up to and including judicial proceeding.²¹

Permissible and Impermissible Grounds for Refusal of Assistance Attempting to achieve a balance between protecting national fundamental interests and consolidating international cooperation in the suppression of illicit drug traffic, the *1988 Convention* specifies a number of grounds upon which Parties may, at their option, invoke for refusal of assistance. In addition, it also specifies circumstances where assistance must not be refused.

As a general rule, requests for MLA must be granted in accordance with domestic law of the Party from which it has been requested.²² However, the circumstances in which domestic law can be used as a reason to decline assistance are limited by two exceptions. First, Parties are not allowed to decline assistance on the present that the drug-related crimes are fiscal or political or politically motivated offenses.²³ Secondly, due to the great significance of bank records in combating illicit drug

¹⁸ 1988 Convention, above n 6, art 7(3). See also 1988 UN Commentary, above n 7, 178; Bassiouni, above n 13, 930; Boister, above n 12, 306 and 309; and William C Gilmore, *Combating International Drugs Trafficking: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1991) 24.

¹⁹ 1988 Convention, above n 6, art 5(4)(d). Mutual assistance under Article 7(g) in identifying or tracing proceeds, instrumentalities or other things for evidentiary purposes, does not prevent them from being later subjected to confiscation. If the request is made for both purposes, it is recommended that both Articles 5(4)(b) and 7(2)(g) are referred to in the request. See 1988 UN Commentary, above n 7, 181.

²⁰ 1988 UN Commentary, above n 7, 177.

²¹ See Boister, above n 12, 305.

²² See Gilmore, above n 18, 24.

trafficking and money laundering and also to the fact that bank secrecy has been a major impediment to the fight against illicit drugs,²⁴ Parties cannot invoke bank secrecy as a ground for refusing MLA.²⁵

Pursuant to Article 7(15), authorized grounds for refusal include the following circumstances. First, requests for assistance can be refused if they do not conform to the convention MLA provisions,²⁶ such as, for example, the requests do not contain the information required, they are not made in a suitable language, or are not properly transmitted.²⁷ Secondly, a Party can refuse to comply with a request for assistance if the execution of such a request is ‘likely to prejudice its sovereignty, security, *ordre public* or other essential interests’.²⁸ This ground is necessary to protect national interests and is commonly observed in different MLATs.²⁹ Thirdly, Parties can refuse assistance if actions requested could not be taken even in a similar domestic case,³⁰ i.e. if the authorities of the requested Party are confined by their domestic laws. Fourthly, the requested Party can decline assistance if such assistance is contrary to the principles of its legal system.³¹ This covers cases where domestic legislation may prescribe other specific grounds for refusal, such as double jeopardy, dual criminality, discrimination or death penalty.³²

Limitations on the Use of Information and Evidence

For the purpose of protecting the legitimate interests of the requested Parties, Article 7(13) of the *1988 Convention* lays down certain limitations on the use, by the requesting Parties, of information and evidence furnished to them by the requested Parties. Pursuant to Article 7(10)(b), the requesting Parties must indicate ‘the subject matter and nature of the investigation, prosecution or proceeding to which the request relates’³³ and, when assistance is granted, they are bound not to use information or evidence for

²³ To remember, under Article 3(10) of the *1988 Convention*, the Parties are obliged not to establish drug-related offenses as fiscal or political offenses or politically motivated offenses. See 1988 Convention, above n 6, art 3(10).

²⁴ See Gilmore, above n 18, 24 and Boister, above n 12, 311.

²⁵ 1988 Convention, above n 6, art 7(5). On this aspect, the international provisions under consideration appear to override domestic law. See Boister, above n 12, 312.

²⁶ 1988 Convention, above n 6, art 7(15)(a).

²⁷ 1988 UN Commentary, above n 7, 194.

²⁸ 1988 Convention, above n 6, art 7(15)(b).

²⁹ See, eg, David McClean, *International Judicial Assistance* (1992) 132.

³⁰ 1988 Convention, above n 6, art 7(15)(c) and 1988 UN Commentary, above n 7, 196.

³¹ 1988 Convention, above n 6, art 7(15)(d).

³² See Boister, above n 12, 321. See also 1988 UN Commentary, above n 7, 196.

other purposes.³⁴ These limitations, however, may restrict the effectiveness of law enforcement in certain cases, as the need to use the information or evidence might go beyond the initially requested purposes due to unforeseen factors.³⁵ To maximize the effectiveness of the system of mutual legal assistance in those cases, Article 7(13) additionally provides that the requesting Parties may use information and evidence for purposes other than those initially indicated if they reach a prior agreement with the requested Parties.

Other Procedural Provisions

To facilitate the MLA execution among Parties, the *1988 Convention* lays down numerous detailed regulations on the content as well as the execution of a request. Generally, the request must be made in a language ‘acceptable’ to the requested Party.³⁶ In urgent circumstances, an oral request may be made on the basis of agreement between the Parties concerned but written confirmation must be provided immediately.³⁷ A request must contain sufficient information necessary for competent authorities of the requested state both to consider the possibility of granting assistance and to take the action requested afterwards. Therefore, it must include information identifying the authority making the request and information that helps the requested authority to understand ‘the context in which it is to act’.³⁸ Especially, the request must clearly indicate the purpose for which the assistance is sought.³⁹ If the request does not contain sufficient information to enable its execution, the requested Parties can ask for additional information.⁴⁰

As the assistance involves acts to be performed in the jurisdiction of the requested Party, the execution of a request must be carried out in accordance with its domestic

³³ 1988 Convention, above n 6, art 7(10)(b).

³⁴ 1988 Convention, above n 6, art 7(13). This provision reflects the concept of ‘speciality’ that has Law on Narcotics been established in the field of extradition. See, for example, Gilmore, above n 18, 24.

³⁵ 1988 UN Commentary, above n 7, 192 and Boister, above n 12, 318.

³⁶ The national language of the requested Parties is always the best choice, but if their national language is ‘little known’, one of the languages that are most commonly used in international communication may be used. See 1988 UN Commentary, above n 7, 187.

³⁷ 1988 Convention, above n 6, art 7(9).

³⁸ See 1988 UN Commentary, above n 7, 189.

³⁹ 1988 Convention, above n 6, art 7(10)(f).

⁴⁰ 1988 Convention, above n 6, art 7(11). This provision is envisaged for cases where the original request did not contain sufficient information necessary for the execution of the request or, due to changes of situation, the requested Parties need additional information or guidance in order to provide assistance. See Boister, above n 12, 317 and 1988 UN Commentary, above n 7, 189-90.

law. However, as it is essential that information and evidence collected by the requested Party be useable by the requesting Party, the latter can include in its requests any particular procedures that it wishes to be followed.⁴¹ Because the assistance is sought to serve in investigations, prosecutions and proceedings within the requesting Party's jurisdiction, the particular procedures specified in the request must be followed to the extent that they are not contrary to the domestic law of the requested Party.⁴² Thus, 'in order to meet this need, Parties may be able to adopt procedures that they would not follow in purely domestic cases',⁴³ provided that they are only bound to follow those particular procedures 'where possible'.⁴⁴ Additionally, as confidentiality is very important in criminal enforcement, the requesting Party may ask the requested Party 'to keep confidential the fact and substance of the request, except to the extent necessary to execute the request'.⁴⁵ In a case where execution of the request would lead to a breach of confidentiality, the requested Party is bound to inform the requesting Party promptly so that the latter can decide whether it should be executed.⁴⁶ The execution of a request may be postponed if it interferes with an ongoing investigation, prosecution or proceeding in the requested Party. In such a case, the Convention requires consultation between the Parties to determine whether the assistance can still be provided and to determine conditions relating to its execution.⁴⁷

Furthermore, Parties concerned are required to facilitate or encourage the presence of persons, including persons in prison, who agree to give assistance.⁴⁸ This obligation, however, is subject to two safeguards, namely: (i) the consistency with domestic laws and practice of the requested Parties⁴⁹ and, (ii) the consent of any person concerned. The second safeguard has been criticised as making this provision weak

⁴¹ 1988 Convention, above n 6, art 7(10). An example is a request that the witnesses and experts are examined on oath. See, eg, 1988 UN Commentary, above n 7, 189 and McClean, above n 29, 134.

⁴² 1988 Convention, above n 6, art 7(12).

⁴³ 1988 UN Commentary, above n 7, 190.

⁴⁴ 1988 Convention, above n 6, art 7(12).

⁴⁵ 1988 Convention, above n 6, art 7(14).

⁴⁶ Ibid. See also 1988 UN Commentary, above n 7, 193.

⁴⁷ 1988 Convention, above n 6, art 7(17).

⁴⁸ 1988 Convention, above n 6, art 7(4). This obligation, according to Boister, is imposed upon both the requested and requesting Parties. For example, the requesting Party would have to 'assure the requested Party that a traveling prisoner would be secure and kept in appropriate conditions'. See Boister, above n 12, 310.

in comparison with MLATs that provide for the compulsory presence of witnesses to give testimony in the requesting Party.⁵⁰

Although Article 7 of the *1988 Convention* sets out many detailed provisions on mutual legal assistance in relation to drug-related crimes, it cannot touch on all concerns or difficulties that may arise between pairs of the Parties. For that reason, Parties are encouraged to consider the possibility of concluding bilateral or multilateral treaties to facilitate legal assistance to combat illicit drug traffic.⁵¹ In addition, it should be noted that although Parties are bound to follow the procedural provisions set out in Article 7, if there is an applicable MLAT between them, its procedural provisions prevail unless Parties choose to apply the corresponding provisions under Article 7 of the *1988 Convention*.⁵²

8.2.1.2 *Mutual Legal Assistance under Vietnamese Legislation*

The *Law on Narcotics 2000* expresses the in-principle willingness of Vietnam to cooperate with other states in investigations, prosecutions and proceedings in respect of drug-related offenses. Nevertheless, up until now, the MLA provisions of the *1988 Convention* have not been adequately transformed into Vietnamese domestic law. It is also a matter of regret that, despite the fact that a number of MLATs with other states have been concluded,⁵³ Vietnam has not yet established the national legislative basis necessary for their implementation.⁵⁴ Vietnam's existing national framework

⁴⁹ The reference to domestic practice of the requested Party is provided because, in some states, the matter falls within the discretion of the administrative and correctional authorities rather than being regulated by legislation. See 1988 UN Commentary, above n 7, 183.

⁵⁰ See Boister, above n 12, 310. If the person concerned agrees to be present in the requesting country, the requesting Party is bound to ensure his immunity in respect of any prior conduct or convictions. This provision is designed to protect a witness who agrees to travel to the requesting country to render assistance. The immunity, however, is not granted for subsequent offenses committed by that person while present in the territory of the requesting country, such as perjury or contempt of court. The immunity ceases 15 days (or any period agreed by the Parties) from the date on which his presence is no longer required. See 1988 Convention, above n 6, art 7(18).

⁵¹ 1988 Convention, above n 6, art 7(20).

⁵² 1988 Convention, above n 6, art 7(7) and 1988 UN Commentary, above n 7, 185.

⁵³ It should be remembered that, up until 2004, Vietnam concluded 14 bilateral treaties on mutual judicial assistances in civil and criminal matters with other countries (see Khanh Vinh Vo (ed), *Binh Luan Bo Luat To Tung Hinh Su* (2004) 921 [trans: Khanh Vinh Vo, *Commentary on the Criminal Procedure Code* (2004)]). Most of those treaties were concluded in the 1980s and most of Vietnam's treaty partners used to be a socialist country.

⁵⁴ See, for example, Xuan Yem Nguyen, *Toi Pham Co To Chuc, Mafia va Toan Cau Hoa Toi Pham* (2003) 683 [trans: Xuan Yem Nguyen, *Organized Crimes, the Mafia and Globalization of Crimes* (2003)] and Xuan Yem Nguyen, *Dan Do Toi Pham, Tuong Tro Phap Ly ve Hinh Su va Chuyen Giao Pham Nhan Quoc Te trong Phong Chong Toi Pham* (2000) 146 [trans: Xuan Yem Nguyen, *Extradition, Mutual Assistance in Criminal Matters and Transfer of Transnational Criminals in Crime Prevention and Suppression* (2000)].

on MLA is underdeveloped. Thus, the *Law on Narcotics 2000* and the *Criminal Procedure Code of Vietnam 2003* (CPC 2003) set out only some basic principles as regards cooperation on reciprocity and the grounds of refusal of MLA.

Cooperation Based on Reciprocity Pursuant to Article 50 of the *Law on Narcotics 2000*, Vietnam does not make the provision of legal assistance conditional on the existence of a treaty. MLA may be granted on the basis of reciprocity but, in that case, the competent Vietnamese authorities may need to reach a direct agreement with corresponding authorities of the concerned states.⁵⁵ However, if there are competing requests for legal assistance, Vietnam gives priority to its bilateral treaty partners.⁵⁶ Thus, while the DCCs do not provide any guidelines on competing requests for legal assistance, the domestic law of Vietnam lays down a national rule dealing with this matter. This rule, nonetheless, is silent concerning competing requests made by multiple treaty partners. The ranking of priorities in those cases is left in the hands of the competent authorities.

Grounds for Refusal In accordance with Article 49 of the *Law on Narcotics 2000* and Article 342 of the *CPC 2003*,⁵⁷ Vietnam may refuse to grant assistance in the following circumstances: first, if requests are not made in conformity with Vietnamese domestic law and with the international treaties to which Vietnam is a contractual Party,⁵⁸ and second, if execution of the request is 'likely to prejudice sovereignty, security, *ordre public* and other essential interests of Vietnam'.⁵⁹ Thus, the Vietnamese provisions on optional grounds for MLA refusal reflect some general rules set out in the *1988 Convention* but are still of a framework nature. Many related questions are not addressed, such as whether Vietnam would refuse to grant assistance due to discrimination, double jeopardy or a lack of double criminality. In relation to this point, it is worth mentioning that, in the specific field of anti money laundering, i.e. under the *Anti Money Laundering Decree 2005*, the

⁵⁵ Law on Narcotics 2000, above n 9, art 50.

⁵⁶ Law on Narcotics 2000, above n 9, art 49(1).

⁵⁷ The *Criminal Procedure Code of Vietnam* is an important legislative document that regulates the rights and obligations of both individuals and state authorities in all types of criminal investigations, prosecutions and proceedings. It also sets out procedures in criminal proceedings. However, the *Criminal Procedure Code 1988*, regrettably, is silent on the issue of legal assistance in criminal matters.

⁵⁸ Law on Narcotics 2000, above n 9, art 49(2)(a).

⁵⁹ Law on Narcotics 2000, above n 9, art 49(2)(b).

abovementioned grounds for refusals of mutual legal assistance are mandatory.⁶⁰ Additionally, a number of other optional grounds may be invoked to refuse legal assistance to combat money laundering, namely: (i) if the requests do not conform with the requirements as to the content and form under the *Anti Money Laundering Decree 2005*, (ii) if a final judgment has been passed by Vietnamese authorities on the concerned persons in respect of the offense or offenses for which the requests have been made, and (iii) if the assistance might interfere with an ongoing investigation, prosecution or proceeding in Vietnam.⁶¹

Corresponding to requirements under the *1988 Convention*, under Article 49 of the Vietnamese *Law on Narcotics 2000* and Article 342 of the *CPC 2003*, bank secrecy is not a ground for refusing legal assistance. In addition, as analyzed in Chapter 6, Vietnamese drug-related crimes under the *Criminal Code 1999*, are not treated as political, fiscal or politically motivated offenses. Thus, on the whole, Vietnam's national regulations in respect of impermissible grounds for refusal of legal assistance are in line with the provisions of the *1988 Convention*.

Interestingly, under most bilateral judicial assistance treaties concluded by Vietnam, the only prescribed ground for refusal is that the execution of the requests is likely to prejudice sovereignty, security, *ordre public* and other essential interests of the requested state.⁶² Exceptionally, under the *Bilateral Treaty on Mutual Judicial Assistance with China 1998*, the contracting Party may invoke the lack of dual criminality as a reason to decline legal assistance.⁶³ This ground has not yet been articulated in Vietnam's domestic law. To avoid such discrepancies between national regulations and the treaty provisions, Vietnamese lawmakers should consider the

⁶⁰ Anti Money Laundering Decree, above n 9, art 22(1).

⁶¹ Anti Money Laundering Decree, above n 9, art 22(2).

⁶² See, for example, *Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Nuoc Cong Hoa Xa Hoi Chu Nghia Tiep Khac ngay 12 thang 10 nam 1982*, art 14 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil and Criminal Matters between Vietnam and the Czech Republic*, 12 November 1982] and *Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Hungary ngay 18 thang 1 nam 1985* art 17 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil, Family and Criminal Matters between Vietnam and Hungary*, 18 January 1985]. It should be noted that a number of treaties are silent on the issue of the grounds for refusal of legal assistance.

⁶³ *Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Nuoc Cong Hoa Nhan Dan Trung Hoa ngay 19 thang 11 nam 1998*, art 27(1) [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil and Criminal Matters between Vietnam and China*, 19 November 1998].

possibility of, on the one hand, amending the scope of Article 342 of the *CCP 2003* to cover dual criminality and, on the other hand, discussing with its partners the possibility of updating existing bilateral treaties so that they will be in line with newly enacted domestic provisions.

Procedural Requirements

Except for the provisions mentioned above on the grounds for refusing assistance, Vietnamese law does not yet regulate essential MLA issues, such as the content and language of assistance requests; limitation on the use of information and evidence; rights and obligations of persons who consent to depart to other states for giving evidence; procedures for handling assistance requests, and so on.⁶⁴ Due to the lack of a domestic framework, Vietnam faces various difficulties in the implementation of the provisions of the *1988 Convention* as well as its MLATs. One can observe substantial procedural divergences from one case to another.⁶⁵ Moreover, in certain circumstances, due to the absence of implementing regulations, the requested cooperation comes to a standstill.⁶⁶

There is an urgent need for Vietnam to enact domestic regulations to give effect to international obligations to provide MLA. As mentioned in Section 9.2.2.1, a *Law on Mutual Legal Assistance and Extradition* (Draft Law) was drafted but has not passed.

Various procedural provisions concerning mutual legal assistance under the *Draft Law* bear substantial similarities to the existing regulations of the *1988 Convention* as analyzed above as well as to the model law of the United Nations. These include the scope of cooperation, the content and language of assistance requests, limitations on the use of information and evidence, confidentiality regarding information

⁶⁴ It should be noted that Article 21(2) of the *Anti Money Laundering Decree 2005* lays down several requirements concerning the content and form of requests for legal assistance. It also provides for the manner in which the requests are to be transmitted. Nonetheless, the provisions of this Decree are only applicable to legal assistance in the field of anti-money-laundering. They are not applicable to legal assistance to combat drug trafficking offenses.

⁶⁵ For instance, Vietnam has recently received a number of assistance requests from Germany in relation to allowing its citizens to travel to Germany to give evidence. Because of the lack of national legislation as regards the rights and obligations of persons who consent to depart to a foreign country to assist investigations, practical cooperation has been very varied. See Xuan Yem Nguyen, *Organized Crimes, Mafia and Globalization of Crimes*, above n 54, 674.

⁶⁶ For example, due to the lack of domestic provisions concerning exchange of information, Vietnamese police may not be able to provide certain information relating to a case in question and, thus, the requested assistance may not be provided. See Xuan Yem Nguyen, *Organized Crimes, Mafia and Globalization of Crimes*, above n 54, 683.

relating to mutual legal assistance, the execution of assistance requests,⁶⁷ and the rights and obligations of persons who consent to depart to other states to give evidence. Thus, if this Law is enacted, the Vietnamese procedural framework for MLA will be fully in line with the DCC requirements.

The *Draft Law* also provides for the following additional optional grounds for refusal of legal assistance. First, assistance may be declined if a final judgment has been passed by the Vietnamese courts on, or a special reprieve has been granted by the President of Vietnam to, the suspect person in respect of the offense or offenses for which the request is made.⁶⁸ Secondly, refusal may also be made if the suspect person is immune under Vietnamese law to prosecution or punishment due to lapse of time.⁶⁹ Thirdly, assistance may be refused if there is a lack of dual criminality, i.e. the alleged act or omission does not amount to a crime under the *Criminal Code 1999*.⁷⁰ Thus, in general, the regulations under the *Draft Law* do not depart from the existing principles in the field.

8.2.2 Confiscation

8.2.2.1 Confiscation under the UN Drug Control Conventions

Under the DCCs, confiscation is seen not only as a punishment, to seize the financial proceeds of drug-related crimes, but also as a law enforcement measure applicable in investigations.⁷¹ Compared with the *1961* and *1971 Conventions*, the *1988 Convention* provides the most comprehensive and advantageous framework for international cooperation in confiscation.

⁶⁷ Pursuant to Article 36(1) of the *Draft Law*, the execution of assistance requests must be carried out in conformity with the existing domestic law of Vietnam but, in certain cases, assistance requests may be executed in conformity with the provisions of the treaty to which both Vietnam and the requesting state are the contracting Parties. See *Quoc Hoi Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam, Du Thao Luat Tuong Tro Tu Phap va Dan Do (Lay Y Kien Nhan Dan)* <http://duthaoonline.quochoi.vn/portlet-params@uP_portlet_action%253Dtrue%2526uP_root%253D51%2526cap%253D3%2526request_ty%253DChonBaiViet%2526idBaiviet%253D7219@portlet-params.tag.idempotent.render.userLayoutRootNode.target.51.uP#51> at 25 March 2007, art 33(1)(c) [trans: National Assembly of Vietnam, Draft Law on Legal Assistance and Extradition (open to Public Suggestions)] (hereinafter Draft Law on Mutual Legal Assistance and Extradition).

⁶⁸ Draft Law on Mutual Legal Assistance and Extradition, above n 67, art 33(1)(c).

⁶⁹ Draft Law on Mutual Legal Assistance and Extradition, above n 67, art 33(1)(d).

⁷⁰ Draft Law on Mutual Legal Assistance and Extradition, above n 67, art 33(1)(e).

⁷¹ Boister, above n 12, 348.

1961 Convention prescribes that ‘any drugs, substances and equipment used in or intended for the commission of any of the offenses, referred to in Article 36, shall be liable to seizure and confiscation’.⁷² Article 22(3) of the *1971 Convention* on confiscation and seizure substantially mirrors its wording. To comply with these provisions, Parties have to establish a legal mechanism that enables the seizure and confiscation of narcotic drugs, psychotropic substances, other substances that may be involved, and equipment used in or intended for the commission of drug-related offenses.⁷³ Under these Conventions, the terms ‘seizure’ and ‘confiscation’ are not defined. However, ‘seizure’ is seen as ‘the provisional act of taking possession pending the procedure on their final decision’,⁷⁴ whereas, ‘confiscation’ is a permanent deprivation. The single confiscation provision under the *1961* and *1971 Conventions* is merely of a framework nature and limited in the sense that it is not applicable to the indirect proceeds of drug trafficking⁷⁵ and Parties are not obliged to cooperate with other states in confiscation.

earlier Conventions, the *1988 Convention* set out numerous detailed substantive and procedural provisions on confiscation.⁷⁶ It obliges Parties to enable confiscation at both the national and international levels. The establishment of a national confiscation mechanism is an important prerequisite for cooperation in international confiscation. Similar to other forms of mutual legal assistance, confiscation under the *1988 Convention* applies to drug-related offenses established in accordance with Article 3(1) but not to offenses committed merely for personal use.⁷⁷

⁷² 1961 Convention, above n 1, art 37.

⁷³ The term ‘equipment’ is not defined under the Conventions but should be broadly interpreted to facilitate law enforcement. Nevertheless, it would not cover ‘large vehicles’, such as railroad cars, large boats or airplanes. See 1961 UN Commentary, above n 4, 444 and 1971 UN Commentary, above n 5, 367.

⁷⁴ Ibid.

⁷⁵ Under the *1961* and *1971 Conventions*, only those proceeds of drug trafficking that are ‘immediately linked to a specific illicit transaction’ are subjected to confiscation. See Boister, above n 12, 354.

⁷⁶ Pursuant to Article 1(f) of the *1988 Convention*, ‘confiscation’ means ‘the permanent deprivation of property by order of a court or other competent authority’. The term ‘forfeiture’ may be alternatively used with the same meaning (see 1988 Convention, above n 6, art 1(f)). Although this Convention develops a comprehensive framework for confiscation, its provisions are not self-executing. All related measures must be defined and implemented in accordance with domestic laws of the Parties. See 1988 Convention, above n 6, art 5(9).

⁷⁷ 1988 Convention, above n 6, art 5(1).

Forfeitable Objects

Forfeitable objects under the *1988 Convention* can be grouped into two categories. The first category includes proceeds generated from the commission of drug-related offenses.⁷⁸ Making efforts to attack varying forms of proceeds obtained both directly as well as indirectly from trafficking, the Convention requires Parties to confiscate: (i) direct proceeds from drug-related offenses, (ii) proceeds that have been transformed or converted into other forms of property, (iii) proceeds that have been intermingled with legitimate property and, (iv) income or other benefits derived from both direct proceeds as well as converted and intermingled properties.⁷⁹ The second category encompasses narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities ‘used in or intended for’ the commission of drug-related offenses.⁸⁰ The related question, as to whether the property holder’s or the user’s intention must be proved, is left to national criminal legislation.⁸¹ Under some domestic laws, both owners and property right holders who have knowledge that their properties have been used by others for criminal purposes are subject to the deprivation of the rights to those items, i.e. the items can be confiscated without regard to ownership.⁸² Such a confiscation, under some legal systems, may occur independently from a conviction (i.e. civil forfeiture), while, in marked contrast, under other legal systems, forfeiture depends entirely on a conviction (i.e. criminal forfeiture).⁸³

Value-Based Confiscation

Confiscation of properties generated from drug trafficking may face difficulties if, for example, the properties cannot be located or have been rendered worthless or have been intermingled with other

⁷⁸ Pursuant to Article 1(p) and (q), ‘proceeds’ means ‘any property derived from or obtained, directly or indirectly, through the commission of an offense established in accordance with Article 3, paragraph 1’ and ‘property’ means ‘assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest, in such assets’. See 1988 Convention, above n 6, art 1(p) and (q).

⁷⁹ 1988 Convention, above n 6, art 5(1) and (6). See also Bassiouni, above n 13, 934. It should also be noted that confiscation of transformed and intermingled properties, in particular, may place the rights of *bona fide* third Parties at risk. Therefore, Article 5(8) emphasizes the principle that the construction of the convention provisions can not prejudice those rights. See 1988 Convention, above n 6, art 5(8).

⁸⁰ 1988 Convention, above n 6, art 5(1)(b). In addition to the terms ‘materials’ and ‘equipment’, the new term ‘instrumentalities’ that was introduced under the *1988 Convention* allows the Parties a broad scope to interpret it to cover any device or vehicle involved in illicit drug traffic. See 1988 UN Commentary, above n 7, 120.

⁸¹ 1988 UN Commentary, above n 7, 121.

⁸² See John T Bentivoglio et al, *State Laws and Procedures Affecting Drug Trafficking Control: A National Overview* (1985) 65 and Gregory D Lee, *Global Drug Enforcement: Practical Investigative Techniques* (2004) 270.

⁸³ See Boister, above n 12, 359 and Bentivoglio et al, above n 82, 65.

legitimate properties.⁸⁴ To ameliorate those difficulties, the Convention allows Parties to confiscate property of equivalent value. Thus, circumstances where direct forfeiture of properties generated from drug-related offenses is ‘impracticable or impossible’, Parties can, alternatively, confiscate properties the value of which corresponds to that of the ill-gotten gains.⁸⁵ This form of confiscation is not mandatory; the States are left to decide whether to enable such a mechanism.⁸⁶

Temporary Measures and Onus of Proof

Because deprivation of property seriously interferes with the rights and economic interests of individuals,⁸⁷ confiscation of property requires sufficient proof of its criminal provenance. The time it takes to prove the offense may give opportunities to criminals to circumvent confiscation by, for example, selling or otherwise transferring the property. For that reason, Article 5(2) requires Parties to enable their authorities to identify, trace and freeze or seize the suspect property, to temporarily prohibit their transfer, conversion or disposition or to temporarily hold them in custody for eventual confiscation.⁸⁸ Additionally, unlawfulness may be hard to prove, especially when assets have been firmly intermingled with legitimate properties.⁸⁹ Thus, Article 5(7) allows Parties to shift the onus of proof to related persons, i.e. innocent persons must prove their *bona fides* as regards the lawful origin of properties liable to confiscation. As this rule is not common, its adoption is subject to the principles of domestic laws of the Parties and the nature of the judicial and other proceedings.⁹⁰

Mutual Legal Assistance in Confiscation

Provision for confiscation of properties located in foreign countries was an innovation of the *1988 Convention*. Pursuant to Article 5(4) of the Convention, the Party which receives a request for assistance in forfeiture processes affecting properties located in its territory must submit that request to its competent authorities. If assistance is granted, the requested Party is, in conformity with its domestic law, either to issue a confiscation order and

⁸⁴ 1988 UN Commentary, above n 7, 139.

⁸⁵ 1988 Convention, above n 6, art 5(1)(a) and 1988 UN Commentary, above n 7, 119.

⁸⁶ 1988 UN Commentary, above n 7, 119.

⁸⁷ *Ibid* 144.

⁸⁸ 1988 Convention, above n 6, art 5(2). Article 5(2) has been criticized for its gaps, as it does not provide guidelines on ‘the control and care’ of the assets that are frozen or seized. See Boister, above n 12, 368.

⁸⁹ 1988 UN Commentary, above n 7, 143.

⁹⁰ 1988 Convention, above n 6, art 5(7).

to give effect to it, or to give effect directly to a confiscation order issued by a foreign authority.⁹¹ In practice, most states choose the first option⁹² although the second approach is more expeditious.⁹³ Under the *1988 Convention*, assistance also applies to identifying, tracing, freezing and provisional seizure of properties for the purpose of eventual confiscation.⁹⁴ However, differences between civil and criminal forfeiture procedures may obstruct extraterritorial confiscation⁹⁵ and, thus, the official UN Commentary recommends that ‘each Party must be able to cooperate with other states, whether or not they adopt the same approach to confiscation’.⁹⁶

Parties can refuse to grant confiscation assistance on varying grounds that are specified under Article 7. These grounds are applicable to MLA on the whole (see the analysis in Section 10.1.2.1 above). Refusals, again, are limited by two exceptions, namely political or fiscal offenses and bank secrecy.⁹⁷ Various MLA procedural provisions are similarly applied to confiscation, such as the preservation of obligations under an applicable assistance treaty, the language, form and content of requests, limitations on the use of information, immunity of persons who consent to give evidence, and the execution of requests.⁹⁸ In addition, Parties are encouraged to conclude bilateral and multilateral treaties to address other issues of confiscation assistance between them.⁹⁹ If Parties require the existence of a treaty as a basis for

⁹¹ 1988 Convention, above n 6, art 5(4)(a). Due to the diversity of legal systems among nations (i.e. some states refuse to enforce orders made by foreign authorities), the *1988 Convention* provides options for the Parties to suit their domestic laws.

⁹² Boister, above n 12, 373.

⁹³ 1988 UN Commentary, above n 7, 147.

⁹⁴ 1988 Convention, above n 6, art 5(4)(b). Requests for assistance to seize or to restrain forfeitable properties located in the territory of foreign countries are generally made to prevent their loss and, in particular, to prevent their removal from that territory to avoid confiscation. See Jimmy Gurule, 'The 1988 U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances - a Ten Year Perspective: Is International Cooperation Merely Illusory?' [1998] *Fordham International law* 74, 84.

⁹⁵ E.g. states that only allow confiscation on the basis of a conviction for a relevant offense (criminal forfeiture or criminal *in personam* proceedings) may face difficulties with a confiscation request made by states that do not use the conviction-based system (i.e. allow civil forfeiture or civil *in rem* proceedings). Another legal difficulty that may occur concerns the forfeiture of immovable properties. See 1988 UN Commentary, above n 7, 124 and 147 and Boister, above n 12, 374. See also Bentivoglio at al, above n 82, 82.

⁹⁶ 1988 UN Commentary, above n 7, 119. In addition, it should be noted that while obliging the Parties to assist other states in confiscation, the 1988 Convention unfortunately omits to regulate the issue of competing confiscation requests. See Boister, above n 12, 374.

⁹⁷ The Parties are bound to empower their competent authorities to order bank, financial or commercial records be made available or be seized. See 1988 Convention, above n 6, art 5(3).

⁹⁸ 1988 Convention, above n 6, art 5(4)(d) and 1988 UN Commentary, above n 7, 128.

⁹⁹ 1988 Convention, above n 6, art 5(4)(g).

granting confiscation assistance but there is no such a treaty between them, they are obliged to consider the *1988 Convention* as that necessary basis.¹⁰⁰

Disposal of Confiscated Objects

The issue of disposing of confiscated objects under the *1988 Convention* is left entirely to the domestic laws and administrative procedures of Parties. Thus, some states require the disposal to be effected in a particular manner specified in legislation, whereas, others provide their authorities with more flexibility.¹⁰¹ In terms of extraterritorial confiscation, disposal is carried out principally in accordance with the domestic laws and administrative procedures of the requested Parties, as the assets are located in their countries and the confiscation is enforced by their authorities.¹⁰² The Convention, however, recommends that the Parties concerned conclude agreements on contributing a part or whole of the value of confiscated proceeds and property either to an intergovernmental body combating illicit trafficking and drug abuse, or to sharing such proceeds and properties between them.¹⁰³

8.2.2.2 Confiscation under Vietnamese Legislation

The existing national laws of Vietnam comply well with the requirements under the DCCs, that Parties enable, at the national level, confiscation of all illicit substances, materials and equipment, or other instrumentalities, involved in, and all types of proceeds derived from illicit drug traffic.

Forfeitable Objects

Under Vietnamese criminal law, forfeitable objects can be divided into four categories. The first group covers materials, equipment, tools or other instrumentalities that are used in or intended for the commission of a crime.¹⁰⁴ The ownership of the properties involved in illicit drug traffic is immaterial to confiscation. Owners who let their items be used for criminal purposes are also found guilty and their items are forfeitable.¹⁰⁵ In practice, persons

¹⁰⁰ 1988 Convention, above n 6, art 5(4)(f).

¹⁰¹ 1988 UN Commentary, above n 7, 132 and see also Bentivoglio at al, above n 82, 66.

¹⁰² The right to disposal is found necessary to stimulate the requested Parties to cooperate in the enforcement of confiscations. See Boister, above n 12, 381.

¹⁰³ 1988 Convention, above n 6, art 5(5). The sharing of assets is seen as a method of encouraging the cooperation between the Parties because, in fact, the requesting countries also contribute to the success of confiscation by providing necessary information. See Boister, above n 12, 383.

¹⁰⁴ *Bo Luật Hình Su Nhoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1999* (Quoc Hoi) art 41(1)(a) [trans: *Criminal Code of Vietnam 1999* (National Assembly)] (hereinafter CCV 1999).

¹⁰⁵ CVC 1999, above n 104, art 41(3).

who have given consent to criminals to use their properties for the commission of a crime are inevitably deprived of their rights to those properties. In addition, persons who have not adequately controlled their property, with the result that criminals have used them in the commission of a crime, may also be deprived of their rights to them.¹⁰⁶ Judgments as to whether such persons are guilty depend on each factual situation and are left in the hands of courts. Items which criminals illegally appropriate from others to use in illicit drug traffic are not subjected to confiscation and the true owners of the properties are entitled to their return.¹⁰⁷

The second group of forfeitable things is prohibited goods.¹⁰⁸ Pursuant to *Decision 88/2000/QĐ-BTM promulgating the Lists of Prohibited Goods* of the Ministry of Trade 2000, all substances enumerated under the DCCs fall under this category.¹⁰⁹ As a result, the domestic regulations of Vietnam are in line with the DCC provisions that require the confiscation of illicit narcotic drugs, psychotropic substances and precursors.

The third group of forfeitable objects covers two types of tainted proceeds, namely ‘properties generated from the commission of a crime’ and ‘properties purchased or exchanged from money or properties gained from the commission of a crime’.¹¹⁰ The second type of proceeds is regarded as converted or transformed property. The *CCV 1999*, however, does not expressly indicate whether it allows confiscation of properties that have been intermingled with legitimate properties or whether it allows confiscation of income gained from those proceeds. In practice, the phrase ‘properties generated from the commission of a crime’ is broadly interpreted to encompass properties that have been intermingled with legitimate properties and any income, interest or other benefits derived from both direct proceeds as well as converted or intermingled properties.¹¹¹ Thus, the practice of Vietnam corresponds to

¹⁰⁶ See Ngoc Hoa Nguyen (ed), *Giao Trinh Luat Hinh Su Viet Nam* (2001) 197 [trans: Ngoc Hoa Nguyen (ed), *Textbook on Criminal Law of Vietnam* (2001)].

¹⁰⁷ CVC 1999, above n 104, art 41(2).

¹⁰⁸ CVC 1999, above n 104, art 41(1)(c).

¹⁰⁹ See *Danh Muc Chi Tiet Hang Hoa Cam Luu Thong, Dich Vu Thuong Mai Cam Thuc Hien, Hang Hoa va Dich Vu Han Che Kinh Doanh, Kinh Doanh Co Dieu Kien ban hanh Quyét Dinh so 88/2000/QĐ-BTM 2000* (Bo Thuong Mai) Pt I(II) [trans: *Lists of Prohibited Goods, Prohibited Commercial Services, Goods and Commercial Services Restricted or Circulated or Conducted under Specified Conditions promulgated by Decision 88/2000/QĐ-BTM 2000* (Ministry of Trade)].

¹¹⁰ CVC 1999, above n 104, art 41(1)(b).

¹¹¹ See Ngoc Hoa Nguyen, above n 106, 196-7.

the requirements under Article 5(6) of the *1988 Convention* as regards confiscation of indirect proceeds of illicit drug traffic. Nonetheless, the *CCV 1999* provisions should be amended to make them self-explanatory.

The fourth and final category of forfeitable objects is properties that are not relevant to a crime. It is necessary to remember that, in relation to a number of serious, very serious or particularly serious offenses, the *CCV 1999* allows courts to deprive a convicted person of a part or the whole of his properties as an additional punishment.¹¹² Thus, under Vietnamese criminal law, properties that are not proceeds of a crime may also be confiscated. As previously set out in Figure 7.1, such punitive confiscation is envisaged for most drug-related crimes.¹¹³ The forfeitable properties in this case must be owned by the convicted persons. The actual control over those properties is immaterial. The items may, at the time of confiscation, be under their control or involved in contract of loan or mortgage.¹¹⁴

Under Vietnamese criminal law, the confiscation of equipment, materials and instrumentalities, criminal proceeds and untainted properties depends entirely upon a person's first being convicted of a substantive crime. Confiscation of narcotic drugs, psychotropic substances and precursors, in contrast, is not dependent on a criminal conviction. In accordance with Article 145 of the *CPC 2003*, all prohibited goods that have been discovered must be taken into custody and transferred to the competent authorities for proper controls.¹¹⁵ Thus, principally, Vietnam conforms to the pattern of criminal forfeiture but, civil forfeiture is applicable to illicit narcotic drugs, psychotropic substances and precursors.¹¹⁶

¹¹² CVC 1999, above n 104, art 40.

¹¹³ I.e.: unlawful manufacturing of narcotic substances (Article 193 of the *CCV 1999*); unlawful stockpiling, transporting, trading or appropriating of narcotic substances (Article 194 of the *CCV 1999*); unlawful stockpiling, transporting, trading or appropriating of precursors used for illicit manufacture of narcotic substances (Article 195 of the *CCV 1999*); unlawful stockpiling, transporting, trading or appropriating of equipment or tools used for the illicit manufacture of narcotic substances or illegal use of narcotic substances (Article 196 of the *CCV 1999*); organizing illegal use of narcotic substances (Article 197 of the *CCV 1999*); harbouring illegal use of narcotic substances (Article 198 of the *CCV 1999*) and legalizing money of property generated from a crime (Article 251 of the *CCV 1999*).

¹¹⁴ Ngoc Hoa Nguyen, above n 106, 195.

¹¹⁵ See *Bo Luat To Tung Hinh Su cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2003* (Quoc Hoi) art 145 [trans: *Criminal Procedure Code of Vietnam 2003* (National Assembly)] (hereinafter *CPC 2003*).

¹¹⁶ It should be noted that, if criminal proceedings cease because a criminal is dead or a criminal is found guilty but exempted from criminal liability, confiscation of equipment, materials or other instrumentalities and tainted properties may still be effective. See *CPC 2003*, above n 115, art 76.

Value-Based Confiscation

The Vietnamese confiscation system is principally property-based, i.e. all direct and indirect proceeds derived from the commission of crimes are subjected to confiscation, including converted and intermingled properties. Value-based confiscation, however, may also apply in a number of additional circumstances, namely: (i) when such confiscation is necessary to ensure pecuniary penalties or (ii) when such confiscation is needed for the purpose of securing the civil rights of victims or third parties.¹¹⁷

Temporary Measures and Onus of Proof

To prevent offenders from circumventing confiscation, the *CPC 2003* allows Vietnamese authorities to apply temporary measures against the properties pending their confiscation. Equipment, materials or other instrumentalities and properties which are proceeds of crime may be temporarily assumed into custody.¹¹⁸ Properties that are not proceeds of crimes may also be temporarily prohibited from transfer, conversion or movement or be temporarily assumed into custody with a view to satisfying a penalty order or securing the civil rights of victims or third parties.¹¹⁹ In these cases, seizure must be limited to properties the value of which corresponds to that of foreseeable or possible punitive confiscation, pecuniary penalties and compensation for injuries or damages.¹²⁰ The onus of proof as regards the tainting of properties liable to confiscation is vested with the government's investigatory, prosecutory and judiciary authorities. Property holders are presumed innocent and do not carry the burden of proof, however, they have the right to prove their *bona fides*.¹²¹

Disposal of Confiscated Objects

The national policies of Vietnam on the disposition of confiscated objects vary according to their categories. Article 24 of the *Law on Narcotics 2000* lays down the general rule that narcotic substances, precursors, addictive and psychotropic drugs that have been seized must be destroyed. Those substances, however, are to be returned to their authorized owners if they have been illegally appropriated.¹²² Under Article 41 of the *CCV 1999* and

¹¹⁷ CPC 2003, above n 115, art 146(1).

¹¹⁸ CPC 2003, above n 115, art 145. See also Mai Bo Nguyen, *Bien Phap Ngan Chan, Kham Xet, Ke Bien Tai San trong Bo Luat To Tung Hinh Su* (2004) 195 [trans: Mai Bo Nguyen, *Restraining Measures, Search and Confiscation under the Criminal Procedure Code* (2004)].

¹¹⁹ CPC 2003, above n 115, art 146(1).

¹²⁰ CPC 2003, above n 115, art 146(2).

¹²¹ CPC 2003, above n 115, art 10.

¹²² Law on Narcotics 2000, above n 9, art 24(1).

Article 76 of the *CPC 2003*, properties and equipment, tools, materials or other instrumentalities relating to criminal conduct are principally allocated to the national revenue. But, if they have been unlawfully appropriated, they are to be returned to their owners. Things that are not useable must be destroyed. Other prohibited objects, such as weapons or explosives, may, at the discretion of competent authorities, be destroyed or allocated to national revenue.¹²³

Mutual Legal Assistance in Confiscation

Thus, so far, Vietnam has established an elaborate legal basis for national confiscation, including types of forfeitable objects, temporary restraining measures and confiscation procedures. By ratifying the *1988 Convention*, it committed to cooperate with others in this area. Under various MLATs, Vietnam agrees to provide its treaty partners with assistance in confiscating things associated with criminal conduct.¹²⁴ It is, however, unclear whether Vietnam chooses to directly enforce confiscation orders issued by competent authorities of foreign states, or alternatively, to issue its own confiscation orders and to give effect to them.¹²⁵ Currently, Vietnam has no specific provisions dealing with international cooperation in confiscation. This matter is simply regarded a specific form of MLA. Therefore, the existing domestic MLA regulations as a whole are applicable to cooperation in confiscation. Because the domestic legislation of Vietnam in this field is not yet adequately established, uncertainties as regards procedures in handling confiscation assistance requests have not been addressed. As for other forms of MLA, confiscation assistance is refused if the requests are not made in conformity with the provisions of the international drug control treaties to which Vietnam is a Party and if the execution of those requests is likely to prejudice sovereignty, security, *ordre public* or other essential interests of Vietnam. Bank secrecy is not invoked as a ground for refusal.¹²⁶

¹²³ See CVC 1999, above n 104, art 41(1) and (2) and CPC 2003, above n 115, art 76(2).

¹²⁴ See, for example, Bilateral Mutual Judicial Assistance Treaty with China, above n 123, art 25; *Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Nuoc Cong Hoa Dan Chu Nhan Dan Lao ngay 20 thang 2 nam 2000* art 57 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil and Criminal Matters between Vietnam and Laos*, 20 February 2000] and *Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Lien Bang Nga ngay 25 thang 8 nam 1988* art 79 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil, Family and Criminal Matters between Vietnam and Russia*, 25 August 1988].

¹²⁵ The 1988 Convention provides the Parties with those options to deal with confiscation assistance requests. See Section 8.2.2.1.

¹²⁶ See Section 8.2.1.2 for cross-reference.

8.2.3 *Transfer of Proceedings*

8.2.3.1 *Transfer of Proceedings under the 1988 Convention*

Transfer of proceedings is a relatively new form of legal cooperation. The *1988 Convention* has a single provision dealing with this issue. Under Article 8, Parties are required ‘to give consideration’ to the possibility of transferring criminal proceedings to another state that may be in a better position to administer justice.¹²⁷ The language of the provision makes it clear that they are not bound to transfer proceedings but to consider the possibility of doing so.¹²⁸

Transfer of proceedings is desirable in the interests of proper administration of justice. Thus, they should take into account various factors to assess the necessity of transferring criminal proceedings in respect of each case in question.¹²⁹ For example, in situations where ‘a bulk of evidence against someone already on trial in State X emerges in State Y’ and when the same individuals have committed distinct offenses in different countries, criminal proceedings might be consolidated in the interests of effective prosecution against that person.¹³⁰ Similar to other forms of international legal cooperation, transfer of proceedings is not applicable to drug-related offenses committed exclusively for personal use.¹³¹

8.2.3.2 *Transfer of Proceedings under Vietnamese Legislation*

Vietnam is relatively new to transfer of proceedings. MLATs concluded by Vietnam do not provide for this form of international cooperation. Both the *Law on Narcotics 2000* and *International Drug Control Cooperation Decree 2003* omitted this form of cooperation. However, in 2003, the *CPC 2003*, for the first time, laid down a single provision dealing with this matter. That provision is applicable to all crimes, including drug-related offenses. Pursuant to Article 345(1), the only circumstance in which Vietnam may transfer criminal proceedings to another state is when the proceedings against a foreigner who has committed a crime in its territory cannot

¹²⁷ 1988 Convention, above n 6, art 8.

¹²⁸ See Boister, above n 12, 329 and 1988 UN Commentary, above n 7, 213.

¹²⁹ Parties may take into account the following factors: the nature of the offense (i.e. its gravity, accomplices and so on), the likely sentence, the location of the alleged persons and possibilities of extradition. See Boister, above n 12, 329.

¹³⁰ See Boister, above n 12, 328 and 1988 UN Commentary, above n 7, 213.

¹³¹ 1988 Convention, above n 6, art 8.

proceed further because he or she has left Vietnam and reached that other state.¹³² Article 345(1), thus, entails two qualifications. First, Vietnam does not transfer criminal proceedings against its citizens. This, again, reflects the strict adherence of the Vietnamese State to the principle of nationality. Secondly, the offense for which the proceedings are to be transferred must have been committed in the territory of Vietnam. Thus, Article 345(1) does not enable transfer of proceedings if a foreigner has committed an extraterritorial offense. This provision seems to narrow down the effectiveness of cooperation by Vietnam in this field. As this form of cooperation is desirable for prosecuting extraterritorial offenses, Vietnamese lawmakers should consider the possibility of enabling the transfer of proceedings against foreigners to the states in which prosecution against them may be more effective due to the presence of relevant evidence.

8.3 Cooperation in Specific Law Enforcement Measures

In addition to general issues of law enforcement cooperation, the *1988 Convention* also focuses on specific tools for combating drug trafficking. In the following parts, those tools are examined.

8.3.1 Controlled Delivery

8.3.1.1 Controlled Delivery under the 1988 Convention

‘Controlled delivery’¹³³ is a very important technique in drug trafficking investigations. It allows law enforcement authorities to detect persons behind the scenes who are engaged in the organization of drug smuggling. In the context of international cooperation, it is necessary that controlled delivery operations be conducted across national borders.¹³⁴ Thus, the *1988 Convention* requires Parties to take ‘necessary measures’ to allow for the use of this technique at the international level ‘if it is permitted by the basic principles of their respective domestic legal

¹³² CPC 2003, above n 115, art 345(1).

¹³³ Pursuant to Article 1(g) of the *1988 Convention*, ‘controlled delivery’ means ‘the technique that allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention [the 1988 Convention], or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offenses established in accordance with article 3, paragraph 1 of the Convention’. See *1988 Convention*, above n 6, art 11(1).

¹³⁴ See Boister, above n 12, 398.

systems'.¹³⁵ The safeguard of domestic law is provided because civil law states may face difficulties in using this technique. Their domestic laws generally require that 'a prosecution be launched whenever there are sufficient grounds for the belief that an offense has been committed'.¹³⁶ To enable resort to this technique, some states may require a legislative basis, whereas, others may leave it to the administrative discretion of their competent authorities.¹³⁷

As the conduct of controlled deliveries entails a risk that the controls will fail and the drugs will be illegally trafficked, Article 11(3) of the Convention allows Parties to remove narcotic drugs or psychotropic substances and to substitute them by other materials in part or in whole.¹³⁸ The operation, however, should be carried out in accordance with domestic laws. For instance, some amount of drugs may be required to be left in the consignment to prove the illicit nature of the consignment in question.¹³⁹

Under some domestic laws, controlled delivery may be used simply to locate stash locations, to obtain evidence needed for search warrants, to verify the reliability of informants or to obtain information for later use.¹⁴⁰ Under Article 1(g) of the 1988 Convention, however, this technique is only applied for the purpose of 'identifying persons involved in the commission of offenses established in accordance with

¹³⁵ 1988 Convention, above n 6, art 11(1). It is necessary to emphasize that the 1988 Convention only addresses controlled delivery at the international level. The national use of this technique is not regulated by the 1988 Convention.

¹³⁶ 1988 UN Commentary, above n 7, 238. See also Boister, above n 12, 398 and Gilmore, above n 18, 36.

¹³⁷ See Chantal Joubert and Hans Bevers, *Schengen Investigated: A Comparative Interpretation of the Schengen Provisions on International Police Cooperation in the Light of the European Convention on Human Rights* (1996) 195-6; Boister, above n 12, 400-1 and 1988 UN Commentary, above n 7, 243-4.

¹³⁸ 1988 Convention, above n 6, art 11(3).

¹³⁹ 1988 UN Commentary, above n 7, 242. It should be noted again that this analysis only focuses on the legislative implementation aspects of the subject studied. With respect to the administrative aspects, the 1988 Convention provides that decisions on the use of controlled delivery shall be made on a case-by-case basis. Decisions are left to the Parties based on their capabilities, taking into consideration financial arrangements and the exercise of jurisdiction (as the passing of illicit drug consignments may cause many countries to have jurisdiction over them, the arrangement for controlled delivery should also consider the issue of exercising jurisdiction). See 1988 Convention, above n 6, art 11(1) and (2).

¹⁴⁰ See, for example, Gregory D Lee, *Global Drug Enforcement: Practical Investigative Techniques* (2004) 99-102 and Michael D Lyman, *Practical Drug Enforcement* (3rd ed, 2007) 110.

Article 3(1) of the Convention'.¹⁴¹ Its application, nonetheless, depends on agreements or arrangements between the Parties concerned.¹⁴²

Controlled delivery under the *1988 Convention* is only applicable to illicit or suspect consignments of narcotic drugs, psychotropic substances, precursors, essential chemicals or their substituted substances (in the case of 'clean' delivery).¹⁴³ The fact that it is not applied to proceeds of drug trafficking or to equipment used in drug manufacture and production, such as tableting machines and laboratory glassware,¹⁴⁴ has been criticized as an inadequacy.¹⁴⁵

8.3.1.2 *Controlled Delivery under Vietnamese Legislation*

As mentioned earlier, some states may require an elaborate legal basis for the use of controlled delivery technique, while others leave it to the discretion of their national authorities. Vietnam appears to opt for the latter approach, as its substantive criminal laws, including the *CPC 2003* and *Ordinance on Organizing Investigation of Criminal Offenses 2004*, do not regulate this issue. However, in specific response to the provisions of the *1988 Convention* that enable the use of this technique at the international level, Article 51 of the *Law on Narcotics 2000* prescribes that:

[t]he Vietnamese State cooperates with others in respect of requests for controlled delivery in conformity with the provisions of the international treaties that Vietnam has ratified or acceded to for the purpose of identifying and prosecuting persons involved in the commission of drug-related crimes. The use of this technique must conform to agreements made between the Vietnamese competent authorities and authorities of the concerned States.¹⁴⁶

Based on this provision, Article 4(2) of the *International Drug Control Cooperation Decree 2003* generally empowers national authorities, within the sphere of their duties and functions, to reach agreements with corresponding authorities of other states on using this technique with a view to identifying and prosecuting persons

¹⁴¹ 1988 Convention, above n 6, art 1(g).

¹⁴² 1988 Convention, above n 6, art 11(1).

¹⁴³ 1988 Convention, above n 6, art 1(g).

¹⁴⁴ 1988 UN Commentary, above n 7, 245.

¹⁴⁵ See, eg, Boister, above n 12, 400 and 404. In accordance with the spirit of the Convention, the contracting Parties should enable the extension of this technique to proceeds of drug crimes and equipment or instrumentalities that may be used in illicit drug production or manufacture. See 1988 UN Commentary, above n 7, 245.

¹⁴⁶ Law on Narcotics 2000, above n 9, art 51.

involved in drug-related crimes.¹⁴⁷ Various specific issues in relation to the use of this technique are left completely to the discretion of investigative authorities, including the scope of items to which controlled delivery may be applied and ‘clean’ delivery.

Relating to this point, it should be mentioned that, under Article 10 of the *CPC 2003*, law enforcement authorities are under obligations to use ‘lawful measures’ in their investigation of substantive crimes.¹⁴⁸ Additionally, under Article 65(1) of the *CPC 2003*, in order to gather evidence in relation to a substantive crime, law enforcement agencies must use ‘investigative measures in conformity with the provisions of this instrument [the *CPC 2003*]’.¹⁴⁹ The fact that the *CPC 2003* does not provide a legislative basis for this technique may lead to denials of its lawfulness. To better protect law enforcement officials involved in controlled delivery, as well as to better secure the legitimacy of evidence gathered using this technique, it is this author’s suggestion that a legal basis for controlled delivery should be built at the national level, i.e. the *CPC 2003* should be revised to confirm the lawfulness of this investigative technique. Furthermore, to ensure its appropriate use, a legislative framework on conditions as well as procedures for its application would be useful. For example, the legislative framework should indicate which authorities are empowered to issue orders on its use, to which objects it can be applied, and if ‘clean delivery’ is permissible. Under the DCCs, the technique of controlled delivery is only applicable to illicit drugs and this has been criticized as inadequate. Thus, Vietnamese lawmakers should consider enabling the application of this technique not only to illicit drugs, but also proceeds of crimes and equipment or tools used in illicit drug manufacture. In addition, if the national law allows the conduct of clean delivery, it should also lay down some rules on the amount of drugs to be retained to secure sentencing. That amount, in the author’s view, should be not less than the quantity subjected to the highest penalties applicable to the related offense, specified in the *CCV 1999* and *Resolution 01/2001/NQ-HDTP Guiding the Application of a Number of Articles of the Criminal Code 1999, 2001* of the Supreme People’s Court.

¹⁴⁷ International Drug Control Cooperation Decree, above n 9, art 4(2).

¹⁴⁸ *CPC 2003*, above n 115, art 10.

¹⁴⁹ *CPC 2003*, above n 115, art 65(1).

For example, 20 kg in respect of opium resin, cannabis resin or cocaine glue; 600 mg in terms of heroine or cocaine (see Figure 6.3 in Chapter 6).

8.3.2 Prevention of the Use of Mail for Illicit Drug Traffic

8.3.2.1 Prevention of the Use of Mail for Illicit Drug Trafficking under the 1988 Convention

Due to their ‘cost-effectiveness’, ‘reliability’ and ‘difficulties of discovering’, postal and other express delivery services have been increasingly employed by criminals in the trafficking of ‘low-volume and high-value’ drugs of abuse.¹⁵⁰ To prevent drug traffickers from employing the advantages of these services in their illicit businesses, the *1988 Convention* imposes on Parties a general obligation to adopt measures to suppress the use of mail for illicit traffic as well as to cooperate with others to this end.¹⁵¹ The term ‘mail’ is not defined but its interpretation should cover varying new forms of postal and other delivery services run by state-owned as well as private couriers or organizations.¹⁵² Measures taken by Parties to give effect to this provision must conform not only to the basic principles of their domestic legal systems but also to their obligations under the *Conventions of the Universal Postal Union*.¹⁵³

Generally, Parties are to decide the appropriate measures to combat illicit traffic by mail. However, to enhance the effectiveness of their combat, the Convention sets out several obligatory measures. In terms of legislative implementation, Parties are bound to take ‘legislative measures to enable the use of appropriate means to secure evidence required for judicial proceedings’.¹⁵⁴ Thus, to comply with this obligation, Parties may need to enact domestic legislation that allows the interception and opening of suspect postal items.¹⁵⁵

8.3.2.2 Prevention of the Use of Mail into Illicit Drug Traffic under Vietnamese Legislation

In response to the *1988 Convention* requirements as regards prevention of the use of mail into illicit drug traffic, in 2006, the Ministry of Public Security and the Ministry

¹⁵⁰ 1988 UN Commentary, above n 7, 351.

¹⁵¹ 1988 Convention, above n 6, art 19(1).

¹⁵² 1988 UN Commentary, above n 7, 353.

¹⁵³ Examples of such obligations are the principle of transit freedom, i.e. postal items in transit through a state Party may not be opened and that the insertion in letter-post items of narcotic drugs and psychotropic substances are prohibited. Ibid 352.

¹⁵⁴ 1988 Convention, above n 6, art 19(2)(c).

of Posts and Telematics of Vietnam issued a joint circular that allows the interception of suspect letters, parcels and packages engaged in postal and express delivery services with a view to suppressing drug-related crimes.

In fact, this specific instrument does not introduce new rules but gives detailed guidance on the implementation of the law enforcement principles set out in the *CPC 2003*. Pursuant to Articles 140 and 144 of the *CPC 2003*, for the purpose of gathering evidence relating to a substantive crime, national law enforcement authorities are empowered to search postal and express letters, parcels and packages in conformity with search warrants and, if evidence of involvement in a crime is found, to seize or to confiscate those items.¹⁵⁶ These basic rules are applicable to all crimes.

Dealing specifically with drug-related offenses, the *Joint Circular on the Interception of Postal and Express Delivery Services 2006* (JC 2006) defines in more detail the scope of postal and services subjected to interception, circumstances in which interceptions are possible, the rights and obligations of national law enforcement authorities and of related service organizations, and procedures to be followed.

In accordance with Part I(1) of the *JC 2006*, interception is applicable to all forms of letters, parcels and packages and all forms of postal and other express delivery services run by state-owned as well as private organizations (hereinafter generally referred to as mail). The interception can be imposed on varying categories of mail, namely: (i) internal mail circulated inside the territory of Vietnam; (ii) mail forwarded to Vietnam from other states and, (iii) mail posted from Vietnam to other states.¹⁵⁷ The *JC 2006*, however, does not indicate whether mail transiting through the territory of Vietnam is subject to interception. Under the *Conventions of the Universal Postal Union*, such mail generally enjoys the freedom of transit, with the

¹⁵⁵ See Boister, above n 12, 463 and 1988 UN Commentary, above n 7, 355.

¹⁵⁶ *CPC 2003*, above n 115, arts 140(2) and 144.

¹⁵⁷ *Thong Tu Lien Tich so 01/2006/TTLT-BCA-BBCTV ve Huong Dan Thuc Hien Mo va Kiem Tra Thu, Buu Pham, Buu Kien, Goi Hang Hoa Gui Qua Mang Buu Chinh Cong Cong va Mang Chuyen Phat Nhanh Nham Phat Hien Toi Pham ve Ma Tuy 2006* (Bo Cong An va Bo Buu Chinh Vien Thong) Pt I(1) [trans: *Decision 01/2006/TTLT-BCA-BBCTV Guiding the Opening and Examination of Mails, Postal Parcels, Postal Packages and Other Commodity Packages in Postal Services and Other Express Delivery Services for the Purpose of Discovering Drug-Related Crimes 2006* (Ministry of Public Security and Ministry of Posts and Telamatics)] (hereinafter JC 2006).

result that the omission mentioned brings about some ambiguity. In its widest interpretation, ‘mail forwarded to Vietnam’ may encompass transit mail but to ensure its meaning is clear, the *JC 2006* should expressly allow the interception of transit mail suspected to be involved in illicit drug traffic.

To protect the legitimate rights and interests of mail senders, interception of mail, pursuant to Part II(1) of the *JC 2006*, is only permitted if there are sufficient grounds to believe that it illegally contains narcotic substances, precursors, addictive or psychotropic drugs.¹⁵⁸ For the purpose of securing the gathering of evidence and of preventing the commission of drug-related crimes, competent investigators are entitled, in urgent cases, to order postal and delivery service organizations to temporarily suspend the passage of suspect mail.¹⁵⁹ Additionally, postal and delivery service organizations are obliged to temporarily cease the passage of the mail that has been suspected to contain controlled substances or that has been discovered to contain those substances.¹⁶⁰ In those cases, they have to report immediately to the nearest police.

After opening mail for searching, law enforcement authorities are entitled to gather samples of suspect substances for examining. They may seize or confiscate them, if they are found to be narcotic drugs, psychotropic substances or precursors/essential chemicals.¹⁶¹ Other things that accompany such mail are still to be delivered¹⁶² but, if the delivery might obstruct the investigation of related crimes, the competent authorities can further suspend their delivery also.¹⁶³

Thus, on the whole, the existing law of Vietnam provides national authorities with the necessary legal tools to secure evidence relating to licit drug traffic by mail. The enactment of the *JC 2006* appears to be a specific response by Vietnam to the requirements under Article 19(2)(c) of the *1988 Convention*.

¹⁵⁸ *JC 2006*, above n 157, Pt II(1).

¹⁵⁹ *JC 2006*, above n 157, Pt II(4)(4.1).

¹⁶⁰ *JC 2006*, above n 157, Pt II(4)(4.2).

¹⁶¹ *JC 2006*, above n 157, Pt II(6)(6.1)(d).

¹⁶² *JC 2006*, above n 157, Pt II(6)(6.2)(a).

¹⁶³ *JC 2006*, above n 157, Pt II(6)(6.2)(b).

8.4 Conclusion

Under the DCCs, Parties are required to cooperate closely with each other in law enforcement against illicit drug traffic. The *1988 Convention*, in particular, provides detailed requirements for legal assistance in criminal matters as a whole and for international confiscation in particular. It also encourages Parties to transfer criminal proceedings to states that are in a better position to administer justice against illicit traffickers. Innovatively, the *1988 Convention* sets out a framework for international cooperation in the use of controlled delivery techniques to identify persons involved in extraterritorial drug traffic. To suppress illicit drug traffic by mail, Parties are obliged to provide their national authorities with effective tools to secure evidence required for judicial proceedings.

Vietnam has tried to respond to these requirements but, in some fields, its national legislation still falls below convention standards and needs further development.

First, the lack of Vietnamese domestic implementing regulations on MLA is a major shortcoming that causes difficulties for national authorities to cooperate with other states which are seeking to suppress drug-related offenses. The fact that the *CPC 2003* set out several basic rules on MLA signaled a new phase of development for domestic law in this field. If the current draft of the *Law on Mutual Legal Assistance and Extradition* is passed, the national law will be in line with international standards under the *1988 Convention*. As it is hard to conclude MLATs with every individual states, Vietnamese lawmakers should allow competent authorities, in the absence of bilateral mutual legal assistance treaties, to rely on the *1988 Convention* as a legal basis for cooperation with others in this field. The current draft has not regulated this issue.

Secondly, under the existing domestic law of Vietnam, several requirements concerning MLA in confiscation actions have not been addressed. The question whether Vietnam will directly enforce foreign orders or submit cases to its competent authorities to issue domestic confiscation orders has not yet been answered. Moreover, the question of whether Vietnam enables civil forfeiture in dealing with foreign confiscation requests has also not yet been answered. Thus, the *Law on Mutual Legal Assistance and Extradition* needs to settle these issues.

Thirdly, the only circumstance in which Vietnam may currently transfer criminal proceedings to another state is when the proceedings against a foreigner who has committed a crime in its territory cannot proceed further because he or she has left Vietnam and reached that state. However, Vietnamese lawmakers should consider enabling the transfer of proceedings against foreigners to the state in which the prosecutions may be more effective because most of evidence against them is present in the territory of that state.

Fourthly, although Vietnam has enabled the use of controlled delivery at an international level, many significant issues are left entirely to the discretion of the competent authorities. Vietnamese domestic criminal law has not yet provided any legal basis for the domestic conduct of controlled delivery. Thus, to protect investigators involved in that conduct and to secure evidence collected as well as to ensure its appropriate use, Vietnamese criminal procedural law should establish a detailed legal basis for controlled delivery, including (i) objects which controlled delivery can target, (ii) conditions for the conduct of clean delivery (i.e. alternative substances that can be used and the amounts of illicit drugs that should remain in the delivery for the purpose of prosecution and sentencing) and, (iii) authorities that are authorized to issue orders on controlled delivery.

9 SPECIAL ADMINISTRATION FOR DRUG CONTROL

9.1 Special Administrative Arrangements for Drug Control under the UN Drug Control Conventions

9.1.1 Obligations of Parties under the 1961 Convention

9.1.2 Obligations of Parties under the 1971 Convention

9.1.3 Obligations of Parties under the 1988 Convention

9.2 Administrative Arrangements for Drug Control in Vietnam

9.2.1 National Authorities Engaged in Drug Control

9.2.1.1 Overview

9.2.1.2 Ministry of Public Security

9.2.1.3 Customs

9.2.1.4 Border Guards and Coast Guards

9.2.1.5 Ministry of Health

9.2.1.6 Ministry of Industry

9.2.1.7 Ministry of Labor, War Invalids and Social Affairs

9.2.1.8 Other Ministries

9.2.1.9 People's Committees

9.2.2 Vietnamese Special Administrations for Drug Control

9.2.2.1 Overview

9.2.2.2 National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution

9.3 Conclusion

The illicit drug phenomenon is a multi-dimensional and multi-faceted problem. It is impractical to designate a single authority with exclusive competence in regard to all aspects of drug control. In most countries, many different authorities at both central and local levels are charged with drug control responsibilities. Because of a variety of agencies involved in drug management, coordination among them can be difficult. The dispersion of drug control functions at the national level can also lead to complications in international cooperation. Therefore, for the purpose of effective implementation, the DCCs require each Party to maintain special administrative arrangements for coordinating both domestic and international aspects of the drug control work of its various agencies. In response, Vietnam has created a legal framework that establishes administrative machinery for the national coordination of drug control.

The main focus of this Chapter is to compare the international requirements in respect of special administration for drug control with the legislative implementation by Vietnam. For that purpose, the DCC provisions in relation to special drug control administration are firstly examined. Next, legal duties and functions of various authorities engaged in drug control are explored to achieve a necessary background understanding of overall national administrative arrangements for drug control. From that background, domestic regulations on compositions and functions of central and local committees for coordination of drug control are exhaustively analyzed. The objective of this Chapter is to identify possible improvements to the Vietnamese legal framework for drug control arrangements, especially concerning authorities charged with the coordinating functions.

9.1 Special Administrative Arrangements under the UN Drug Control Conventions

9.1.1 Obligations of Parties under the 1961 Convention

The existing international drug control system is predicated on each state exercising and administering its own control system. Its efficiency, therefore, depends on three main state actions, i.e. compliance with the convention provisions within each member State, cooperation between them, and cooperation of each individual Party

with the international control bodies.¹ Domestic arrangements of national authorities charged with drug control and with maintaining international cooperation in the drug field, therefore, play a very important part in the success of implementing international provisions.²

In many countries, drug control functions are generally allocated to various government agencies, such as the Ministry of Health, Ministry of Interior, Ministry of Justice, Customs Department, etc.³ It is claimed that drug control might be neglected if national authorities are burdened with many other duties and, that the lack of coordination among the various agencies involved possibly weakens drug management.⁴ In addition, the absence of a direct relationship between national administrative machineries and international drug control bodies can be a serious defect for the effective implementation of the DCCs.⁵

For those reasons, the *1961 Convention*, continuing the ideas of its predecessors,⁶ requires its contracting members to maintain a special administration for coordinating the work of their various national departments charged with drug control at both the national and international levels. Such requirements are contained in Article 17, which reads as follows: 'The Parties shall maintain a special administration for the purpose of applying the provisions of this Convention', and in Article 35(a):

Having due regard to their constitutional, legal and administrative system, the Parties shall...make arrangements at the national level for coordination of preventive and repressive action against the illicit traffic; to this enforcement

¹ See Alfons Noll, 'International Treaties and the Control of Drug Use and Abuse' (1977) 6 *Contemporary Drug Problems* 17, 19.

² Bertil a Renborg, *International Drug Control - A Study of International Administration by and through the League of Nations* (2nd ed, 1972) 92.

³ See, eg, Louis Elisabeth Eisenlohr, *International Narcotics Control* (1934) 69 and Mustapha I Soueif, 'The Psychotropic Convention in Egypt' in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and their International Control* (1981) 61, 63.

⁴ Renborg, above n 2, 92.

⁵ Eisenlohr, above n 3, 73.

⁶ In the conference for adopting the *Convention on Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs 1931* (1931 Convention), there was a proposal for establishing a single authority responsible for drug control. However, that proposal was not accepted. Instead, the *1931 Convention* required the contracting Parties to establish a central official organisation charged with the task of watching the application of laws and regulations in relation to drug control and of communicating directly to the central official organisation in other Convention members information concerning illicit drug trafficking. The *Convention for the Suppression of Illicit Traffic 1936* regulated in more detail the obligation to establish a central police office in each country to deal with illicit traffic. Ibid 93.

they may usefully designate an appropriate agency responsible for such coordination.⁷

Several important observations should be made on these provisions. First, the term ‘special’ used in the wording of Article 17, which is not explained in the Convention, does not necessarily mean a ‘single authority’,⁸ as features of the constitutional, legal and administrative systems of many countries are not suitable for establishing such an unique authority.⁹ However, it is desirable that they designate a ‘central office’ charged with such duties.¹⁰

Secondly, in order to comply with the Convention’s requirement of maintaining the ‘special administration’, each individual State needs to maintain some special administrative arrangements to ensure liaison and coordination among its different national agencies which perform various drug control tasks, and to ensure effective cooperation both with the international bodies and with other countries in this field.¹¹ In other words, the setting up of the special administration for drug control needs to take into account the possibility of handling not only national coordination, but also international cooperation.¹²

Thirdly, the obligation of Parties under Article 35(a) to arrange their administration at the national level for coordination of preventive and repressive actions against illicit traffic is simply ‘a special application of their more general obligation under

⁷ See *Single Convention on Narcotic Drugs*, opened for signature 30 March 1961, art 35(a) (entered into force 13 December 1964).

⁸ At the Conference for adopting the *1961 Convention*, some opposition to using this term was raised, since it could be understood to mean a ‘single authority’. However, the Conference made it clear that the *1961 Convention* did not oblige Parties to establish a ‘single authority’ for coordination in drug control. See United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961* (1973) 207.

⁹ See, eg, 1961 UN Commentary, above n 8, 206 and Renborg, above n 2, 92.

¹⁰ See 1961 UN Commentary, above n 8, 206 and Renborg, above n 2, 93-4. Under the *Convention for the Suppression of Illicit Traffic 1936*, the member states are required to set up in their countries a central office for supervision and coordination of the campaign against illicit traffic. The function of such central offices was to centralize all information to facilitate the investigation and prevention of illicit traffic, and keep close contact with the corresponding central offices of other Convention members. However, the centralisation of national drug control authorities presents complications to the countries, which have a federal constitution. See also Noll, above n 1, 78.

¹¹ 1961 UN Commentary, above n 8, 207.

¹² Joel Sollier, ‘Cac Cong Cu Hop Tac Tu Phap Quoc Te trong Linh Vuc Phong Chong Buon Ban Bat Hop Phap cac Chat Ma Tuy’ (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) 62 [trans: Sollier, Joel, ‘Measures of International Cooperation in Combating Illicit Drug Trafficking’ (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)].

Article 17'.¹³ Additionally, the phrase 'preventive action' in the wording of Article 35(a) can have a very broad translation to include all measures dealing with controlling licit activities and drug abuse treatment¹⁴ that consequently leads to a large overlap in the scope of this Article and Article 17. To avoid their duplicative interpretation, it has been recommended that 'preventive action' be constrained to a narrow meaning that directly relates to illicit traffic.¹⁵

Fourthly, Article 35(a) is particularly designed to ensure coordination of police forces combating drug trafficking on the national level,¹⁶ because close cooperation as well as smooth and speedy communication among law enforcement authorities is essential for the effective handling of individual criminal cases.¹⁷ Moreover, the existence of the two independent Articles means that arrangements under Article 35(a) are not necessarily a part of the special administration under Article 17.¹⁸ Agencies responsible for coordinating the combat against illicit traffic can operate independently from agencies charged with the coordination of drug control in general.

The special arrangements for drug control, in actuality, are organized very differently in various states, due to differences in their constitutional, legal and administrative systems.¹⁹ That variety can also result from dissimilarities in their national needs, national policies and the availability of suitable facilities, expertise and manpower.²⁰ The simplest form of special drug control administration is some system of officer liaison among numerous drug control authorities.²¹ Periodical joint meetings of different governmental departments charged with various functions of drug control are also a suitable form.²² A coordinating commission is another form of special

¹³ 1961 UN Commentary, above n 8, 417.

¹⁴ Ibid 419.

¹⁵ Ibid. Examples of such measures are to maintain lists of illicit traffickers, to establish specialized police units dealing with illicit drugs, to train police officers concerned with cases of illicit traffic and so on.

¹⁶ See a phrase 'at the national level' in the wording of Article 35(a). Under Article 17, the special administration is not mandatory to be on the national level.

¹⁷ See, eg, Neil Boister, *Penal Aspects of the UN Drug Conventions* (2001) 295.

¹⁸ 1961 UN Commentary, above n 8, 418.

¹⁹ Ibid; Eisenlohr, above n 3, 69-75 and Renborg, above n 2, 94.

²⁰ Bror Rexed et al, *Guidelines for the Control of Narcotic and Psychotropic Substances in the Context of the International Treaties* (1984) 62 and Jack a Kinney et al, *A Study of International Control of Narcotics and Dangerous Drugs* (1972) 21.

²¹ 1961 UN Commentary, above n 8, 418.

²² Ibid.

administration that has been developed in many countries. Such a commission normally consist of representatives of various administrations or offices concerned with drug control.²³ It may also include members having expert knowledge of special aspects of drug problems.

9.1.2 Obligations of Parties under the 1971 Convention

The provisions of the *1971 Convention* on special administrations for drug control substantially resemble those of the *1961 Convention*. Based on the approach of the earlier Convention, the *1971 Convention* designed two separate articles to deal with this issue. Article 6 regulates administrative arrangements for general coordination in drug control²⁴ and Article 21(a) focuses particularly on coordination in combating illicit trafficking.²⁵

The only dissimilarity between Article 6 of the *1971 Convention* and the corresponding provisions of the *1961 Convention* (Article 17) is that the establishment and maintenance of the special administration for narcotic drugs control is mandatory, whereas it is not a strict obligation for the control of psychotropic substances.²⁶ The lesser degree to which the provisions are binding under the *1971 Convention* is considered one of its compromises that were intended to ensure the wide acceptability of this Convention in the face of the disinclination of many countries to accept international obligations.²⁷

As the social problems caused by narcotic drugs are very similar to those caused by psychotropic substances, the issues that the administrative authorities have to deal with respecting narcotic drugs are similar to those concerning psychotropic

²³ See Renborg, above n 2, 95. At present, the special administration of Vietnam, Thailand and China is organized in this form. See Kim Lien, 'To Chuc va Hoat Dong Phong Chong Ma Tuy tai Thai Lan va Trung Quoc' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 49, 50 and 54-5 [trans: Kim Lien, 'Organization and Operation of Drug Control in Thailand and China' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 49].

²⁴ See *Convention on Psychotropic Substances*, opened for signature 21 February 1971, art 6 (entered into force 16 August 1976).

²⁵ See 1971 Convention, above n 24, art 21(a).

²⁶ In the wording of Article 6 of the *1971 Convention*, the word 'desirable' is used, whereas in Article 17 of the *1961 Convention*, the word 'shall' is selected.

²⁷ Glenn F Murray and Reginald G Smart, 'The History and Rational for the Convention on Psychotropic Substances' in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and Their International Control* (1981) 1, 14.

substances.²⁸ Thus, to avoid creation of too many different national drug authorities, which would cause a burden to Parties, the *1971 Convention* recommends that they may maintain one special administration to perform functions specified under both these Conventions.²⁹

9.1.3 Obligations of Parties under the 1988 Convention

Unlike the *1961* and *1971 Conventions*, the *1988 Convention* does not contain any provisions explicitly concerned with special administration for the overall purpose of applying the convention provisions. However, in certain fields of drug control, such as mutual legal assistance (MLA), for the purpose of international cooperation it requires Parties to arrange competent authorities to perform cooperating and coordinating functions.

To improve and strengthen international cooperation and coordination, the *1988 Convention* obliges its Parties to designate a single authority or authorities to receive and process requests for mutual legal assistance or to receive and transmit them to the competent authorities for execution.³⁰ It is worthwhile to note that under the earlier Conventions, the special administrative arrangements for general coordination and, particularly, for law enforcement cooperation are not necessarily in the form of an authority. By comparison, under Article 7(8) of the *1988 Convention*, the arrangement for handling MLA requests must take the form of a competent authority or authorities. This mandatory provision takes an important step towards practical advantages,³¹ because communications through central authorities enable reductions in unnecessary delays in receipt and transmission of the requests.³² In addition, working relationships established between counterparts in the respective Parties facilitate better access to information and understanding of specific conditions for a request as well as a quick response to urgent and significant cases.

²⁸ United Nations, *Commentary on the Convention on Psychotropic Substances, done at Vienna on 21 February 1971* (1976) 146. Remember that the inclusion of dependence-producing substances under the scope of control of the *1961 Convention* or *1971 Convention* does not always appear to be solely on account of technical considerations. See Section 4.1.3 for a cross-reference.

²⁹ See 1971 Convention, above n 24, art 6.

³⁰ See *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988, art 7(8) (entered into force 11 November 1990).

³¹ United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988: Done at Vienna on 20 December 1988* (1998), 186.

³² Ibid and Boister, above n 17, 313.

Parties can entrust one of their existing authorities, such as Police or Customs, with the duty of handling MLA requests, or they can establish a ‘freestanding’ authority or authorities charged with that duty.³³ Pursuant to Article 7(8), Parties can establish more than one authority in charge with requests for MLA.³⁴ However, the maintenance of many authorities is not desirable. A single authority would centralise the process and make it more efficient,³⁵ especially in countries where more than one agency is competent on drug issues.³⁶

The *1988 Convention* requires Parties to cooperate closely in suppressing illicit traffic by sea.³⁷ Pursuant to Article 17(7), they must designate an authority or authorities to receive and respond to requests in regard to a vessel suspected of being involved in illicit drug traffic.³⁸ Similarly, the establishment of more than one authority is not encouraged, as in practice this can slow down communications.³⁹ However, where Parties find that their legal, geographical features and technical capabilities⁴⁰ make it essential, they can designate different authorities in different locations to handle such requests. Pursuant to Article 17(3)(4), the designated authorities are responsible for at least two types of requests: (i) requests to confirm the registry of a suspect vessel, and (ii) requests for authorizations to take appropriate measures in regard to that vessel, for example boarding and searching the vessel.⁴¹

³³ 1988 UN Commentary, above n 31, 186. In many countries, a central point is developed as the route for all incoming and outgoing requests. That central point is often situated within the Ministry of Justice of the country. It may be also situated independently or in another government department, such as the Ministry of Foreign Affairs. See Lorna Harris and Christopher Murray, *Mutual Assistance in Criminal Matters: International Cooperation in the Investigation and Prosecution of Crime* (2000) 17.

³⁴ See 1988 Convention, above n 30, art 7(8).

³⁵ Boister, above n 17, 313-4.

³⁶ The allowance of more than one authority is deliberately designed for those states that do not have a uniform central government. Those states are, for example, federal or composite states or states which have external dependent territories (see 1988 UN Commentary, above n 31, 186). Nevertheless, Article 7(8) does not explicitly state that such an allowance is only for federal or composite states. Thus, it has been argued that the existing flexibility is actually a weakness in this Article. According to Boister, the permission to establish more than one authority in legal assistance is designed to accommodate current practice in the field, and it is considered a disadvantage of this provision. The designation of a single authority would make the process more efficient. See Boister, above n 17, 313.

³⁷ Under the *1988 Convention*, a separate article is designed to enhance international cooperation in the combat against drug trafficking by sea, namely Article 17 ‘Illicit traffic by sea’. Article 17 is considered a highly innovative law enforcement provision. It formulates various procedures, practices and standards to be carried out by Parties.

³⁸ See 1988 Convention, above n 30, art 17(7).

³⁹ 1988 UN Commentary, above n 31, 332.

⁴⁰ Ibid 332 and 335.

⁴¹ See 1988 Convention, above n 30, art 17(3)(4). See also 1988 UN Commentary, above n 31, 337.

As ‘providing information’⁴² and ‘executing searches and seizures’⁴³ are some forms of MLA under Article 7(2). Consequently, the requirement that Parties designate competent authorities responsible for handling requests in regard to a suspected vessel to combat illicit traffic by sea under Article 17(7) is only a special application of their more general obligation to designate competent authorities charged with MLA under Article 7(8).

In brief, to prevent ineffectiveness due to the lack of coordination between various government authorities involved in drug management, the *1961* and *1971 Conventions* require Parties to maintain a special administration for applying the convention provisions, ensuring liaison and coordination among them for both national drug control and international cooperation. In addition, for the particular purpose of preventing and repressing illicit drug trafficking, these Conventions require them to arrange this administration at the national level for coordination of actions against illicit drug activities. By contrast, the *1988 Convention* does not oblige Parties to maintain a special administration for the purpose of applying the Convention provisions on the whole. Instead, it requires them to designate competent authorities for the purpose of MLA.

Thus, to comply with the DCC provisions, Vietnam needs to maintain special administrative arrangements for coordinating the work of its various authorities engaged in drug management and to designate competent authorities responsible for international cooperation in MLA. The following part of this Chapter examines the responses by Vietnam. First, national legislation on drug control duties of various government authorities in Vietnam is analyzed to provide a necessary understanding of Vietnam’s arrangements for drug control. Then, using this background, Vietnamese laws and regulations on special administrations for drug control are thoroughly examined and compared to the DCC requirements.

⁴² 1988 Convention, above n 30, art 7(2)(e).

⁴³ 1988 Convention, above n 30, art 7(2)(c).

9.2 Administrative Arrangements for Drug Control in Vietnam

9.2.1 National Authorities Engaged in Drug Control

9.2.1.1 Overview

As drug abuse and drug-related crimes are serious and complex community problems, many different governmental resources in Vietnam are mobilized into drug control.⁴⁴ However, only in 2000 did the *Law on Narcotics 2000*, for the first time, lay down basic principles for organizing a national drug control administration. According to those principles, at the peak, the national Government is responsible for uniformly directing and administering drug control throughout the country.⁴⁵ Ministries and Ministerial-Rank Organs are charged with drug control functions in accordance with the sphere of their statutory functions and powers, and they have to cooperate closely with others in preventing and suppressing illicit drugs.⁴⁶ At the local levels, i.e. province, district and ward,⁴⁷ People's Committees are accountable for drug control within their respective local areas.⁴⁸

To study Vietnam's drug administration, several approaches can be taken, for example, by hierarchy or by function. This analysis, however, examines Vietnamese drug control arrangements by institutional structure for two reasons. First, the Conventions require Parties to set up and to maintain some special administration for drug control, with the result that this approach helps to bring out clearly the national compliance issues. Secondly, the present domestic laws and regulations specify duties and functions of government authorities involved in drug control by institutional structure. As one of the objectives of this Chapter is to identify possible improvements to the national legal framework for drug control, an approach that corresponds to domestic laws and regulations best benefits this purpose.

⁴⁴ Drug administration in Vietnam is characterized by the involvement of numerous state authorities. Of twenty-six Ministries and Ministerial-Rank Organs, half have imposed on them legal duties in drug control. See *Quyết Định số 61/2000/QĐ-TTg về việc Thành lập Ủy ban Quốc gia Phòng, Chống AIDS và Phòng, Chống Tệ nạn Ma túy, Mai Dăm 2000* (Thủ Tướng Chính Phủ) art 5 [trans: *Decision 61/2000/QĐ-TTg to Establish the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution 2000* (Prime Minister)] (hereinafter *Decision to Establish the National Committee 2000*).

⁴⁵ *Luat số 23/2000/QH10 về Phòng, Chống Ma túy năm 2000* (Quốc Hội) art 37(1) [trans: *Law 23/2000/QH10 on Narcotics Prevention and Suppression 2000* (National Assembly)] (hereinafter *Law on Narcotics 2000*).

⁴⁶ *Law on Narcotics 2000*, above n 45, art 37(3).

⁴⁷ See Section 2.3.5 for more information on the administrative system of Vietnam.

⁴⁸ *Law on Narcotics 2000*, above n 45, art 37(4).

9.2.1.2 Ministry of Public Security

Among various state authorities engaged in drug control, the Ministry of Public Security (MOPS), which administers the Police of Vietnam, plays the most important role. Its responsibilities range widely from coordination, combating drug-related crimes, collecting statistics, control of licit drug activities, international cooperation, drug abuse rehabilitation and drug prevention education.

Coordination: Under the *Law on Narcotics 2000*, the MOPS is charged with the overall function of coordinating various Ministries and Ministerial-Rank Organs involved in drug control to ensure uniform performance of drug management⁴⁹ over the whole national territory.⁵⁰ It sums up for the Government reports filed by various state authorities on their drug control implementation.⁵¹ An important point should be underlined here that, under *Decision 61/2000/QĐ-TTg to Establish the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution (National Committee) 2000* (Decision to Establish the National Committee 2000), the National Committee is also charged with drug management coordination. Thus, there are certain overlaps in their legal functions. The National Committee, however, is responsible for a wider range of activities than that of the MOPS. The former coordinates both government and non-government organizations involved in drug control, whereas the latter is only to coordinate government authorities.⁵² The role of the National Committee is discussed in detail in Section 9.2.2.2 below.

Additionally, under *Decree 05/2003/ND-CP on International Cooperation in Drug Control 2003* (International Drug Control Cooperation Decree 2003), the MOPS is charged with assisting the Government to coordinate various state authorities in performing national obligations under the DCCs.⁵³ Compared to the DCC

⁴⁹ According to Article 36 of the *Law on Narcotics 2000*, drug management in the State includes various areas of activities, such as formulating and implementing strategic policies and action plans, creating legal frameworks, organizing machinery and building up forces for drug control, and international drug control cooperation. See *Law on Narcotics 2000*, above n 45, art 36.

⁵⁰ It sums up, for the Government, reports of various state authorities on their drug control implementations. See *Law on Narcotics 2000*, above n 45, arts 37(2) and 38(1)(a).

⁵¹ *Law on Narcotics 2000*, above n 45, arts 37(2) and 38(1)(a).

⁵² See *Decision to Establish the National Committee 2000*, above n 44, art 2(3).

⁵³ *Nghi Định số 05/2003/ND-CP về Hợp Tác Quốc Tế trong Lĩnh Vực Phòng, Chống Ma Túy 2003* (Chính Phủ) art 7(2)(c) [trans: *Decree 05/2003/ND-CP on International Cooperation in Drug Control 2003* (Government)] (hereinafter *International Drug Control Cooperation Decree 2003*).

requirements, this domestic regulation is laudable. Nonetheless, it seems to be too ambitious in respect of the MOPS's sphere of work.

Combating Drug-Related Crimes: Pursuant to the *Regime for Cooperation between the Police Force, Border Guard, Coast Guard and Customs Force in Preventing and Combating Drug-Related Crimes in the Areas of Border Lines, Border Gates and on the Seas* that is promulgated by Decision 133/2002/QĐ-TTg 2002 (Drug Law Enforcement Cooperation Regime 2002), the MOPS is a key authority in the combat against drug-related crimes.⁵⁴ Under the *Law on Narcotics 2000*, it is charged with formulating policies, strategies and cooperation plans for fighting drug-related crimes,⁵⁵ and with directing their implementation.⁵⁶ Importantly, it is responsible for the coordination of various authorities in this field.⁵⁷ Thus, these national provisions regarding the MOPS coordination role in the combat against illicit drug trafficking corresponds well with the requirements under Article 35(a) of the *1961 Convention* and Article 21(a) of the *1971 Convention* for special administration for combating illicit drug trafficking.

Statistics: Under the *Law on Narcotics 2000*, gathering 'statistics on drug control' and managing information on drug-related crimes is a part of the MOPS duties.⁵⁸ Because this instrument fails to elaborate on the scope of 'statistics on drug control', several uncertainties exist. As, currently, under the *Law on Organization of People's Procuracies 2002*, the Supreme People's Procuracy (SPP)

⁵⁴ See, eg, *Quy Che Phoi Hop giua Luc Luong Cong An, Bo Doi Bien Phong, Canh Sat Bien va Hai Quan trong Dau Tranh Phong, Chong cac Toi Pham ve Ma Tuy tai Dia Ban Bien Gioi, Cua Khau va Tren Bien ban hanh kem theo Quyet Dinh so 133/2002/QĐ-TTg của Thủ Tướng Chính Phủ 2002* (Thu Tuong Chinh Phu) art 2(4) [trans: *Regime for Cooperation between Police Force, Border Guard, Coast Guard and Customs Force in Preventing and Combating Drug-Related Crimes in the Areas of Border Lines, Border Gates and on the Sea, Promulgated by Decision 133/2002/QĐ-TTg of the Prime Minister 2002* (Prime Minister)] (hereinafter Drug Law Enforcement Cooperation Regime 2002).

⁵⁵ Law on Narcotics 2000, above n 45, art 38(1)(a).

⁵⁶ Law on Narcotics 2000, above n 45, art 38(1)(a).

⁵⁷ Law on Narcotics 2000, above n 45, art 38(1)(b). As a big number of agencies in Vietnam are authorized to investigate drug-related crimes, including Anti-Narcotics Police; Investigating Bodies within the competence of the Ministry of National Defense, Border Guards, Coast Guards and Customs to avoid delays in action, the MOPS is responsible for making arrangements for receiving and handling information on drug-related crimes transferred by agencies, organizations, social units and individuals and to provide guidance for other law enforcement authorities to undertake initial investigations. To facilitate the investigation of drug-related offenses, under the *Law on Narcotics 2000* the MOPS is also charged with organizing the expertise to identify narcotic substances and precursors suspected to be involved in unlawful activities. See Law on Narcotics 2000, above n 45, art 38(1)(b),(d) and (d).

⁵⁸ Law on Narcotics 2000, above n 45, art 38(1)(g).

is responsible for ‘statistics on criminal offenses’,⁵⁹ some arguments point out that ‘statistics on drug control’ must logically include ‘statistics on drug-related crimes’.⁶⁰ Consequently, the MOPS and the SPP are simultaneously charged with the same task. Article 38(1)(g) of the *Law on Narcotics 2000* that prescribes the duty of the MOPS and Article 5 of the *Law on Organization of People’s Procuracies 2002* that regulates the functions of the SPP with respect to statistics on drug-related crimes are therefore largely overlapping. On the other hand, it has been argued that the phrase ‘statistics on drug control’ in the language of Article 38(1)(g) of the *Law on Narcotics 2000* need not include ‘statistics on drug-related crimes’ and that the MOPS is not bound to gather drug-related crime statistics. Being a coordinating authority, it is only responsible for managing statistics collected by the SPP for the purpose of drug control.⁶¹ In 2005, the Supreme People’s Court, SPP, MOPS and Ministry of National Defence made a joint circular to guide the statistical work on criminal offenses.⁶² Unfortunately, this circular does not address the issue in question. Overall, the later argument appears to be more persuasive but an amendment to Article 38(1)(g) of the *Law on Narcotics 2000* is needed to avoid any misunderstanding.

Control of Licit Activities: Not only playing a core role in suppressing drug trafficking, under the *Law on Narcotics 2000*, *Decree 80/2001/ND-CP Guiding the Control of Domestic Licit Activities in relation to Narcotics 2001* (Decree on the Control of Domestic Licit Drug Activities 2001) and *Decree 58/2003/ND-CP Stipulating the Control of Importation, Exportation, Transit through the Territory of Vietnam in relation to Narcotic Substances, Precursors, Addictive*

⁵⁹ *Luat so 34/2002/QH10 To Chuc Vien Kiem Sat Nhan Dan 2002* (Quoc Hoi) art 5 [trans: *Law 34/2002/QH10 on the Organization of People’s Procuracies 2002* (National Assembly)].

⁶⁰ See, eg, Xuan Tuy Phan, ‘Mot So Van De Thong Ke Toi Pham trong Luat Phong Chong Ma Tuy’ (2003) 7 *Ban Tin Phong Chong Ma Tuy* 3, 5 [trans: Xuan Tuy Phan, ‘Some Issues on Crime Statistics Pursuant to the Law on Narcotics Prevention and Suppression’ (2003) 7 *Bulletin on Narcotics Prevention and Suppression* 3].

⁶¹ Ibid 4-5. In 2003, the Supreme People’s Procuracy made a *Decision 01/2003/VKSTC-TCCB on Organizing Apparatus of the Supreme People’s Procuracy*. Under this decision, the Statistics Bureau on Criminal Offenses is established and responsible for carrying out statistics on criminal offenses (Article 1(14)).

⁶² See *Thong Tu Lien Tich so 01/2005/TTLT-VKSTC-TATC-BCA-BQP Huong Dan Thi Hanh Mot So Quy Dinh cua Phap Luat trong Cong Tac Thong Ke Hinh Su, Thong Ke Toi Pham 2005* (Vien Kiem Sat Nhan Dan Toi Cao, Toa An Nhan Dan Toi Cao, Bo Cong An va Bo Quoc Phong) [trans: *Joint Circular 01/2005/TTLT-VKSTC-TATC-BCA-BQP Guiding the Implementation of a Number of Regulations on Criminal Statistics and Statistics on Criminal Offenses 2005* (People’s Supreme Procuracy, People’s Supreme Court, Ministry of Public Security and Ministry of National Defence)].

Drugs and Psychotropic Drugs 2003 (Drug Trade Decree 2003), the MOPS is charged with a number of important tasks in the control of licit drug activities. First, it sums up various national efforts to this end and reports to the Government.⁶³ This MOPS duty, however, is only a special application of its general function concerning summing up the implementation of national drug control work. Secondly, it is responsible to provide guidance for and to speed up the control work of other Ministries and local Governments in order to avoid diversion of licit drugs.⁶⁴ It is entitled to audit the compliance of state authorities, enterprises and individuals.⁶⁵ Thirdly, it is to prescribe regimes on controlling drugs used in law enforcement areas and to organize their implementation.⁶⁶ Fourthly, it takes full responsibility for the control of drug transit through the territory of Vietnam,⁶⁷ including granting transit authorizations, deciding schedules, itineraries and border gates for drug transit,⁶⁸ and ensuring that actual drug transits take place in conformity with those conditions.⁶⁹

International Cooperation:

The role of the MOPS is highly prominent in the field of international cooperation. Pursuant to *International Drug Control Cooperation Decree 2003*, it is accountable to the Government for coordinating various Ministries and Ministerial-Rank Organs in international drug control cooperation, and assists the Government to ensure uniform performance in this field.⁷⁰ Particularly, under Article 7(2)(b) of this Decree, the MOPS is charged

⁶³ See *Nghi Dinh so 58/2003/ND-CP Quy Dinh Kiem SoatNhap Khau, Xuat Khau, Van Chuyen Qua Canh Lanh Tho Viet Nam Chat Ma Tuy, Tien Chat, Thuoc Gay Nghien, Thuoc Huong Than 2003* (Chinh Phu) art 3(1)(a) [trans: *Decree 58/2003/ND-CP Stipulating the Control of Importation, Exportation, Transit through the Territory of Vietnam in relation to Narcotic Substances, Precursors, Addictive Drugs and Psychotropic Drugs 2003* (Government)] (hereinafter Drug Trade Decree 2003) and *Nghi Dinh so 80/2001/ND-CP Huong Dan viec Kiem Soat cac Hoat Dong Hop Phap Lien Quan den Ma Tuy o Trong Nuoc 2001* (Chinh Phu) art 18(2) [trans: *Decree 80/2001/ND-CP Guiding the Control of Domestic Licit Activities in relation to Narcotics 2001* (Government)] (hereinafter Decree on the Control of Domestic Licit Drug Activities 2001).

⁶⁴ Drug Trade Decree 2003, above n 63, art 3(1)(b) and Decree on the Control of Domestic Licit Drug Activities 2001, above n 63, art 18(1).

⁶⁵ Decree on the Control of Domestic Licit Drug Activities 2001, above n 63, art 18(1). Carrying out such inspections, the MOPS shall be subjected to the provisions under the Law on Inspection 2004.

⁶⁶ See, eg, Law on Narcotics 2000, above n 45, art 38(c); Drug Trade Decree 2003, above n 63, art 5(3) and Decree on the Control of Domestic Licit Drug Activities 2001, above n 63, art 18(3).

⁶⁷ Law on Narcotics 2000, above n 45, art 38(2).

⁶⁸ To carry out that duty, the MOPS is entitled to establish administrative machinery to assess transit applications. See Drug Trade Decree 2003, above n 63, arts 13(3), 14(2).

⁶⁹ Drug Trade Decree 2003, above n 63, art 18(1).

⁷⁰ It formulates long-term strategies and annual plans for international cooperation in drug control, and sums up and harmonizes numerous cooperation schemes and programs across the country. Supervision and provision of guidance for People's Committees at the provincial level to implement

with handling extradition, mutual legal assistance and transferring convicted persons in relation to drug-related offenses.⁷¹ As the *1988 Convention* requires a national special administration in regard to MLA cooperation, these Vietnamese domestic provisions are fully compliant with the DCC requirements.

Drug Abuse Rehabilitation and Education: In accordance with its policing responsibilities, the *Law on Narcotics 2000* provides that the MOPS be responsible for ensuring the security of drug abuse rehabilitation centers. It must coordinate with the Ministry of Labor, War Invalids and Social Affairs in establishing files on drug abusers subjected to compulsory treatments, steers consignment of them to treatment centers, and carries out inspections of community-based drug treatment and rehabilitation activities.⁷² Additionally, the *Decision to Establish the National Committee 2000* requires the MOPS to cooperate with other Ministries, Ministerial-Rank Organs and local governments in educating on the harm that drugs do, and in encouraging the public involved in drug prevention.⁷³

It is worth mentioning that several current Vietnamese discussions have focused on the issue of streamlining the administrative machinery for national drug control. A multitude of state authorities, each engaged in the same field of drug management, is blamed for an overlap of functions that can lead to institutional delays in action and lack of responsibility.⁷⁴ The highly recommended principle is '*One Task Principally Done by One Ministry*'.⁷⁵ In supporting of this point of view, it is recommended here that some drug abuse treatment and education duties of the MOPS should be refined, so that this authority can allocate more of its resources to law enforcement.

cooperation plans and programs is also a part of its duties. See International Drug Control Cooperation Decree 2003, above n 53, art 7(2).

⁷¹ International Drug Control Cooperation Decree 2003, above n 53, art 7(2)(b).

⁷² Law on Narcotics 2000, above n 45, art 38(1)(h).

⁷³ See, eg, Decision to Establish the National Committee 2000, above n 44, art 5(5),(6).

⁷⁴ See, eg, Trinh Kiem Nguyen, 'Xem Xet Kinh Nghiem Phong Chong Ma Tuy tai Tuyen Quang Duoi Goc Do Khoa Hoc Quan Ly Nha Nuoc' (2003) 4 *Ban Tin Phong Chong Ma Tuy* 12, 16 [trans: Nguyen, Trinh Kiem, 'Experiences of Drug Control in Tuyen Quang from the State Management Perspective' (2003) 4 *Bulletin on Narcotics Prevention and Suppression* 12].

⁷⁵ Ibid and Gon Cong, 'Cai Nghien Ma Tuy Ba Giai Doan va Nguyen Tac Quan Ly "Mot Viec Mot Bo Lam la Chu Yeu" o Tuyen Quang - Mot Mo Hinh Tot Can Duoc Nhan Rong' (2002) 9 *Ban Tin Phong Chong Ma Tuy* 18, 19 [trans: Gon Cong, 'Narcotic Drugs Treatment with the Three-Period Method and the Management Rule 'One Task Done Principally by One Ministry' in Tuyen Quang - A Good Model to Be Duplicated' (2002) 9 *Bulletin on Narcotics Prevention and Suppression* 18].

9.2.1.3 Customs

Customs in Vietnam⁷⁶ are generally tasked to inspect and to supervise cross-border movement of goods and methods of transport as well as to prevent and to combat the smuggling of goods and illegal transnational movements.⁷⁷ Therefore, Customs forces are comparable to ‘the guards of national gates’.⁷⁸ Their legal functions in relation to drug control can be grouped into the following areas: control of licit cross-border drug transactions, handling administrative customs infringements, combating drug-related offenses, international cooperation, and education about drug prevention and suppression.

Control of Licit Cross-Border Drug Transactions: Under the *Drug Trade Decree 2003*, Customs are charged with controlling drugs of abuse involved in international transactions.⁷⁹ Customs authorities are obliged to keep records on all transnational drug transactions in accordance with the regulations of the Ministry of Health, Ministry of Industry and MOPS.⁸⁰ Nonetheless, the regulations written by these Ministries do not specify the tasks that Customs are to perform, resulting in a gap in the operation of the *Drug Trade Decree 2003*. Also under this Decree, Customs are responsible to cooperate with other law enforcement authorities to escort transit drugs out of the territory of Vietnam upon request of the MOPS.⁸¹

Handling Administrative Customs Infringements: The *Law on Narcotics 2000* generally requires the authorities involved in drug control to handle administrative violations in accordance with the ambit of their statutory duties and

⁷⁶ The General Department of Customs which directs the operation of the whole system of Customs in Vietnam is a functioning body within the competence of the Ministry of Finance. See *Luat so 29/2001/QH10 ve Hai Quan 2001* (Quoc Hoi) art 12 [trans: *Law 29/2001/QH10 on Customs 2001* (National Assembly)].

⁷⁷ See Law on Customs 2001, above n 76, art 11.

⁷⁸ See, eg, Van Thiep Vu, 'Tim Hieu cac Nguyen Nhan cua nhung Han Che, Thieu Sot trong Cong Tac Phong Ngua, Dau Tranh Phong, Chong cac Toi Pham ve Ma Tuy cua Luc Luong Cong An, Hai Quan, Bo Doi Bien Phong' (2001) 6 *Ban Tin Phong Chong Ma Tuy* 8, 9 [trans: Van Thiep Vu, 'Studying the Reasons for Shortcomings in Narcotics Prevention and Suppression by the Polices, Border Guards and Customs' (2001) 6 *Bulletin on Narcotics Prevention and Suppression* 8].

⁷⁹ Drug Trade Decree 2003, above n 63, arts 8(2) and 10(2). See also Law on Narcotics 2000, above n 45, art 44(1). It is authorized to suspend importations, exportations or transits of drugs, if their quantities, qualities or labels are incompatible with the import, export or transit authorizations.

⁸⁰ Drug Trade Decree 2003, above n 63, art 10(2).

⁸¹ The MOPS that issues drug transit authorizations can make such requests in cases in which drugs are transited in a large volume or when such escorts are necessary to avoid any risk of drug diversion and Customs must collaborate with Anti-Narcotics Police, Border Guards and Coast Guards to ensure

jurisdiction.⁸² Under the *Ordinance on Administrative Sanctions 2002*, leaders of customs authorities at checkpoints, leaders of Provincial Customs Departments, and the Head of the General Department of Customs are authorized to impose fines for infringements of customs laws and regulations.⁸³

Combating Drug-Related Offenses: Pursuant to Article 44(1) of the *Law on Narcotics 2000*, Customs must cooperate closely with the Police to detect and to prevent unlawful cross-border drug transactions.⁸⁴ Furthermore, under the *Drug Law Enforcement Cooperation Regime 2002*, Customs are obliged to investigate drug-related crimes which are revealed in the areas under their supervision,⁸⁵ in accordance with their jurisdiction.⁸⁶ Their investigative jurisdiction under the *Ordinance on Organizing Investigation of Criminal Offenses 2004*, however, is limited to only two types of criminal offenses, i.e. ‘Smuggling’⁸⁷ and ‘Illegal cross-border transportation of goods and/or currencies’.⁸⁸ These offenses exclude handling of drugs of abuse, as under the *Criminal Code of Vietnam 1999* (CCV 1999), drug-related offenses are established as separate offenses. Thus, there is a gap between the *Drug Law Enforcement Cooperation Regime 2002* and the *Ordinance on Organizing Investigation of Criminal Offenses 2004*.

that transit drugs are to be transported in strict compliance with authorizations. See Drug Trade Decree 2003, above n 63, art 16(2).

⁸² Law on Narcotics 2000, above n 45, art 45(2).

⁸³ See *Phap Lenh so 44/2002/PL-UBTVQH10 Xu Ly Vi Pham Hanh Chinh 2002* (Uy Ban Thuong Vu Quoc Hoi) art 34 [trans: *Ordinance 44/2002/PL-UBTVQH10 on Administrative Sanctions 2002* (National Assembly)] (hereinafter *Ordinance on Administrative Sanctions 2002*).

⁸⁴ Law on Narcotics 2000, above n 45, art 44(1).

⁸⁵ Under Article 2 of the *Decree on Areas of Activities of Customs 2002*, the areas under supervision of customs are checkpoints at land border gates, international railway stations, international airports, seaports and international river ports. See *Nghi Dinh so 107/2002/ND-CP Quy Dinh Pham Vi Dia Ban Hoat Dong cua Hai Quan; Quan He Phoi Hop trong Phong Chong Buon Lau, Van Chuyen Trai Phep Hang Hoa qua Bien Gioi va cac Hanh Vi Khac Vi Pham Phap Luat Hai Quan 2002* (Chinh Phu), art 2 [trans: *Decree 107/2002/ND-CP on Areas of Activities of Customs; Cooperation in Preventing and Suppressing Smuggling of Goods, Unlawful Cross-Border Transportation of Goods and Other Conduct that Violate Customs Law 2002* (Government)] (hereinafter *Decree on Areas of Activities of Customs 2002*).

⁸⁶ In addition, on request from the Police, Customs have the responsibility to cooperate with them in investigating drug-related crimes that may be committed outside their functioning locations. See *Drug Law Enforcement Cooperation Regime 2002*, above n 54, arts 1(4), 5(1) and 5(4).

⁸⁷ ‘Smuggling’ is a criminal offense, which is specified under Article 153 of the Criminal Code 1999. ‘Illegal cross-border transportation of goods and/or currencies’ is a criminal offense, which is specified under Article 154 of the Criminal Code 1999.

⁸⁸ *Phap Lenh so 23/2004/PL-UBTVQH11 ve To Chuc Dieu Tra Hinh Su 2004* (Uy Ban Thuong Vu Quoc Hoi) art 20(1) [trans: *Ordinance 23/2004/PL-UBTVQH11 on Organizing Investigation of Criminal Offenses 2004* (National Assembly)] (hereinafter *Ordinance on Organizing Investigations of Criminal Offenses 2004*).

Other Duties:

Under the *Law on Narcotics 2000*, cooperation with their counterparts in other countries to prevent and to fight illicit drug transactions is also a part of Customs' duties.⁸⁹ As prevention and suppression of illicit drugs are emphasized as the tasks of every individual, every family, every state authority and all society,⁹⁰ the *Drug Law Enforcement Cooperation Regime 2002* requires Customs to cooperate with Police, Border Guards and Coast Guards to organize education campaigns for local habitants in the borderline areas on drug control laws and regulations, on operations of drug traffickers and the harm caused by drugs.⁹¹

9.2.1.4 Border Guards and Coast Guards

Both Vietnamese Border Guards and Coast Guards function under the central direction of the Ministry of National Defence.⁹² Except that they operate in different geographical areas,⁹³ their legal functions in terms of drug control are substantially the same.

Under the *Drug Trade Decree 2003*, Border Guards and Coast Guards are charged with inspection and control of drug transits within the areas under their supervision. When requested by the MOPS, they must cooperate with police forces and Customs to escort transit drugs out of the territory of Vietnam.⁹⁴ Pursuant to the *Ordinance on Administrative Sanctions 2002*, they are authorized to handle drug-related

⁸⁹ Law on Narcotics 2000, above n 45, art 44(2).

⁹⁰ Law on Narcotics 2000, above n 45, art 4(1).

⁹¹ Drug Law Enforcement Cooperation Regime 2002, above n 54, art 4(1).

⁹² See *Phap Lenh so 55/1997/PL-UBTVQH ve Bo Doi Bien Phong 1997* (Uy Ban Thuong Vu Quoc Hoi) art 2 [trans: *Ordinance 55/1997/PL-UBTVQH on Border Guards 1997* (Standing Committee of National Assembly)] (hereinafter Border Guards Ordinance 1997) and *Phap Lenh so 04/1998/PL-UBTVQH10 ve Luc Luong Canh Sat Bien Viet Nam 1998* (Uy Ban Thuong Vu Quoc Hoi) art 2 [trans: *Ordinance 04/1998/PL-UBTVQH10 on Coast Guards of Viet Nam 1998* (Standing Committee of National Assembly)] (hereinafter Coast Guards Ordinance 1998).

⁹³ Under the *Ordinance on Coast Guards 1998* of Vietnam, Coast Guards perform their functions over the contiguous customs and security zone, and the exclusive economic zone of Vietnam. Under the *Ordinance on Border Guards 1997*, Border Guards of Vietnam perform their functions over the land border areas, national islands, border gates and the sea of Vietnam. However, over the sea, Border Guards cooperate with Coast Guards under the central direction of the Ministry of National Defense. See Coast Guards Ordinance 1998, above n 92, art 3; Border Guards Ordinance 1997, above n 92, art 5 and *Nghi Dinh so 41/2001/ND-CP ban hanh Quy Che Phoi Hop Thuc Hien Quan Ly Nha Nuoc ve Hoat Dong cua Luc Luong Canh Sat Bien va viec Phoi Hop Hoat Dong giua cac Luc Luong tren cac Vung Bien va Them Luc Dia cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2001* (Chinh Phu) arts 5 and 7(1) [trans: *Decree 41/2001/ND-CP promulgating the Cooperation Regime on Implementing State Management of the Operation of the Coast Guards over the Seas and over the Contiguous Customs and Security Zone of Vietnam 2001* (Government)].

⁹⁴ Drug Trade Decree 2003, above n 63, art 16(2).

administrative infringements⁹⁵ and their jurisdiction in this field is much wider than that of Customs. They are empowered to impose sanctions on both customs and non-customs infringements.⁹⁶ Nonetheless, they are only entitled to exercise jurisdiction over infringements of customs laws and regulations in the geographic areas where Customs offices have not yet been established.⁹⁷

In the battle against drug trafficking, the *Law on Narcotics 2000* and the *Drug Law Enforcement Cooperation Regime 2002*, provide that both Border Guards and Coast Guards must cooperate closely with Police and Customs to combat illicit drug activities.⁹⁸ Under the *Ordinance on Organizing Investigations of Criminal Offenses 2004*, *Border Guards Ordinance 1997* and *Coast Guards Ordinance 1998*, they are authorized to investigate a wide range of drug-related crimes committed within the areas under their supervision.⁹⁹ The jurisdiction of Border Guards, however, is broader than that of Coast Guards in respect of the offenses of ‘Unlawful cultivation of opium poppy or other drug-producing plants’ and ‘Unlawful manufacture of narcotic substances’.¹⁰⁰

Similar to Customs, the *International Drug Control Cooperation Decree 2003* requires them to cooperate with their international counterparts to prevent and to

⁹⁵ See Administrative Sanctions Ordinance 2002, above n 84, arts 32 and 33; and Coast Guards Ordinance 1998, above n 92, arts 10 and 14.

⁹⁶ See *Nghi Dinh so 49/CP ve Xu Phat Vi Pham Hanh Chinh trong Lanh Vuc An Ninh, Trat Tu 1996* (Chinh Phu) arts 22, 29 [trans: *Decree 49/CP on Administrative Sanctions in the Areas of Public Security and Order 1996* (Government)] and *Nghi Dinh so 137/2004/ND-CP Quy Dinh Xu Phat Vi Pham Hanh Chinh tren cac Vung Bien va Them Luc Dia cua nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2004* (Chinh Phu) arts 11, 23(1) [trans: *Decree 137/2004/ND-CP on Administrative Sanctions on the Seas and in the Contiguous Customs and Security Zones of Vietnam 2004* (Government)].

⁹⁷ See *Nghi Dinh so 138/2004/ND-CP ve Xu Phat Vi Pham Hanh Chinh trong Lanh Vuc Hai Quan 2004* (Chinh Phu) arts 23(5), 22(7) and arts 10, 14 [trans: *Decree 138/2004/ND-CP on Administrative Sanctions for Customs 2004* (Chinh Phu)].

⁹⁸ *Law on Narcotics 2000*, above n 45, art 44(1) and *Drug Law Enforcement Cooperation Regime 2002*, above n 54, art 5.

⁹⁹ See, eg, *Ordinance on Organizing Investigations of Criminal Offenses 2004*, above n 88, arts 19 and 22; *Border Guards Ordinance 1997*, above n 92, art 12; *Coast Guards Ordinance 1998*, above n 92, arts 6 and 7; and *Drug Law Enforcement Cooperation Regime 2002*, above n 54, art 1(2) and (3).

¹⁰⁰ Border Guards are authorized to investigate a wide range of drug-related crimes, including ‘Unlawful cultivation of opium poppy or other drug-producing plants’, ‘Unlawful manufacture of narcotic substances’, ‘Unlawful stockpiling, transportation, trade or appropriation of narcotic substances’, ‘Unlawful stockpiling, transportation, trade or appropriation of precursors used in the illicit manufacture of narcotic substances’ and ‘Unlawful stockpiling, transportation, trade of equipment or tools used in the illicit manufacture of narcotic substances’. Coast Guards are not entitled to investigate ‘Unlawful cultivation of opium poppy or other drug-producing plants’ and ‘Unlawful manufacture of narcotic substances’. See *Ordinance on Organizing Investigations of Criminal Offenses 2004*, above n 88, arts 19 and 20.

suppress illicit cross-border drug movements and drug trafficking on the sea.¹⁰¹ They are also obliged to cooperate with other relevant Vietnamese authorities to organize education campaigns for local residents on laws and regulations regarding drug control, drug harms and to provide them with up-to-date information on the operation of drug traffickers in the areas under their supervision.¹⁰²

9.2.1.5 Ministry of Health

The Ministry of Health (MOH) in Vietnam is responsible for protecting and caring for public health.¹⁰³ With respect to drug control, it plays a principal role in controlling the manufacture of, trade in and distribution of narcotic substances used in medical and scientific areas. It also plays a major role in drug abuse treatment.

Under the *Law on Narcotics 2000* and its implementing regulations, the MOH is authorized to specify lists of addictive drugs, psychotropic drugs and precursors used in the medical area and in scientific studies, and to stipulate in detail control regimes applicable to them as well as to organize the implementation of those regimes. Based on the legal framework created by the Government,¹⁰⁴ it is entitled to stipulate conditions and procedures for, and to grant authorizations to import, to export and to manufacture drugs that are used in medical and scientific areas.¹⁰⁵

In the field of drug abuse treatment, *Decree 56/2002/ND-CP on Organizing Family-Based and Community-Based Drug Abuse Treatment 2002* and *Decree 135/2004/CP Promulgating Regulations on the Compulsory Treatment and Organization of Treatment and Rehabilitation Centers pursuant to the Ordinance on Administrative Sanctions, Regulations on Treatment of Juveniles, and Regulations on Voluntary*

¹⁰¹ International Drug Control Cooperation Decree 2003, above n 53, art 14.

¹⁰² See, eg, Border Guards Ordinance 1997, above n 92, art 10 and Drug Law Enforcement Cooperation Regime 2002, above n 54, art 4(1).

¹⁰³ See *Nghe Dinh so 49/2003/ND-CP Quy Dinh Chuc Nang, Nhiem Vu, Quyen Han va Co Cau To Chuc cua Bo Y Te 2003* (Chinh Phu) art 1 [trans: *Decree 49/2003/ND-CP Promulgating Functions, Tasks, Powers and the Organizational Structure of the Ministry of Health 2003* (Government)].

¹⁰⁴ Based on the framework under the *Law on Narcotics 2000*, the Government has enacted two separate normative documents on regulating licit drug activities. One of them, *Decree 80/2001/ND-CP Guiding the Control of Domestic Licit Activities in relation to Narcotics 2001*, regulates domestic activities. The other, *Decree 05/2003/ND-CP on International Cooperation in Narcotics Prevention and Suppression 2003*, stipulates controls of international transactions, including importation, exportation and transits of those substances. However, these Decrees still appear to be of a framework nature and leave many specific issues to the Ministry of Health to stipulate in detail.

Treatment 2004 empower the MOH to grant or to withdraw permits for circulation of detoxication medicines and, as a technical agency, to prescribe therapies for drug abuse treatment that are uniformly applied in the compulsory as well as community-based treatments.¹⁰⁶ In addition, the *Law on Narcotics 2000* obliges it to provide human and technical support to others with respect to drug abuse treatment.¹⁰⁷

The *Law on Narcotics 2000* also requires the MOH to maintain cooperation with international counterparts for the control of licit drug activities and drug abuse treatment.¹⁰⁸ Pursuant to the *International Drug Control Cooperation Decree 2003*, it is responsible to formulate collaboration strategies and plans, and to organize their implementation. It is also responsible for carrying out projects, funded by the Government of Vietnam or other countries or international organizations, including research on therapies for drug abuse treatment, and control of drugs of abuse used in medical and scientific areas.¹⁰⁹

9.2.1.6 Ministry of Industry

The legal duties of the Ministry of Industry (MOI) in respect of drug control are limited to stipulating control regimes applicable to licit activities relating to precursors used in industries and to organize their implementation.¹¹⁰ Under the *Drug Trade Decree 2003* and the *Decree on the Control of Domestic Licit Drug Activities 2001*, it is empowered to grant authorizations to import, to export and to manufacture precursors.¹¹¹

¹⁰⁵ *Law on Narcotics 2000*, above n 45, art 40(2); *Drug Trade Decree 2003*, above n 63, arts 5(1) and 6(3); and *Decree on the Control of Domestic Licit Drug Activities 2001*, above n 63, art 5.

¹⁰⁶ See *Nghi Dinh so 56/2002/ND-CP ve To Chuc Cai Nghien Ma Tuy tai Gia Dinh va Cong Dong 2002* (Chinh Phu) art 22(1) [trans: *Decree 56/2002/ND-CP on Organizing Family-Based and Community-Based Drug Abuse Treatment 2002* (Government)], and *Nghi Dinh so 135/2004/CP Quy Dinh Che Do Ap Dung Bien Phap Dua Vao Co So Chua Benh va To Chuc Hoat Dong cua Co So Chua Benh theo Phap Lenh Xu Ly Vi Pham Hanh Chinh va Che Do Ap Dung doi voi Nguoi Chua Thanh Nien, Nguoi Tu Nguyen vao Co So Chua Benh 2004* (Chinh Phu) art 64(3) [trans: *Decree 135/2004/CP Promulgating Regulations on the Compulsory Treatment and Organization of Treatment and Rehabilitation Centers pursuant to the Ordinance on Administrative Sanctions, Regulations on Treatment of Juveniles, and Regulations on Voluntary Treatment 2004* (Government)].

¹⁰⁷ *Law on Narcotics 2000*, above n 45, art 40(1)(6).

¹⁰⁸ *Law on Narcotics 2000*, above n 45, art 40(1)(c).

¹⁰⁹ *International Drug Control Cooperation Decree 2003*, above n 53, art 10(2).

¹¹⁰ *Law on Narcotics 2000*, above n 45, art 41(1)(a) and *Decree on the Control of Domestic Licit Drug Activities 2001*, above n 63, art 20.

¹¹¹ Within the legal framework created by the Government, it is authorized to specify in detail conditions for granting those authorizations. See *Drug Trade Decree 2003*, above n 63, arts 5(2), 6(3) and *Decree on the Control of Domestic Licit Drug Activities 2001*, above n 63, art 5.

Similar to the MOH, pursuant to the *Law on Narcotics 2000*, it has responsibility to cooperate with international counterparts in other countries to control licit drug activities within its sphere of duties.¹¹² It formulates cooperation strategies and plans and organizes their implementation. In accordance with the *International Drug Control Cooperation Decree 2003*, the MOH is responsible for carrying out projects, funded by the Government of Vietnam or other countries or international organizations, on the control of precursors used in industrial areas.¹¹³

9.2.1.7 Ministry of Labor, War Invalids and Social Affairs

As a part of its responsibilities to deal with social evils in the country,¹¹⁴ the Ministry of Labor, War Invalids and Social Affairs (MOL) plays a core role in drug abuse treatment and social rehabilitation. While the MOH is responsible for medical aspects of treatment for drug abusers, the MOL is legally charged with organizing and managing drug abuse treatment over the whole country and solving post-treatment problems, especially the issue of jobs for drug abusers.¹¹⁵

The *Law on Narcotics 2000* requires the MOL to formulate national strategies, policies and annual plans regarding drug abuse treatment and rehabilitation and to organize their implementation.¹¹⁶ It promulgates labor, treatment and education regimes used in compulsory drug treatments,¹¹⁷ and is authorized to grant and to withdraw the operating permits of drug abuse treatment institutions.¹¹⁸ It arranges apparatus and organizes training programs for the principal officials working in drug

¹¹² Law on Narcotics 2000, above n 45, art 41(1)(b).

¹¹³ International Drug Control Cooperation Decree 2003, above n 53, art 11(2).

¹¹⁴ See *Nghi Dinh so 29/2003/ND-CP Quy Dinh Chuc Nang, Nhiem vu, Quyen Han va Co Cau To Chuc cua Bo Lao Dong, Thuong Binh va Xa Hoi 2003* (Chinh Phu) art 1 [trans: *Decree 29/2003/ND-CP Promulgating Functions, Tasks, Powers and the Organizational Structure of the Ministry of Labor, War Invalids and Social Affairs 2003* (Government)].

¹¹⁵ Law on Narcotics 2000, above n 45, art 39(1), (3) and *Nghi Dinh so 146/2004/ND-CP Quy Dinh Chuc Nang, Tham Quyen Quyet Dinh Dua Vao Co So Quan Ly, Day Nghe va Giai Quyet Viec Lam doi voi Nguoi sau Cai Nghien Ma Tuy 2004* (Chinh Phu) art 21 [trans: *Decree 146/2004/ND-CP Promulgating Functions and Jurisdiction of Rehabilitation Bodies over Compulsory Vocational Training and Working after Drug Abuse Treatment 2004* (Government)] (hereinafter Decree on Compulsory Drug Abuse Treatment 2004).

¹¹⁶ See, eg, Law on Narcotics 2000, above n 45, art 39(1).

¹¹⁷ See Decree on Compulsory Drug Abuse Treatment 2004, above n 115, art 64(3).

¹¹⁸ Law on Narcotics 2000, above n 45, art 39(5) and *Nghi Dinh so 147/2003/ND-CP Quy Dinh ve Dieu Kien, Thu Tuc Cap Giay Phep va Quan Ly Hoat Dong cua cac Co So Cai Nghien Ma Tuy Tu Nguyen 2003* (Chinh Phu) art 12 [trans: *Decree 147/2003/ND-CP Promulgating Conditions and Procedures for Granting Permits to Establish Voluntary Drug Abuse Treatment Institutions 2003* (Government)] (hereinafter Decree on Drug Abuse Treatment Institutions 2003).

abuse treatment and post-treatment areas, and is responsible to provide vocational training, employment consultancy and other forms of support to drug abusers after their treatment to help them with integration into communities and to prevent them from relapsing.¹¹⁹

Pursuant to the *Law on Narcotics 2000*, the MOL has responsibility to cooperate with concerned authorities and local governments in ‘building drug abuse treatment institutions and providing guidance for their operation’.¹²⁰ Attention should be drawn to the fact that drug abuse treatment institutions in Vietnam are divided into two categories, i.e. compulsory treatment centers run by the State¹²¹ and voluntary treatment institutions set up by various organizations and individuals as charities or for financial gain.¹²² As the relevant provision does not specify which type of treatment institutions the MOL needs to consider building and operating, some confusion does exist. It may be inferred that it is only responsible for state treatment centers. Nevertheless, to avoid ambiguity in its interpretation, there is a necessity for amending this provision.

As MOL is involved in the field of drug abuse treatment and post-treatment rehabilitation, the *Law on Narcotics 2000* obliges it to gather statistics on drug abuse treatment and social rehabilitation over the whole country.¹²³ As mentioned already, the MOPS is also charged with statistics on drug control. Thus, the lack of further distinction of their functions is a defect in the current regulations, as it may result in an overlap.

Similar to other Ministries, under the *Law on Narcotics 2000*, the MOL is responsible for implementing international cooperation in drug abuse treatment and for solving social problems after treatment in accordance with its sphere of duties.¹²⁴ It receives and manages international funds and support for the purposes of drug abuse treatment and social rehabilitation.¹²⁵

¹¹⁹ Law on Narcotics 2000, above n 45, art 39(2) and (3).

¹²⁰ Law on Narcotics 2000, above n 45, art 39(3).

¹²¹ Decree on Compulsory Drug Abuse Treatment 2004, above n 115, art 50.

¹²² Decree on Drug Abuse Treatment Institutions 2003, above n 119, art 1.

¹²³ Law on Narcotics 2000, above n 45, art 39(4).

¹²⁴ Law on Narcotics 2000, above n 45, art 39(6) and International Drug Control Cooperation Decree 2003, above n 53, art 9(1).

¹²⁵ Ibid.

9.2.1.8 Other Ministries

Numerous Ministries and Ministerial-Rank Organs in Vietnam are charged with drug management. A number of them, however, are legally obliged to perform a variety of major drug control duties, while some are involved in only a few areas. The *Law on Narcotics 2000* and the *Decision to Establish the National Committee 2000* oblige the Ministry of Agriculture and Rural Development, and the Committee for Ethnic Minorities and Mountainous Areas to cooperate in implementing opium poppy alternatives and sustainable development programs and in educating ethnic populations to eradicate opium poppy plantations and illicit drugs prevention.¹²⁶ Nevertheless, it is regrettable that these regulations are too general and there is no further clarification of their tasks.

Pursuant to *Decree 77/2003/ND-CP Prescribing Functions, Duties, Powers and the Organizational Structure of the Ministry of Finance 2003*, the Ministry of Planning and Investment is responsible for long-term strategies and plans for socio-economic development throughout the whole country.¹²⁷ In accordance with its sphere of work, the *Decision to Establish the National Committee 2000* requires it to cooperate with concerned authorities, especially the Ministry of Finance, to establish budget estimates and investment schedules for drug control.¹²⁸ This Decision also imposes on the Ministry of Finance¹²⁹ responsibility to ensure timely financial resources for drug control activities and for cooperation with others, such as local governments, to maintain a budget balance that can be allocated for drug management.¹³⁰

Under the *Law on Narcotics 2000* and the *Decision to Establish the National Committee 2000*, the Ministry of Education and Training and Ministry of Culture and Information are charged with drug education. However, the former is mainly

¹²⁶ See *Law on Narcotics 2000*, above n 45, art 43, and *Decision to Establish the National Committee 2000*, above n 44, art 5(7), (8).

¹²⁷ See *Nghe Dinh so 77/2003/ND-CP Quy Dinh Chuc Nang, Nhiem Vu, Quyen Han va Co Cau To Chuc cua Bo Tai Chinh 2003* (Chinh Phu) arts 1, 2 [trans: *Decree 77/2003/ND-CP Prescribing Functions, Duties, Powers and the Organizational Structure of the Ministry of Finance 2003* (Government)] (hereinafter *Decree on Ministry of Finance 2003*).

¹²⁸ See *Decision to Establish the National Committee 2000*, above n 44, art 5(12).

¹²⁹ Drawing up the national annual budget and ensuring financial resources for activities of various state organs are parts of the functions of the Ministry of Finance. See *Decree on Ministry of Finance 2003*, above n 127, art 2.

responsible for drug education in education units,¹³¹ while the latter focuses on organizing drug education campaigns for the public.¹³²

Performing lawmaking functions,¹³³ the Ministry of Justice is charged with exhaustively studying and improving the legal framework for drug control.¹³⁴ Nevertheless, the role of the MOPS in this field is also very important, as it is involved in the drafting of numerous normative documents on drug control.¹³⁵

9.2.1.9 People's Committees

As mentioned earlier, the overall drug management in each locality is vested with the People's Committee in that respective area.¹³⁶ People's Committees take responsibility for directing various drug control activities in their local areas, ranging from control of licit drug activities, prevention and suppression of illicit drug activities, to drug abuse treatment and social rehabilitation as well as drug education.

Under the existing laws and regulations, duties in relation to drug control of the People's Committees at different administrative levels, i.e. at provincial, district and ward levels, are not distinguished, leading to some confusion over their ambit. The clarification of their duties is essential for operational efficiency and for avoiding gaps or duplications in local drug management. Thus, it is necessary that guiding regulations be enacted to provide a clear-cut distinction in the tasks of People's Committees at different levels.

¹³⁰ Decision to Establish the National Committee 2000, above n 44, art 5(11). In the fight against illicit drugs, however, the role of the Ministry of Finance is principally known through its customs operations.

¹³¹ See Law on Narcotics 2000, above n 45, art 42 and Decision to Establish the National Committee 2000, above n 44, art 5(6).

¹³² Decision to Establish the National Committee 2000, above n 44, art 5(5).

¹³³ *Nghi Dinh so 62/2003ND-CP Quy Dinh Chuc Nang, Nhiem Vu, Quyen Han va Co Cau To Chuc cua Bo Tu Phap 2003* (Chinh Phu) art 1 [trans: *Decree 62/2003/ND-CP Promulgating Functions, Tasks, Powers and the Organizational Structure of the Ministry of Justice 2003* (Government)].

¹³⁴ Decision to Establish the National Committee 2000, above n 44, art 5(13).

¹³⁵ See Hong Anh Le, 'Tinh Hinh va Ket Qua Trien Khai Thuc Hien Luat Phong, Chong Ma Tuy trong 2 nam 2001 - 2002' (2003) 4 *Ban Tin Phong Chong Ma Tuy* 2, 11 [trans: Hong Anh Le, 'Current State and Outcomes of the Two-Year Implementation of the Law on Narcotics Prevention and Suppression, from 2001 to 2002' (2003) 4 *Bulletin on Narcotics Prevention and Suppression* 2]. For example, the Ministry of Public Security has promulgated certain joint circulars with concerned authorities to guide the application of the provisions of the Criminal Code in relation to drug-related crimes, and it is also involved in drafting processes for various drug control decrees.

¹³⁶ Law on Narcotics 2000, above n 45, art 37(4).

9.2.2 *Special Administration for Drug Control*

9.2.2.1 *Overview*

As a large number of authorities at the central and local levels are engaged in drug control in Vietnam, it is of extreme importance that various resources and authorities interconnect to form a well-organized chain for drug control. There needs to be some definite organ to formulate overall strategies and to coordinate their work to facilitate international cooperation in this field and to avoid delays that often follow in a poorly connected system. Originating from the national need and to comply with the DCC provisions on special administration, at the central government level in Vietnam, the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution (National Committee) was established to act as the coordinating body. At the provincial level, correspondingly, Provincial Steering Committees for Prevention and Suppression of AIDS, Drugs and Prostitution (Provincial Steering Committee) were set up. At the district level, it is at the discretion of the President of the People's Committee to establish a District Steering Committee for Prevention and Suppression of AIDS, Drugs and Prostitution (District Steering Committee).¹³⁷ The composition and functions of the Provincial and District Steering Committees correspond to those of the National Committee but are limited to their local areas.

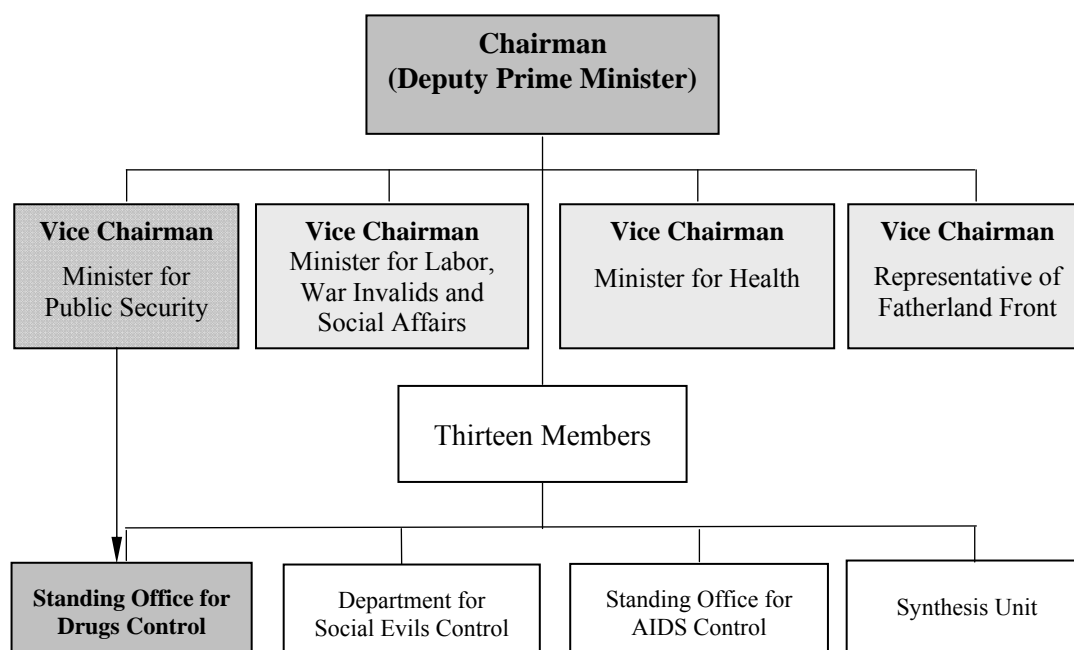
9.2.2.2 *National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution*

In 1993, by *Resolution 06/BCT-TW on Enhancing Directions on Drug Prevention and Suppression*, the first national committee on drug control in Vietnam was established, namely the Steering Committee for Drug Prevention and Suppression Programs (Steering Committee 1993).¹³⁸ This authority, however, was only organized at ministerial rank and its functions were principally to coordinate the implementation of national drug control programs. In 1997, to enhance the government drug control administration, the Prime Minister made *Decision 686/QĐ-*

¹³⁷ Decision to Establish the National Committee 2000, above n 44, art 6(3). The President of the District People's Committee himself considers the question of whether it is necessary to establish the District Steering Committee.

TTg to establish the National Committee for Drug Prevention and Suppression (the National Committee 1997) that replaced the Steering Committee 1993 and, for the first time, was headed by a Deputy Prime Minister.¹³⁹ Thus, in comparison with the Steering Committee 1993, the National Committee 1997 is organized at an even higher governmental rank. One of its main functions was to coordinate the work of various Ministries, social organizations and the public to combat illicit drugs.¹⁴⁰ Later, in 2000, the Prime Minister issued *Decision 61/2000/QĐ-TTg 2000* to establish the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution (National Committee) which was set up by merging the National Committee 1997, the National Committee for Prevention and Suppression of AIDS and the Government Steering Committee for Social Evils.¹⁴¹ Under this Decision, the organizational structure of the National Committee is as follows.

Figure 9.1 Organizational Structure of the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution



¹³⁸ See *Nghi quyết 06/CP về tăng cường chỉ đạo công tác phòng, chống và kiểm soát ma túy 1993* (Chính Phủ) art 2(b) [trans: *Resolution 06/BCT-TW on Enhancing Directions on Drug Prevention and Suppression 1996* (Government)].

¹³⁹ *Quyết Định số 686/QĐ-TTg về việc Thành Lập Ủy Ban Quốc Gia Phòng, Chống Ma Túy 1997* (Thu Tuong Chính Phủ) art 1 [trans: *Decision 686/QĐ-TTg to Establish the National Committee for Drugs Prevention and Suppression 1997* (Prime Minister)] (hereinafter *Decision to Establish the National Committee 1997*).

¹⁴⁰ *Decision to Establish the National Committee 1997*, above n 140, art 2.

¹⁴¹ See *Decision to Establish the National Committee 2000*, above n 44, art 1.

Under this Decision, a chairman who is one of four Deputy Prime Ministers of the country is the head of the National Committee.¹⁴² He is assisted by four vice-chairmen, namely Minister for Public Security, Minister for Labor, War Invalids and Social Affairs, Minister for Health and a representative from the Fatherland Front.¹⁴³ The National Committee also consists of thirteen other members who are deputy ministers drawn from various line Ministries and representatives from some important socio-political organizations.¹⁴⁴ It meets biannually (in June and December), while its Standing Board, composed of the Chairman and his four Vice-Chairmen, meets quarterly.¹⁴⁵ The Chairman can summon an irregular meeting to consider urgent issues.¹⁴⁶ His conclusions made at every conference of the National Committee or at meetings of the Standing Board are important guidelines for various authorities in carrying out their tasks.

Pursuant to Article 1 of the *Decision to Establish the National Committee 2000*, the National Committee is an inter-disciplinary organization. It is mandated to assist the Prime Minister in directing and coordinating the drug control work of various state authorities, social organizations and unions involved (see Figure 9.2 below).¹⁴⁷ It formulates state-wide policies, strategies, programs and plans for the prevention and suppression of illicit drugs.¹⁴⁸ As mentioned earlier in Section 9.2.1.2, under the *Law on Narcotics 2000*, the MOPS is also given the responsibility to coordinate the drug

¹⁴² Decision to Establish the National Committee 2000, above n 44, art 3(1).

¹⁴³ Decision to Establish the National Committee 2000, above n 44, art 3(2).

¹⁴⁴ The thirteen members of the National Committee are Deputy Ministers for Culture and Information; Training and Education; Finance; Planning and Investment; Justice; Agriculture and Rural Development; Deputy Chairman of Office of Government; Deputy Chairman of the Committee of Ethnic Minorities and Mountainous Areas; Deputy Director of General Department of Customs; Vice Commander of High Command of Border Guards; Representative from Secretariat of Central Committee of the Communist Youth Union; Vice-chairman of the Vietnam's Women Union; and Vice-chairman of the Vietnam's Labor Union. See Decision to Establish the National Committee 2000, above n 44, art 3(3).

¹⁴⁵ *Quy Che Hoat Dong cua Uy Ban Quoc Gia Phong, Chong AIDS, va Phong, Chong Te Nan Ma Tuy, Mai Dam Ban Hanh kem theo Quyet Dinh so 01/QD-UBQG61 2000* (Chu Tich Uy Ban Quoc Gia Phong, Chong AIDS va Phong, Chong Te Nan Ma Tuy, Mai Dam) art 13(1) [trans: *The Operational Regime of the National Committee for the Prevention and Suppression of AIDS, Drugs and Prostitution promulgated by the Decision 01/QD-UBQG61 2000* (Chairman of the National Committee for Prevention and Control of AIDS, Drugs and Prostitution)] (hereinafter Regime for the Operation of the National Committee 2000).

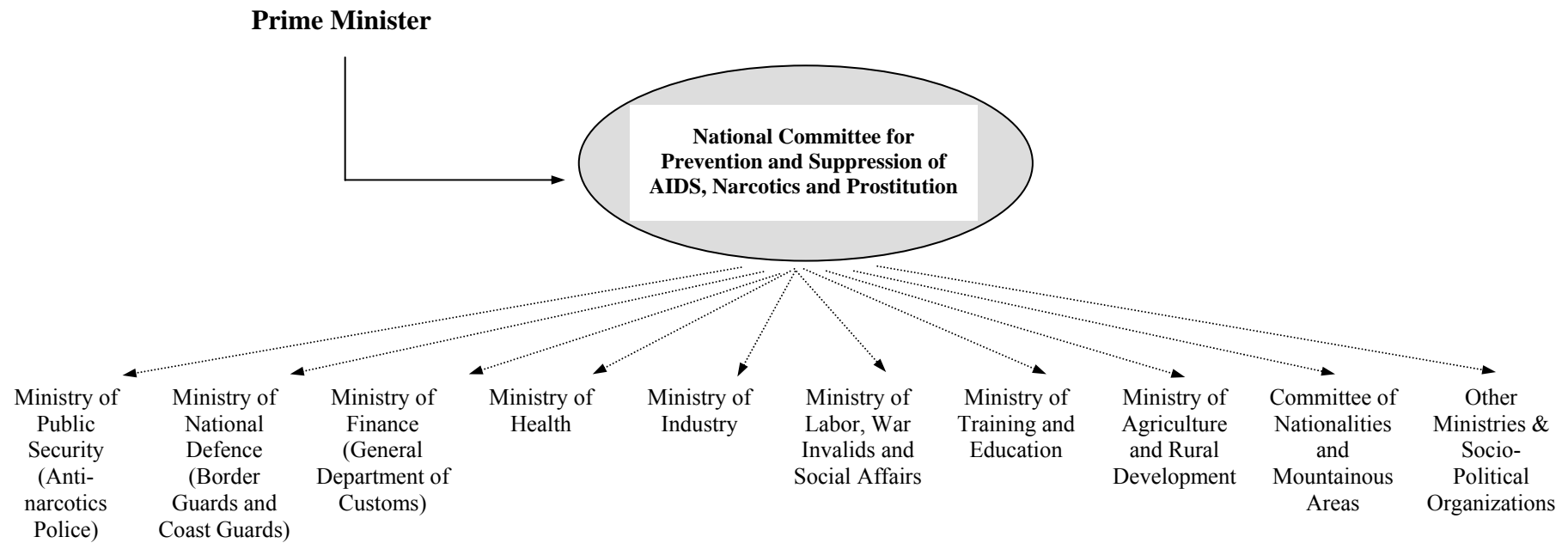
¹⁴⁶ Regime for the Operation of the National Committee 2000, above n 145, art 13(2).

¹⁴⁷ It is responsible for summing up the situation and implementation of drug control in the country and periodically reports to the Prime Minister. See also Decision to Establish the National Committee 2000, above n 44, arts 1 and 2(4).

¹⁴⁸ See Decision to Establish the National Committee 2000, above n 44, art 2(1). See also Regime for the Operation of the National Committee 2000, above n 145, art 5(2)(c).

control work of various state authorities. Although the *Decision to Establish the National Committee 2000* gives the National Committee the broader coordinating function, certain overlaps in regulations of these instruments should be reconsidered. As the National Committee is an inter-disciplinary body and under direct leadership of the Deputy Prime Minister, allocation of the general coordinating task to this Committee is more rational.

Figure 9.2 Coordination authority structure



Pursuant to the *Decision to Establish the National Committee 2000*, the National Committee is to direct and monitor central and local authorities over the whole country in implementing their drug control duties.¹ It directs integration and cooperation between different drug control programs, plans and resources, and evaluates the implementation of policies and activities of authorities at all levels.² In the field of international cooperation in drug control, it is obligated to provide guidance and directions for other state authorities which are involved.³ As it meets only twice a year, its assisting apparatus, i.e. the Standing Office for Drug Control (SODC), plays an essential role in performing these functions.

Under the *Decision to Establish the National Committee 2000* and the *Regime for the Operation of the National Committee 2000*, the SODC is an assisting apparatus of the National Committee in the area of drug management but is under direct administration of the Minister for Public Security.⁴ It assists the National Committee to discharge its drug control functions, including involvement in drafting laws and regulations on drug management.⁵ In relation to the implementation of DCCs, under *Decision 01/QĐ-UBQG Promulgating Duties, Powers and the Organization of the Standing Office for Drug Control 1998*, it is designated as the nominated contact point for Vietnam in international drug control cooperation⁶ and prepares reports on the working of the DCCs.

¹ Decision to Establish the National Committee 2000, above n 44, art 2(2).

² Decision to Establish the National Committee 2000, above n 44, art 2(2),(3). See also Van Khai Phan, 'Ngan Chan va Bai Tru cac Te Nan Xa Hoi Nhat la Te Nan Ma Tuy, Mai Dam nham Xay dung Loi Song Van Minh, Lanh Manh' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 8, 12 [trans: Van Khai Phan, 'Prevention and Suppression of Social Evils, Especially Drug Abuse and Prostitution, to Establish a Civilized and Healthy Lifestyle' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 8].

³ Decision to Establish the National Committee 2000, above n 44, art 2(5).

⁴ See Decision to Establish the National Committee 2000, above n 44, arts 4(2) and and Regime for the Operation of the National Committee 2000, above n 145, art 2(2)(b). The Standing Office for Drug Control is principally constituted of officers of the MOPS. The Office of Government, the Ministry of Finance, the Ministry of Labor, War Invalids and Social Affairs, the Ministry of Education and Training, the Committee of Ethnic Minorities, the General Department of Customs and the High Command of Border Guards are obliged to appoint an authorized official to work part-time at the Standing Office for Drug Control. See *Quyết định số 01/QĐ-UBQG về Nhiệm vụ, Quyền hạn và Tổ chức của Văn phòng Ủy Ban Quốc gia Phòng, Chống Ma túy 1998* (Ủy Ban Quốc gia Phòng, Chống Ma túy) art 2 [trans: *Decision 01/QĐ-UBQG Promulgating Duties, Powers and Organization of the Standing Office for Drug Control 1998* (National Committee for Prevention and Suppression of Narcotics)] (hereinafter *Decision Promulgating Duties, Powers and Organisation of the Standing Office for Drug Control 1998*).

⁵ Regime for the Operation of the National Committee 2000, above n 145, art 10(2)(đ).

⁶ See Decision Promulgating Duties, Powers and Organisation of the Standing Office for Drug Control 1998, above n 152, art 1(4).

Regarding the organization and functions of the National Committee, it is worth mentioning that some recent arguments have stimulated a reconsideration of special administrative arrangements for drug control in the country.⁷ Those arguments support the idea that the organization of the special administration for drug control should turn back to the model of the National Committee 1997, which specialized particularly in drug control and is not charged with AIDS and prostitution control.⁸ Some authors mention that although the matters of AIDS, drugs and prostitution are closely interrelated, the establishment of one national committee dealing with all of these issues seems to weaken Vietnam's performance in each field. Models of special administration for drug control in some neighbouring countries, such as Thailand and China, are considered as good practice examples. In those countries, national committees are organized for drug control only.⁹ It is regrettable that the recent arguments only raise the question but do not provide any in-depth analysis or studies to support their arguments. The reorganization of special administrative arrangements for drug control is not only a matter of laws and regulations. It must be viewed in the national context taking into account manpower availability, financial resources as well as benefits with regards to national priorities. Thus, this question needs further in-depth study.

9.3 Conclusion

The administrative machinery for drug control in Vietnam has achieved momentum since the *Law on Narcotics 2000* came into force.¹⁰ This instrument and its subordinate normative documents form a system of rules and regulations for both national coordination and international cooperation in drug control administration.

⁷ See, eg, Trinh Kiem Nguyen, above n 74, 17 and Kim Lien, above n 23, 54.

⁸ See, Minh Duc Nguyen, *Hoan Thien Khung Phap Luat Hinh Su doi voi Toi Pham ve Ma Tuy o Viet Nam* (D Phil thesis, Hoc Vien Canh Sat Nhan Dan, 2003) 141 [trans: Minh Duc Nguyen, Improving Criminal Legal Framework Dealing with Drug-Related Crimes (D Phil Thesis, Politics Institution, 2003)] and Trinh Kiem Nguyen, above n 74, 17.

⁹ See Lien Kim, above n 23, 50 and 54.

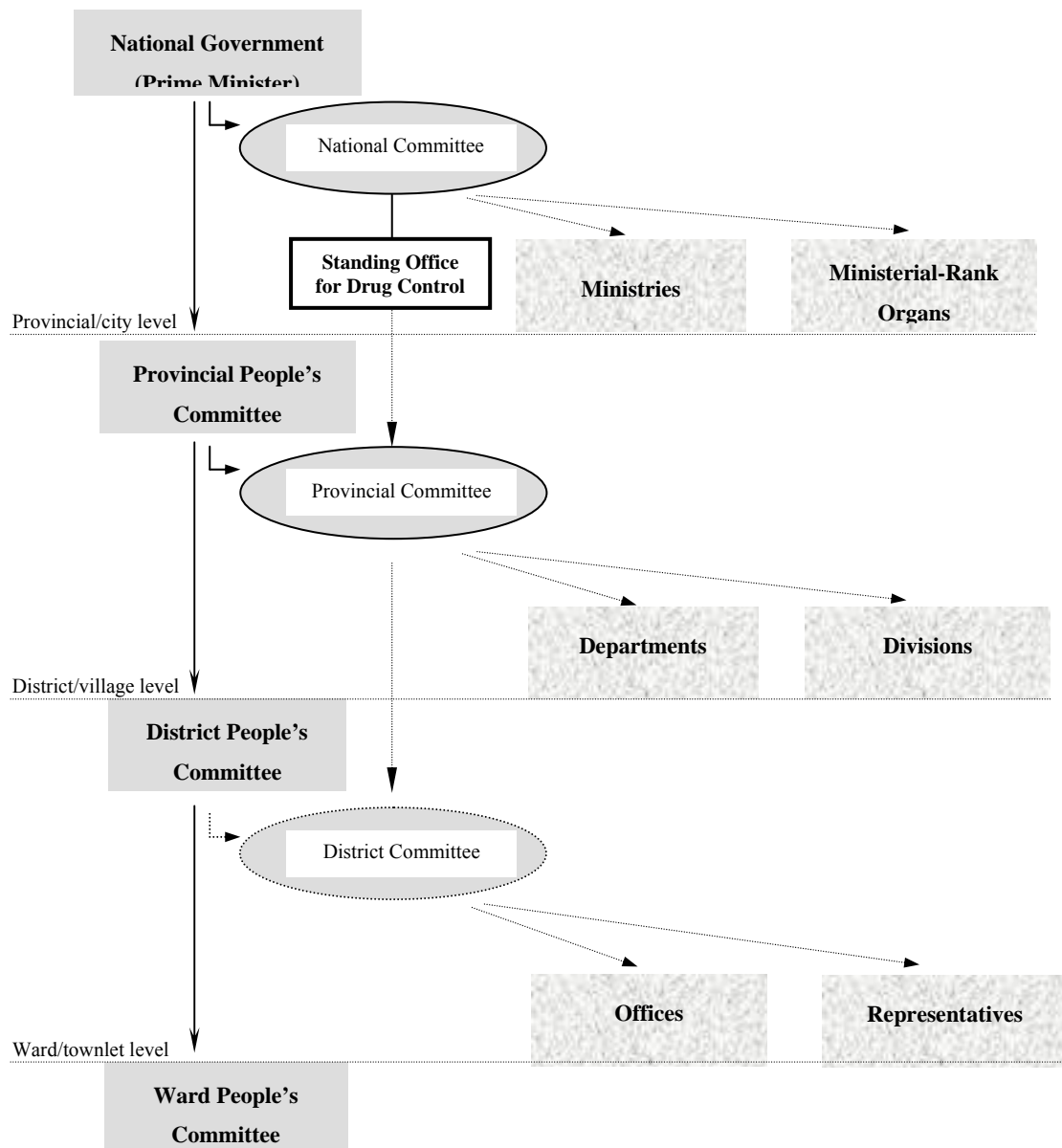
¹⁰ See, eg, *Thong Bao so 76/TB-VPCP Y Kien Ket Luan cua Pho Thu Tuong Pham Gia Khiem tai Hoi Nghi Toan Quoc So Ket 3 nam Thuc Hien Cong Tac Phong, Chong AIDS va Phong Chong Te Nan Xa Hoi 2004* (Van Phong Chinh Phu) pt 1 [trans: *Circulation 76/TB-VPCP on Conclusions of the Deputy Prime Minister Pham Gia Khiem at the National Conference on Summing up the Three-Year Implementation of the Work of Prevention and Suppression of AIDS, Narcotics and Prostitution 2004* (Government Office)] (hereinafter *Circulation on Conclusions at the National Conference for Drug Control 2004*). See also Hong Anh Le, above n 135, 4-5 and Van Duc Pham, 'Tinh Hinh va Ket Qua Mot Nam Trien Khai Luat Phong Chong Ma Tuy' (2002) 8 *Ban Tin Phong Chong Ma Tuy* 4, 6 [trans:

An overall conclusion can be drawn that the existing legal framework of Vietnam for special drug control arrangements is in line with the international requirements.

The National Committee plays an important role in formulating state-wide drug control strategies and plans, and in coordinating various domestic authorities involved in drug management. The MOPS is a coordinating authority in the fight against illicit drug trafficking. The SODC, which is an assisting apparatus of the National Committee and is under direct administration of the Minister for Public Security, has now become an important drug control counterpart for United Nations Office on Drugs and Crime and regional organizations as well as for various countries. As a whole, drug administration in Vietnam can be visually described in the Figure 9.3.

Van Duc Pham, 'The Situation and Results of the One-Year Implementation of the Law on Narcotics Prevention and Suppression' (2002) 8 Bulletin on Narcotics Prevention and Suppression 4].

Figure 9.3 Overall Structure of Vietnam's Drug Control Administration



Although the Vietnamese legal framework in regard to administrative arrangements for drug control has achieved major improvements and is in line with the DCC provisions, certain weaknesses still exist. Overlaps in drug control functions of several state authorities obstruct the government drug management.¹¹ Those shortcomings result partly from the fact that the national law fails to provide a clear demarcation between the drug control functions of different state authorities

¹¹ See Circulation on Conclusions at the National Conference for Drug Control 2004, above n 160, pt 1; Trinh Kiem Nguyen, above n 75, 16 and The Tiem Le, 'Tinh Hinh, Ket Qua Cong Tac Phong, Chong Ma Tuy nam 2002 va nhung Nhiem Vu Trong Tam Phong, Chong Ma Tuy nam 2003' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 13, 18 [trans: The Tiem Le, 'Situation and Results of Drug Control in 2002 and Main Tasks of Drug Control in 2003' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 13].

involved. Based on the analysis above, this Author's research leads to the following recommendations.

The *Law on Narcotics 2000* and the *Decision to Establish the National Committee 2000* currently impose the functions of coordinating the drug control work upon both the National Committee and the MOPS but do not clearly differentiate their sphere of responsibilities, causing some uncertainties. The general coordinating responsibilities are better vested in the National Committee, as it is a horizontally integrative organization. The coordinating functions for combating drug-related crimes, however, need to remain in the hands of the MOPS to facilitate prompt cooperation between law enforcement authorities in handling individual criminal cases. Thus, Articles 37(2) and 38(1) of the *Law on Narcotics 2000* regarding the drug control duties of the MOPS need to be revised.

The 'statistics on drug control' function of the MOPS under the *Law on Narcotics 2000* and the 'statistics on criminal offenses' duty of the SPP under the *Law on Organization of People's Procuracies 2002* suffer from overlap. To avoid involving both the MOPS and the SPP in the task of gathering statistics on drug-related crimes, it is necessary that Article 38(1)(g) of the *Law on Narcotics 2000* defines in further detail the scope of duties of the MOPS in relation to 'statistical work on drug control'. As each state authority gathers statistics within its sphere of work, including the SPP which gathers statistics on drug-related crimes, the duty of the MOPS should be confined to synthesizing and managing those statistics relating to drug control available from various sources (including the SPP) and providing guidance to concerned authorities to set up a state-wide drug control database.

It seems to be duplicative for Customs, Border Guards and Coast Guards under the *Drug Trade Decree 2003* to be simultaneously charged with escorting transit drugs out of the territory of Vietnam. As Customs principally function at checkpoints and border gates,¹² it is recommended here that its escort duty under Article 16(2) of the *Law on Narcotics 2000* should be removed.

The legal requirements that each of the MOPS, Customs, Border Guards and Coast Guards are to engage in drug education campaigns for ethnic minorities in border

areas, and that the Ministry of Agriculture and Rural Development and the Committee for Ethnic Minorities and Mountainous Areas are also charged with drug education for the country's ethnic populations largely overlap. While a diversity of authorities is charged with drug education for ethnic minorities, the lack of elaborate regulations on clarifying their responsibilities can lead to buck-passing. Vietnamese legislators should consider the principle '*One Task Principally Done by One Ministry*' in streamlining the state drug administration. The Committee for Ethnic Minorities and Mountainous Areas is responsible for various aspects of state management with respect to the ethnic populations,¹³ so that consequently, drug education for the ethnic minorities should be vested in that Committee.

The failure of the current legislation to distinguish drug control functions of People's Committees at different administrative levels can lead to some confusion about their sphere of responsibilities. Therefore, it is necessary that elaborate regulations on drug control duties of People's Committees at each level be enacted. Clear distinctions between their duties should be provided in every technical field of drug control. The drafting of such regulations must be based on an exhaustive study of statutory functions and powers of People's Committees at each administrative level. Drug control duties of ward, district and provincial People's Committees must harmoniously interrelate with their other administrative functions and powers.

Another shortcoming in domestic law of Vietnam in the field of drug control administration is evident in the inconsistencies between some instruments. Under the *Ordinance on Organizing Investigation of Criminal Offenses 2003*, the investigative jurisdiction of Customs is limited to the offenses of 'Smuggling' and 'Illegal cross-border transportation of goods and/or currencies'. In contrast, under the *Drug Law Enforcement Cooperation Regime 2002*, Customs are obliged to investigate drug-related offenses revealed in its areas of supervision. Considering inconsistencies between these instruments, it is suggested here that the *Ordinance on Organizing Investigation of Criminal Offenses 2004* should be amended to expand the investigative jurisdiction of Customs over several types of drug-related crimes,

¹² Decree on Areas of Activities of Customs, above n 85, art 2.

¹³ See *Nghi Định số 59/1998/ND-CP về Chức Năng, Nhiệm Vụ, Quyền Hạn và Tổ Chức Bộ Máy của Ủy Ban Dân Tộc và Miền Núi 1998* (Chính Phủ) art 2 [trans: *Decree 59/1998/ND-CP on Functions, Tasks, Powers and the Organization of the Committee for Ethnic Minorities and Mountainous Areas 1998* (Government)].

namely ‘Unlawful stockpiling, transporting, trading in or appropriating narcotic substances’ (Article 194 of the *CCV 1999*), ‘Unlawful stockpiling, transporting, trading in or appropriating precursors used in the illicit manufacture of narcotic substances’ (Article 195 of the *CCV 1999*), and ‘Manufacturing, stockpiling, transporting and/or trading in means and/or tools used in the illicit manufacture or illegal use of narcotic substances’ (Article 196 of the *CCV 1999*). In the *Project 1717/TCHQ-DT on Enhancing Capacity of Detecting and Combating Narcotics Passing through the Border Gates 2001*, the General Department of Customs also asked the Government to consider expanding the investigative jurisdiction of Customs over some drug-related crimes.¹⁴

To avoid any misunderstanding and ambiguity in the legal duty of the MOL concerning cooperating with other concerned authorities in building drug abuse treatment institutions, the provisions of Article 39(3) of the *Law on Narcotics 2000* need to be rewritten. The phrase ‘drug abuse treatment institutions’ needs to be changed to ‘compulsory treatment centers’ to match with the language of other Articles.

¹⁴ See *De An 1717/TCHQ-DT ve Tang Cuong Nang Luc Phat Hien, Ngan Chan Ma Tuy qua Cua Khau 2001* (Tong Cuc Hai Quan) pt IV(3)(3.1) [trans: *Project 1717/TCHQ-DT on Enhancing Capacity of Detecting and Combating Narcotics Passing through the Border Gates 2001* (General Department of Customs)].

10 OBLIGATIONS TO FURNISH INFORMATION

10.1 Overview

10.2 Estimates and Statistics on Quantities of Drugs for Medical and Scientific Purposes

10.2.1 Estimates and Statistics under the UN Drug Control Conventions

10.2.1.1 Estimates of Quantities of Drugs Needed for Medical and Scientific Purposes

10.2.1.2 Statistics on Quantities of Drugs Used for Medical and Scientific Purposes

10.2.2 Estimates and Statistics under Vietnamese Legislation

10.2.2.1 Estimates of Quantities of Drugs Needed for Medical and Scientific Purposes

10.2.2.2 Statistics on Quantities of Drugs Used for Medical and Scientific Purposes

10.3 Furnishing of Other Drug Control Information

10.3.1 Annual Report Questionnaire

10.3.2 Vietnamese Responses to Annual Report Questionnaire and Its Legislation on Drug Statistics

10.4 Conclusion

Statistical data and accurate information are prerequisites for effective drug administration, illicit traffic analysis and policy-making. The collection of reliable and comprehensive information on all aspects of drug control is, therefore, of immense importance to both national authorities and international bodies involved in this area. As international drug control is an indirect system that is predicated on state cooperation, in order to monitor drug administration all over the world and to oversee the compliance of the contracting Parties, the international drug control bodies need information from numerous countries. Thus, Parties to the DCCs are obliged to submit reports on the working of the Conventions and a wide range of information on drug control in their countries.

In the first part of this Chapter, the DCC provisions in relation to obligations of Parties to furnish information are exhaustively studied. Then, the corresponding laws and regulations of Vietnam to implement its obligations are examined in the second part. The Chapter concludes with possible solutions to develop national regulatory system relating to the collection of data and information necessary for its compliance with international provisions as well as valuable for national drug management.

10.1 Overview

The framework for international drug control has evolved through a long period, with the result that the existing DCCs take full advantage of the experiences of their predecessors in creating effective mechanisms to collect data and information essential for international drug administration and policy-making.¹ In the first place, under the *1961 Convention*, Parties are bound to submit their estimates of and statistics on the quantities of drugs used for medical and scientific purposes.² The estimates system makes it possible for the International Narcotics Control Board (Board) to know in advance and to monitor the quantities of narcotic drugs required for licit uses during the year in each country and in the world as a whole. The statistics system enables it to know the actual amount of narcotic drugs that have been produced, manufactured and used. As the estimates system causes some administrative burden to the contracting Parties, the *1971 Convention* does not require estimates as such but obliges Parties to submit their statistics on the actual quantity of psychotropic substances used for medical and scientific purposes. In relation to precursors, the *1988 Convention* only requires for a limited range of statistics. (Detailed analysis of the DCC estimates and statistics systems are provided in Section 10.2.1 below.)

Moreover, under the three DCCs, Parties are explicitly required to submit a wide range of other information related to drug control in their countries, including (i) laws and regulations passed in order to give effect to the Conventions, (ii) names and addresses of Government authorities charged with controlling the international trade

¹ See, eg, Louis Lessem, 'Towards an International System of Drug Control' (1974) 8 *Law Reform* 103, 149.

² The analysis of the estimates and statistics system is not included in Chapter 5 entitled Controls on Licit Drug Activities, because that Chapter focuses on the control measures that Parties apply to their

in drugs, (iii) particular cases of illicit drug trafficking, and (iv) annual reports on the working of the Conventions. (Information that Parties are to submit under the DCCs is summarized in Figure 10.1 below.³)

Figure 10.1 A Summary of Information to Be Furnished under the UN Drug Control Conventions

Requirements	1961 Convention	1971 Convention	1988 Convention	Furnished to
Laws and regulations to give effect of the Convention	Obligatory	Obligatory	Obligatory	Commission (through General-Secretary)
Information on Government authorities charged with control of international trade	Obligatory	Obligatory	Nil	as above
Particular cases of illicit drug trafficking	Obligatory	Obligatory	Obligatory	as above
Annual reports on the working of the Convention	Obligatory	Obligatory	Obligatory (Article 12)	as above
Estimates	Obligatory	Voluntary (simplified)	Nil	Board
Statistics	Obligatory	Obligatory	Obligatory (limited)	as above

Laws and Regulations to Give Effect to the Conventions To give effect to the DCCs in their territories, Parties must transform the convention provisions into domestic laws. National laws and regulations are significant evidence of the Parties'

domestic licit drug activities, whereas, the estimates and statistics system analyzed here relate to the responsibilities of Parties themselves towards the international drug control bodies.

³ In addition, they are bound to furnish information concerning Convention ratification, accession, denunciation, territorial or regional application, reservation and amendment of reservation. However, these obligations are commonly prescribed in every international Convention and principally relate to administrative procedure rather than to drug control. Therefore, this research does not focus on their examination. Also noteworthy is that, under the *1961 and 1971 Conventions*, Parties are obliged to furnish information, at the request of the Commission and the Board, that are necessary for the discharge of their functions (see, for example, the introductory paragraph of Article 18 and Article 14(1)(a) of the *1961 Convention*; and the introductory paragraph of Article 16 and Article 19(1) of the *1971 Convention*). As the furnishing of information in these cases is on a case-by-case basis, it is not

implementation of the DCC obligations, and are thus crucial to the international bodies which are overseeing the convention compliance by Parties. Furthermore, information on each other's domestic laws and regulations is necessary for the cooperation of the States in combating illicit drugs.⁴ Due to this level of importance, Parties are required to furnish texts of their national legislation promulgated for the purposes of implementing the provisions of the DCCs.⁵

This obligation of Parties is a continuing one.⁶ The *1961 Convention* makes it clear that they are required to furnish texts of laws and regulations promulgated 'from time to time' and, under the *1971 Convention*, they are responsible for submitting 'important changes' in their laws and regulations.⁷ To comply fully with this obligation, Parties must also supply amendments to laws and regulations that have been made to their national legislation. In federal or composite states, where not only central governments can promulgate laws and regulations but governments of internal sub-divisions are also authorized to enact legal documents to give effect to the Conventions, they should furnish legislation of both the central governments and the political sub-divisions.⁸

anticipated and codified by national legislative action. Therefore, this research does not attempt to explore that aspect of the requirement to furnish information.

⁴ Those laws and regulations may also be good examples for lawmakers of other States in regulating similar drug issues in their own countries. See United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988: Done at Vienna on 20 December 1988* (1998) 364. See also S K Chatterjee, *Drug Abuse and Drug-Related Crimes: Some Unresolved Legal Problems* (1989) 70.

⁵ *Single Convention on Narcotic Drugs*, opened for signature 30 March 1961, art 18(1)(b) (entered into force 13 December 1964); *Convention on Psychotropic Substances*, opened for signature 21 February 1971, art 16(1)(a) (entered into force 16 August 1976) and *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, opened for signature 20 December 1988, art 20(1)(a) (entered into force 11 November 1990). Although the three DCCs bear substantial resemblances in obliging the Parties to furnish texts of national laws and regulations to implement the Conventions, some differences between them exist. Under the *1961 Convention*, they are bound to furnish texts of 'laws and regulations in order to give effect to the Convention'. This means that they have to furnish texts of 'all their laws and regulations that implement provisions of the Convention' (see United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961* (1973) 213). In fact, a great number of national laws are generally involved in the Convention's implementation, e.g. penal codes, customs laws and administrative and pharmaceutical regulations. As a result, this obligation may pose a heavy burden upon the Parties. The *1971 Convention* seems to take that burden off, as it only requires reporting of 'laws and regulations concerning psychotropic substances' (Article 16(1)(a) of the *1971 Convention*). The *1988 Convention*, however, fully reintroduces the wording of the corresponding *1961 Convention* provisions (Art 20(1)(a) of the *1988 Convention*).

⁶ 1961 UN Commentary, above n 5, 214.

⁷ 1971 Convention, above n 5, art 16(1)(a).

⁸ 1961 UN Commentary, above n 5, 214 and 1988 UN Commentary, above n 4, 364-5.

Information on Government Authorities Charged with Control of International Trade of Drugs

As analyzed in Chapter 5, the international trade in narcotic drugs and psychotropic substances is subject to the control of import and export authorizations. Thus, information about the competent authorities of other States involved in control of international trade is of immense importance for international cooperation, particularly for preventing illicit traffic using forged documents,⁹ as direct contacts are often the most expeditious means of identifying and stopping suspicious transactions.¹⁰ The *1961* and *1971 Conventions* require Parties to furnish names and addresses of their government authorities authorized to issue import and export authorizations.¹¹ They should provide names and addresses of not only national but also regional competent authorities.¹²

In particular, under the *1971 Convention*, the import and export of psychotropic substances in Schedule I are generally prohibited except when the importer and exporter are competent authorities, or persons or enterprises specially authorized by competent authorities.¹³ Therefore, Parties to this Convention have to submit names and addresses of government authorities that are entitled to import or export these substances. In addition, they must also submit names and addresses of government authorities issuing special permits for imports of the psychotropic substances in Schedules II, III or IV that they generally prohibit from importation into their countries.

Under the *1988 Convention*, it is at the discretion of Parties to apply the control of import and export authorizations over international trade in precursors. Therefore, they are not obliged by this Convention to furnish information on competent authorities empowered to issue relevant import and export authorizations.

Particular Cases of Illicit Drug Trafficking

All three DCCs oblige Parties to furnish information on the particulars of illicit traffic cases that may be

⁹ 1961 UN Commentary, above n 5, 218.

¹⁰ International Narcotics Control Board, *Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances: Report of the International Narcotics Control Board on the Implementation of Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* (1993) 9.

¹¹ 1961 Convention, above n 5, art 18(1)(d) and 1971 Convention, above n 5, art 16(2).

¹² United Nations, *Commentary on the Convention on Psychotropic Substances, done at Vienna on 21 February 1971* (1976) 283.

¹³ 1971 Convention, above n 5, art 7.

important because of they may disclose new trends, quantities or sources of drugs involved, or methods used.¹⁴ Such information is necessary for the Commission on Narcotic Drugs (Commission) to review the drug trafficking situation in individual countries or regions and to develop strategies to deal effectively with illicit drug trafficking. Moreover, such information may help law enforcement authorities of different countries to cooperate in specific criminal drug cases.¹⁵ Due to its importance, this information is necessary to be submitted ‘as soon as possible after the event’,¹⁶ except where delays are required by the ‘valid consideration of successful police investigation’.¹⁷

There is a minor difference between the three DCCs regarding this requirement. The *1961 Convention* expressly requires Parties to furnish cases they consider important and general data on illicit traffic cases as well as, in more detail, specific data on particular cases requested by the Commission.¹⁸ In contrast, the *1971* and *1988 Conventions* entrust them with full discretion to consider which cases of illicit drugs are to be reported.

Annual Reports on the Working of the Conventions Codifying many previous treaties, the *1961 Convention* continues the well-established practice of its predecessors in this field,¹⁹ asking for annual reports on the working of the Convention.²⁰ Based entirely on this model, the *1971 Convention* similarly requires Parties to submit annual reports on the working of the Convention in their territories.²¹ Taking a different line, the *1988 Convention* generally requires Parties

¹⁴ See 1961 Convention, above n 5, art 18(1)(c); 1971 Convention, above n 5, art 16(3) and 1988 Convention, above n 5, art 20(1)(b).

¹⁵ See 1961 UN Commentary, above n 5, 216 and 1971 UN Commentary, above n 12, 285.

¹⁶ 1971 Convention, above n 5, introductory paragraph of art 16(3).

¹⁷ 1971 UN Commentary, above n 12, 284.

¹⁸ 1961 UN Commentary, above n 5, 215.

¹⁹ For example, the *Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs 1931* and the *Convention for the Suppression of the Illicit Traffic in Dangerous Drugs 1936*.

²⁰ 1961 Convention, above n 5, art 18(1)(a).

²¹ 1971 Convention, above n 5, art 16(1). The term ‘territories’ under these two Conventions refers to not only the whole territory of a State, but also geographic areas or regions of a State treated as separate entities for the application of the system of drug control, such as for import and export authorizations. The Parties can combine data and information on each separate region into a single annual report of the whole country, although they are encouraged to make a separate report on each of those regions. See, eg, 1961 UN Commentary, above n 5, 213 and 1971 UN Commentary, above n 12, 281.

to furnish information on the working of the Convention in their territories but not annual reports in particular.

In what is now a well-established practice, for the dual purpose of facilitating the work of the States and collecting necessary information, the Commission and the Board have prepared a number of forms to be used in the Parties' reports. These forms are, on the one hand, a helpful guide for their implementation and, on the other hand, of great importance for international drug control bodies to collect specific and comparable information essential for their review of the global situation on drug control and for developing drug control policies and strategies. As information on estimates and statistics on quantities of drugs used for medical and scientific purposes relate to a very specific technical area of drug control, separate forms are provided for their reports.²² However, an Annual Report Questionnaire (ARQ) which required by all three DCCs is designed to collect a wide range of information on drug control in the contracting countries.²³ By supplying responses to the ARQ, Parties simultaneously implement their obligations to furnish reports on the working of the Conventions, information on changes in national legislation in relation to drug control, reports on illicit drug trafficking, and information on government authorities involved in national drug control. Thus, in accordance with this international practice, to examine Vietnam's compliance with its obligations to furnish information on drug control under the DCCs, this thesis focuses on its responses to the ARQ.

In practice, many Governments still face difficulties in answering all questions in the ARQ and a variety of them provide incomplete information.²⁴ Very often, some specific information has not yet been communicated to the international drug control

²² Those forms are available at the website of the International Narcotics Control Board
<<http://www.incb.org/incb/index.html>>.

²³ The electronic version of the ARQ is available at
<http://www.unodc.org/unodc/en/cnd_questionnaire_arq.html>.

²⁴ See, eg, *World Drug Report 2004*, United Nations Office on Drugs and Crime [409]
<http://www.unodc.org/pdf/WDR_2005/volume_1_chap1_cannabis.pdf> at 14 September 2005;
INCB, *Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances*, above n 10, 4-5 and Kettil Bruun, Lynn Pan and Ingemar Rexed, *The Gentlemen's Club - International Control of Drugs and Alcohol* (1975) 22-3.

bodies and certain data may be absent in some years but available in other years.²⁵ Moreover, the accuracy of data submitted by the Parties is apparently varied. Data presented by some countries are based on systematic surveys and a comprehensive statistical system, while figures furnished by others may be purely a result of guesswork.²⁶ According to the Board, these difficulties faced by Parties may result from the lack of adequate *legislative* and administrative mechanisms of control and from the insufficient cooperation with healthcare services and industries, especially pharmaceutical and chemical industries.²⁷

Despite the fact that Vietnam as recently as 1997 became a DCC Party, it is laudable that, in compliance with the DCC requirements, it has enacted a number of regulations requiring domestic drug manufacturers, importers, exporters, and traders to prepare their estimates and statistics. Thanks to those regulations, Vietnam is able to complete its estimates and statistics on quantities of drugs needed for medical and scientific purposes.²⁸ In contrast, it continues to experience many difficulties in providing complete ARQ responses as regards specific data on drug abuse and drug trafficking in the country.²⁹ It is yet to establish a comprehensive system to collect information on drug control. Quantitative information that is important for Vietnam to carry out its convention obligations and to perform national drug administration and policy-making remains incomplete and sometimes non-existent.³⁰ These

²⁵ For example, see World Drug Report 2004, above n 24, 409 and INCB, *Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances*, above n 10, 5.

²⁶ See World Drug Report 2004, above n 24, [p. 413].

²⁷ See INCB, *Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances*, above n 10, 1-2.

²⁸ Vietnam furnished the information required even before it became a DCC Party. See, for example: International Narcotic Control Board E/INCB/2004/4 (Submission of information by Governments pursuant to Article 12 of the 1988 Convention (form D) for the years 1995-1999. For more information on its adherence status concerning estimates and statistics in relation to precursors, narcotic drugs and psychotropic substances, see http://www.incb.org/pdf/e/tr/pre/2006/precursors_E_annexe.pdf, http://www.incb.org/pdf/e/tr/nar/2006/Narcotics_publication_2006_part2.pdf and http://www.incb.org/pdf/e/tr/psy/2006/psychotropic_substances_2006.pdf. On occasions, Vietnam still fails to furnish its estimates or statistics. This, however, probably results from delays and shortcomings in administrative action rather than flaws in the national legal framework.

²⁹ See, eg, the ARQ responses of Vietnam for 2003 and 2004.

³⁰ Its present drug statistics system is prominently characterized by a lack of an information network. See *Thong Bao so 32/TB-VPCP Y Kien Ket Luan cua Pho Thu Tuong Pham Gia Khiem tai Cuoc Hop Uy Ban Quoc gia Phong, Chong AIDS va Phong, Chong Te Nan Ma Tuy, Mai Dam 2004* (Van Phong Chinh Phu) pt 2 [trans: *Circulation 32/TB-VPCP on Conclusions of the Deputy Prime Minister Pham Gia Khiem at the Meeting of the National Committee for the Prevention and Suppression of AIDS, Drugs and Prostitution 2004* (Government Office)] (hereinafter *Circulation 2004*).

shortcomings have partly resulted from weaknesses evident in the national legal framework for drug data collection. Although a number of domestic instruments specify the key government authorities charged with the collection and management of specific drug statistics,³¹ none of those instruments deals particularly with the establishment of a comprehensive statistical system relating to controlled drugs. At the periodical meeting of the National Committee in 2005, the Prime Minister required various national authorities to improve the quality of their reports with reliable data that are of importance for drug strategies and management.³² He also emphasized the need to enhance the national system for drug information, especially a widely accessible database to facilitate better coordination between different national authorities involved in drug control and policy-making.³³ The Ministry of Public Security is required to promulgate elaborate regulations on the collection, storage, dissemination, publication and use of drug data relating to each local area and the whole State.³⁴ However, this Ministry has not yet produced necessary regulations.

³¹ For example, Articles 38(1)(g) of the *Law on Narcotics 2000* imposes upon the Ministry of Public Security responsibility for establishing statistics on drug control and managing information on drug-related offenses. Article 39(4) of this Law requires the Ministry of Labor, War Invalids and Social Affairs to compile statistics of drug treatment and after-treatment rehabilitation. Article 25(1) of *Decree on Organizing Family-Based and Community-Based Drug Abuse Treatment 2002* obliges People's Committees to organize surveys and statistics of information on drug abusers. See *Luật số 23/2000/QH10 về Phòng, Chống Ma túy năm 2000* (Quoc Hoi) arts 38(1)(g) and 39(4) [trans: *Law 23/2000/QH10 on Narcotics Prevention and Suppression 2000* (National Assembly)] (hereinafter *Law on Narcotics 2000*) and *Nghị Định số 56/2002/ND-CP về Tổ chức Cải thiện Ma túy tại Gia đình và Cộng đồng 2002* (Chinh Phu) art 25(1) [trans: *Decree 56/2002/ND-CP on Organizing Family-Based and Community-Based Drug Abuse Treatment 2002* (Government)].

³² *Thông Báo số 91/TB-VPCP Ý Kiến Kết Luận của Phó Thủ Tướng Phạm Gia Khiêm tại Cuộc Họp Thường Kỳ của Ủy Ban Quốc Gia Phòng, Chống AIDS và Phòng, Chống Ma túy, Mai Dăm 2005* (Van Phong Chinh Phu) pt 2 [trans: *Circulation 91/TB-VPCP on Conclusion of the Deputy Prime Minister Pham Gia Khiem at the National Conference on Summing up the Three-Year Implementation of the Work of Prevention and Suppression of AIDS, Narcotics and Prostitution 2005* (Government Office)].

³³ It should also be noted that one of the objectives of Vietnam's drug control strategy towards 2010 is to set up national database on drug control and, in particular, to establish an effective mechanism of transferring drug control information among national law enforcement authorities. See *Quyết Định số 49/2005/QĐ-TTg về việc Phê Duyệt Kế Hoạch Tổng Thể Phòng Chống Ma túy đến năm 2010* (Thu Tuong Chinh Phu) art 2(4) [trans: *Decision 49/2005/QĐ-TTg to Approve the Master Plan on Drug Control to 2010* (Prime Minister)] (hereinafter *Decision to Approve Drug Control Master Plan to 2010*).

³⁴ *Circulation 2004*, above n 30, pt 2.

10.2 Estimates and Statistics on Quantities of Drugs for Medical and Scientific Purposes

10.2.1 Estimates and Statistics on Quantities under the UN Drug Control Conventions

10.2.1.1 Estimates of Quantities of Drugs Needed for Medical and Scientific Purpose Narcotics Regime

Pursuant to the objectives to limit the use of narcotic drugs to medical and scientific needs and to prevent their diversion into illicit channels, the *1961 Convention* obliges its Parties to restrict drugs available in their countries to within estimates confirmed by the Board. In fact, the estimates system has evolved over a very long history, as it was introduced by the *Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs 1931*,³⁵ and lies at the heart of the narcotics regime.³⁶ It has become a principal means of curbing excessive production and distribution of narcotic drugs.³⁷ Every member State must furnish to the Board annual estimates of the quantities of narcotic drugs they anticipate needing for each forthcoming year.³⁸ As it is difficult to provide accurate estimates far in advance, Parties can submit supplementary estimates during the year.³⁹ Estimates of drugs for medical and scientific purposes have to be furnished separately from those for non-medical purposes.⁴⁰ The Board is authorized

³⁵ The *Geneva International Opium Convention 1925* first introduced the estimate system. Nevertheless, that estimate system was entirely different from the one that is in place today, as that estimate system was not binding upon governments. The present system of obligatory and binding estimates was introduced more than 70 years ago by the *Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs 1931*. See, eg, Bertil a Renborg, *International Drug Control - A Study of International Administration by and through the League of Nations* (2nd ed, 1972) 99; Frank Maas, 'Alternatives to Indirect Control of International Narcotics Traffic' (1975) 8 *International Law and Politics* 241, 247 and Cherif M Bassiouni, 'International Drug Control System' in Bassiouni M C (ed), *International Criminal Law* (1999) vol 1, 905, 924.

³⁶ See Lessem, above n 1, 132 and see also Maas, above n 35, 246.

³⁷ See International Working Group on the Single Convention on Narcotic Drugs, *Report of the International Working Group on the Single Convention on Narcotic Drugs, 1961 - September 20 - 24, 1982* (1983) 14.

³⁸ *1961 Convention*, above n 5, art 19 and *Protocol Amending the Single Convention on Narcotic Drugs, 1961*, opened for signature 31 December 1972 art 9 (entered into force 8 August 1975). See also Bassiouni, above n 35, 924 and Charles S Rhyne, Amelito R Mutuc and Brian M Libow, *International Control of Narcotic Drugs: The Law-Making Activities of the United Nations Commission on Narcotic Drugs and the International Narcotics Control Board* (1976), 16.

³⁹ In general, whenever new circumstances require increases or decreases in drug needs for the country, the Parties can submit to the Board a revision of their estimates. Nevertheless, supplementary estimates need to be submitted early enough for proper examination and supplementary estimates that reach the Board after the end of the year under consideration are generally not admitted. See, eg, *1961 UN Commentary*, above n 5, 236-7 and Renborg, above n 35, 107.

⁴⁰ Estimates of narcotic drugs for medical and scientific purposes are specified under Article 19, while estimates of drugs for non-medical purposes (including estimates of coca leaves for preparation of a

to examine estimates prepared by the Parties (including supplementary estimates) and may ask for further explanations.⁴¹ If any State fails to furnish estimates, this body is authorized to establish its own estimates for that State.⁴² Authorized drug production, manufacture, trans-national sale and distribution in a country must not exceed the estimates confirmed and published by the Board for that country. If the Board finds a country has manufactured or imported a greater quantity of a particular drug than its estimates, it deducts the excess from the estimates for that country for the next year.⁴³ Additionally, it can notify other Parties about the excesses and other Parties are then obliged not to authorize further exports of the relevant drugs to that country during the year in question, unless supplementary estimates are confirmed by the Board or the drugs in question are essential for medical treatment in that country.⁴⁴

The estimates system makes it possible for the Board to know in advance the quantities of narcotic drugs required for licit uses during the year in each country and in the world as a whole. The maximum quantities of narcotic drugs that each country can obtain, by manufacture or import, or both, must not exceed the estimates published by the Board. As a result, the system of estimates works to limit the supply of narcotic drugs to medical and scientific purposes and consequently prevents their diversion from licit sources into illicit channels.⁴⁵ However, delays in obtaining related information and the burdensome tasks of assembling the prescribed data are considered a disadvantage in this system. As mentioned above, the total annual estimates for a country are subject to the deductions for the previous year's excesses. The Board calculates such deductions on the basis of the stocks available in the country concerned at the end of the preceding year to which the estimates relate and on the basis of the estimates of drug stocks required for the year itself.⁴⁶ Normally, the statistics must reach the Board no later than 30 June of the following calendar

flavouring agent and estimates of drugs temporarily permitted for non-medical use) are regulated by Articles 27(2) and 49(3)(b) of the *1961 Convention*.

⁴¹ 1961 Convention, above n 5, art 12(4).

⁴² 1961 Convention, above n 5, art 12(3).

⁴³ 1961 Convention, above n 5, art 21(3).

⁴⁴ 1961 Convention, above n 5, art 21(4).

⁴⁵ See, for example Renborg, above n 35, 99 and International Narcotics Control Board, *Effectiveness of the International Drug Control Treaties: Supplement to the Report of the International Narcotics Control Board for 1994* (1995) 4.

⁴⁶ 1961 UN Commentary, above n 5, 235.

year.⁴⁷ Thus, the estimates system is not able to reveal ‘yearly overproduction until several months have passed’.⁴⁸ Moreover, as the Board can only publish the estimates containing the amount to be deducted late in the year for which the deduction is to be made, exporting countries are unable to consider these deductions until late in that year.⁴⁹ Therefore, there is a time lag in the actual application of the mentioned deductions (see also Section 5.2.1).⁵⁰

Psychotropics Regime

While the estimates system is a core element of the narcotics regime, it is not applicable to psychotropic substances. The *1971 Convention* does not ask for estimates. Such an absence of requirements appears to be a compromise made between arguments that the application of the narcotics regime to psychotropic substances may cause an administrative overburden for Parties and that expansion of the narcotics regime to psychotropic substances may weaken it.⁵¹ However, after this Convention came into force, the increasing diversion of psychotropic substances into illicit traffic attracted the attention of the Board and some voluntary measures were recommended in order to enhance the international control of these substances.⁵² The United Nations Economic and Social Council encouraged Parties to submit voluntarily their assessments of requirements for psychotropic substances at least once every three years, and are regarded as ‘simplified estimates’.⁵³ These estimates function as guides for them when approving exports of psychotropic substances. When amounts of psychotropic substances involved in international transactions are too large in comparison to estimates of the destination countries, exporting countries should not

⁴⁷ Ibid and Chatterjee, above n 4, 413.

⁴⁸ Lessem, above n 1, 139.

⁴⁹ Under the control system of international trade in narcotic drugs, exporting countries are obliged to control amounts of exported drugs to one country within estimates confirmed by the Board for that country. See 1961 Convention, above n 5, art 31(1).

⁵⁰ See also 1961 UN Commentary, above n 5, 236.

⁵¹ See the text of Section 4.1.3.

⁵² See Bror Rexed et al, *Guidelines for the Control of Narcotic and Psychotropic Substances in the Context of the International Treaties* (1984) 41 and International Working Group on the Convention on Psychotropic Substances, *Report of the "International Working Group on the Convention on Psychotropic Substances, 1971" - September 8 -12, 1980* (1981) 19.

⁵³ See Resolutions 1987/1 of 6 May 1981 (E/RES/1981/7) and 1991/44 of 21 June 1991 (E/1991/INF/5/Add.1) of the Economic and Social Council.

permit exports unless competent authorities of importing countries confirm import requests and issue import authorizations.⁵⁴

Precursor Regime

The 1988 Convention neither requires mandatory estimates nor requests voluntary simplified estimates of precursor and essential chemicals. Thus, in this respect, the control applicable to narcotic drugs appears to be the most stringent, followed by the control regime for psychotropic substances. The control regime applicable to precursors and essential chemicals is the least stringent.

10.2.1.2 Statistics on Quantities of Drugs Used for Medical and Scientific Purposes

While the estimates system asks for anticipated requirements of drugs, the system of statistics requires actual quantities of drugs produced and manufactured; used in manufacture of other drugs or preparations; consumed, seized and disposed; and imported and exported and held in stocks in the contracting countries.⁵⁵ This statistical system is complementary to and strengthens the estimates system.

Statistical information is important in various respects. First, in relation to estimates, statistical figures on the past obviously are a helpful guide for the calculation of anticipated requirements for a forthcoming year.⁵⁶ Additionally, the examination of statistical returns can disclose whether Parties are limiting the manufacture and import of controlled substances in their countries within their estimates. Secondly, using international comparisons, discrepancies between statistical data on imports and corresponding export data of different countries can reveal drug diversions into illicit traffic.⁵⁷ Thirdly, the examination of series of statistical data on the consumption of dependence-producing substances in one country and the comparison of these statistics across varied countries of similar socio-economic circumstances may disclose the extent of drug abuse problems in some countries.⁵⁸ Finally,

⁵⁴ See Bror Rexed et al, *Guidelines for the Control of Narcotic and Psychotropic Substances in the Context of the International Treaties* (1984) 44 and International Narcotics Control Board, *Report of the International Narcotics Control Board for 2005* (2006) [para 109] <http://www.incb.org/pdf/e/ar/2005/incb_report_2005_full.pdf> at 20 March 2006.

⁵⁵ Lessem, above n 1, 133 and Rhyne, Mutuc and Libow, above n 38, 17.

⁵⁶ See, eg, 1961 UN Commentary, above n 5, 224.

⁵⁷ See Chatterjee, above n 4, 405; 1961 UN Commentary, above n 5, 252 and 1971 UN Commentary, above n 12, 290.

⁵⁸ 1971 UN Commentary, above n 12, 290.

shortcomings in reporting statistical data, such as incompleteness or inaccuracy, may result from some weaknesses in national drug control systems.⁵⁹ Thus, a study of statistical data may point out some defects of national system of drug control that need to be improved.

Narcotics Regime

Parties to the *1961 Convention* are obliged to furnish annual statistical returns of drug quantities used for medical and scientific purposes and for non-medical purposes not later than 30 June following the calendar year that the statistics relate to. In addition, they must submit quarterly statistics on imports and exports of narcotic drugs and poppy straw.⁶⁰ Statistical data on drug imports and exports are of extreme importance to prevent the diversion of international shipments into illicit channels and to avoid the imported quantities of drugs into one country exceeding its limitation. Therefore, these statistics need to be furnished to the Board one month after the end of the quarter to that they relate.⁶¹

Psychotropics Regime

Similarly to the earlier Convention, the *1971 Convention* requires Parties to furnish annual statistics on quantities of drugs manufactured, imported, exported and held in stock by manufacturers.⁶² However, certain differences between them exist. First, the scope of statistics relating to narcotic drugs is wider than that regarding psychotropic substances. Statistical returns on narcotic drugs must include data on drug consumption, whereas statistics on psychotropic substances need not include such information. This absence is regarded as an inadequacy of the statistics regime under the *1971 Convention*. It was for this reason that Parties are encouraged to submit their statistical data on the use of psychotropic substances on a voluntary basis.⁶³ Secondly, while under the *1961 Convention*, the scope of statistical returns does not differ between Schedules of narcotic drugs (excepting preparations)⁶⁴ and it varies slightly between Schedules of

⁵⁹ Ibid.

⁶⁰ 1961 Convention, above n 5, art 20(1)(d) and 1972 Protocol, above n 38, art 10.

⁶¹ 1961 Convention, above n 5, art 20(2) and 1972 Protocol, above n 38, art 10.

⁶² 1961 Convention, above n 5, art 16(4).

⁶³ See Resolution of the Economic and Social Council number 1576(L) of 20 May 1971 and 1985/15 of 28 May 1985 and Part III of form P concerning Annual statistical report on substances listed in the 1971 Convention.

⁶⁴ 1961 Convention, above n 5, art 2(3),(4). The statistical returns of preparations in Schedule III are restricted to the quantities of drugs to be used for the manufacture of such preparations. Statistical returns of preparations other than those in Schedule III, distinct from statistical returns of the drugs they contain, are not required.

psychotropic substances.⁶⁵ Thirdly, the *1971 Convention* does not oblige Parties to furnish quarterly statistics on imports and exports of drugs, but supplementary statistical information relating to future periods on the quantities of substances to be exported and imported.⁶⁶ Nevertheless, due to significant cases of diversions and attempted diversions of psychotropic substances after the *1971 Convention* came into force, Parties are encouraged to submit voluntarily quarterly statistics of imports and exports of the psychotropic substances in Schedule II.⁶⁷

Precursors Regime

The *1988 Convention* resembles the earlier Conventions in that it requires Parties to furnish annual statistics of substances frequently used in illicit drug manufacture.⁶⁸ However, the scope of annual statistics required is very limited, as Parties are only bound to submit information on seized amounts and on non-controlled substances that are significantly involved in illicit drug manufacture.⁶⁹ Concerned at the increasing worldwide diversion of precursors into illicit channels in the 1990s, *Resolution 1995/20* of the UN Economic and Social Council invites Parties to furnish voluntarily to the Board information on licit trade and use of these substances.⁷⁰

In brief, the scope of information currently to be included in estimates and statistics of psychotropic substances and precursors is wider than that originally required under the *1971* and *1988 Conventions*. Although Parties are only encouraged to furnish related information on a voluntary basis, in practice, the systems of expanded estimates and statistics have now been firmly established.⁷¹ According to the latest reports of the Board, a large majority of countries and territories regularly submit

⁶⁵ For example, statistics for psychotropic substances in Schedule I need to include quantities manufactured, exported, imported and held in stocks by manufacturers. Statistics for the substances in Schedule II are similar to those required for substances in Schedule I but, additionally, include quantities used in the manufacture of exempt preparations and quantities used for industrial purposes. See 1971 Convention, above n 5, art 16(4).

⁶⁶ 1971 Convention, above n 5, art 16(5).

⁶⁷ See Resolutions of Economic and Social Council 1576(L) of 20 May 1971 and 1987/1 of 6 May 1981 (E/RES/1981/7) and form A/P of the Board.

⁶⁸ 1988 Convention, above n 5, art 12(12).

⁶⁹ Ibid.

⁷⁰ See Resolution of Economic and Social Council number 1995/20 (para 8, 9 and 13) and form D Annual Information on Substances Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances.

⁷¹ See United Nations, *Report on the International Conference on Drug Abuse and Illicit Trafficking: Vienna, 17-26 June 1987* (1987) 32 and INCB, *Effectiveness of the International Drug Control Treaties: Supplement to the Report of the International Narcotic Control Board for 1994*, above n 45, 4.

their estimates and statistics on the forms prepared by this body.⁷² Nevertheless, some Governments continue to confront difficulties in submitting complete estimates and statistics.⁷³

10.2.2 Estimates and Statistics under Vietnamese Legislation

The Vietnamese legal framework for estimates and statistics has been established since 1995. In that year, to bring national regulations into line with international standards with a view to ratifying the DCCs, the Ministry of Health (MOH) issued *Decision 939/QD-BYT* that promulgates the estimates and statistics control applicable to addictive drugs (Decision 939/QD-BYT 1995). Thanks to the estimates and statistics systems created by this instrument, Vietnam was able to furnish voluntarily its estimates and statistics of addictive drugs before it became a DCC Party.

Since Vietnam ratified the DCCs in 1997, its national control system of estimates and statistics has been considerably reinforced. In 1999, the MOH issued *Decision 2033/1999/QD-BYT to Promulgate the Control Regimes Applicable to Addictive Drugs and Addictive Substances* (Addictive Drug Control Regime 1999) that replaced *Decision 939/QD-BYT 1995*. Later, in 2001, it issued *Decision 3047/2001/QD-BYT to Promulgate the Control Regimes Applicable to Psychotropic Drugs and Psychotropic Substances* (Psychotropic Drug Control Regime 2001).⁷⁴ These two regimes are substantially similar to each other. As a result, all Vietnamese narcotic substances, i.e. all narcotic drugs and psychotropic substances under the DCCs, are subject to the same controls for estimates and statistics in Vietnam. Note

⁷² According to the report of the Board for 2005, with respect to narcotic drugs, 80% of the total 210 countries and territories all over the world furnished their estimates as required, while 81% and 90% of them furnished annual statistics and quarterly statistics of imports and exports, respectively. With respect to psychotropic substances, the number of countries that submitted their annual statistics is lower than that regarding narcotic drugs. Only 75% of the total 210 countries and territories submitted annual statistics. Almost all countries and territories submitted their assessments for requirements of psychotropic substances at least once, and 102 countries have already furnished a full revision of their assessments. See INCB, *Report of the International Narcotics Control Board for 2005* (2006), above n 54, [para 52, 56, 106, 109-10].

⁷³ Insufficiency of estimates and statistical data is often an indicator of deficiencies in national monitoring and reporting systems, especially in pharmaceutical areas. Ibid [55] and [60].

⁷⁴ These instruments later were simultaneously amended by *Decision 1442/2002/QD-BYT 2002* and *Decision 1443/2002/QD-BYT 2002*, respectively. As Vietnam neither makes temporary reservation against non-medical use of narcotic drugs nor permits domestic uses of coca leaves and poppy straw for non-medical purposes, it is exempted from the obligations to furnish non-medical estimates and statistics of those controlled drugs.

that the national estimates and statistics systems are also applied to precursors used in the pharmaceutical industry.

10.2.2.1 Estimates of Drugs Needed for Medical and Scientific Purposes

The present estimates systems applicable to nationally controlled substances under the *Addictive Drug Control Regime 1999* and the *Psychotropic Drug Control Regime 2001* are closely modelled on the regime provided under *Decision 939/QD-BYT 1995*. All units involved in licit drug activities are obliged to submit annual estimates of their anticipated needs for controlled drugs for the forthcoming year on the form specified by the MOH. At any time during the year, these units can submit supplementary estimates that may increase or decrease the anticipated amounts provided in the original ones. However, if estimates for the relevant year exceed those established for the preceding year, detailed explanations must be furnished.⁷⁵

Compared to the DCC provisions, Vietnamese regulations on estimates appear to be more stringent. First, under the national provisions, any estimates exceeding the anticipated quantities for the preceding year are bound to be accompanied with supporting explanations. In contrast, under the DCCs, it is not mandatory for Parties to furnish explanations for their growing estimates.⁷⁶ In practice, for the purpose of ensuring the availability of drugs necessary for medical therapies, the official UN Commentary even advises Parties to allow an increase of around 10% in national drug consumption to provide for the growth of population, developments in medical areas and trends in the incidence of diseases.⁷⁷ Secondly, under the national provisions, psychotropic substances are also subject to the estimates system, whereas, under the international provisions, they are not subject to the mandatory

⁷⁵ *Quy Che Quan Ly Thuoc Gay Nghieng ban hanh kem theo Quyét Dinh 2033/1999/QĐ-BYT 1999* (Bo Y Te) art 8 [trans: *Control Regime applicable to Addictive Drugs promulgated by Decision 2033/1999/QĐ-BYT 1999* (Ministry of Health)] (hereinafter *Addictive Drug Control Regime 1999*) and *Quy Che Quan Ly Thuoc Huong Tam Than ban hanh kem theo Quyét Dinh 3047/2001/QĐ-BYT 2001* (Bo Y Te) art 8 [trans: *Control Regime Applicable to Psychotropic Drugs Promulgated by Decision 3047/2001/QĐ-BYT 2001* (Ministry of Health)] (hereinafter *Psychotropic Drug Control Regime 2001*). With respect to the estimate control applied to drug manufacturing enterprises, see also Chapter 5 for more information.

⁷⁶ The Parties are not required to furnish explanations for their estimates that exceed the estimates of the preceding year, though the Board may request them to do so in relation to any statement included in their own estimates. See 1961 Convention, above n 5, art 13(4).

⁷⁷ The growth in drug consumption can possibly be anticipated to be higher due to some special factors, such as rapid socio-economic developments or introduction into use of new drugs. See 1961 UN Commentary, above n 5, 224 and see also Chatterjee, above n 4, 411.

estimates system but only voluntary simplified estimates. Thirdly, under Vietnamese legislation, precursors used in the pharmaceutical industry are also subject to the estimates system. In marked contrast, under the *1988 Convention*, the estimates system is not applied to precursors.

10.2.2.2 Statistics on Quantities of Drugs Used for Medical and Scientific Purposes

Under the present Vietnamese control regimes, all units involved in drug activities are obliged to report drug statistics in the time, form and in the manner specified by the MOH.⁷⁸ They are bound to submit monthly, half-yearly and yearly statistical reports on the actual quantities of drugs used.⁷⁹

Additionally, all units involved in drug imports are bound to submit statistics of imports not later than 10 days from the actual importing date. These statistics have to be made on the form specified by the MOH.⁸⁰ In relation to this point, it should be noted that drug exports are not subject to such a control. This may originate from the fact that Vietnam is mainly a drug importing country.⁸¹

Similar to the national estimates system, the domestic provisions on statistics are more stringent than the general DCC requirements. The same Vietnamese statistics system applies to narcotic drugs, psychotropic substances and precursors used in pharmaceutical industry. In contrast, under the DCCs, the scope of statistics concerning psychotropic substances and precursors is more limited, as compared to that relating to narcotic drugs. In addition, under the relevant Vietnamese regulations, statistics of imports have to be furnished soon after the importation.

⁷⁸ Addictive Drug Control Regime 1999, above n 75, art 16(2) and Psychotropic Drug Control Regime 2001, above n 75, art 16(2).

⁷⁹ *Quyết Định số 1442/2002/QĐ-BYT về việc Sửa Đổi, Bổ Sung Một số Điều của Quy Chế Quản Lý Thuốc Gay Nghiện ban hành kèm theo Quyết Định số 2033/1999/QĐ-BYT 2002* (Bo Y Te) art 1(5) [trans: *Decision 1442/2002/QĐ-BYT on Amendments and Supplements to Some Articles of the Control Regime Applicable to Addictive Drugs attached to Decision 2033/1999/QĐ-BYT 2002* (Ministry of Health)] (hereinafter *Decision to Amend Addictive Drug Control Regime 2002*) and *Quyết Định số 1443/2002/QĐ-BYT về việc Sửa Đổi, Bổ Sung Một số Điều của Quy Chế Quản Lý Thuốc Huống Tam Than ban hành kèm theo Quyết Định 3047/2001/QĐ-BYT 2001* (Bo Y Te) art 1(5) [trans: *Decision 1443/2002/QĐ-BYT on Amendments and Supplements to Some Articles of the Control Regime Applicable to Psychotropic Drugs attached to Decision 3047/2001/QĐ-BYT 2002* (Ministry of Health)] (hereinafter *Decision to Amend Psychotropic Drug Control Regime 2002*).

⁸⁰ Addictive Drug Control Regime 1999, above n 75, art 16(1); *Decision to Amend Addictive Drug Control Regime 2002*, above n 79, art 1(4); *Psychotropic Drug Control Regime 2001*, above n 75, art 16(1) and *Decision to Amend Psychotropic Drug Control Regime 2002*, above n 79, 1(4).

⁸¹ Duy Cuong Nguyen, 'Chan Chinh Cong Tac Xuat Nhap Khau trong Nganh Duoc' (1994) 1 *Duoc Hoc* 2, 4 [trans: Duy Cuong Nguyen, 'Reorganization of Import and Export in the Pharmaceutical Industry' (1994) 1 *Pharmacy* 2].

Such a requirement helps the competent national authorities to disclose expeditiously whether the import quantities of the controlled substances are constrained within corresponding estimates.

10.3 Furnishing of Other Drug Control Information

10.3.1 Annual Report Questionnaire

The ARQ prepared by the Commission is composed of three parts. Part I collects information on legislative and administrative measures of drug control, including information on changes in laws and regulations in relation to the DCC implementation during the reporting year,⁸² and names and addresses of national competent authorities involved in drug control.⁸³ Many questions for Part I are designed to find out if Parties have applied appropriate control measures to the scheduled substances and if there is any increase in licit drug manufacture in their countries (i.e. names and addresses of enterprises which are licensed to manufacture drugs, and types and quantities of drugs to be manufactured).⁸⁴ Additionally, this Part asks for information on drugs of abuse under national control but not yet under international control.⁸⁵

Part II focuses particularly on drug abuse, including its extent, patterns and trends. It contains a large number of questions that ask for a broad range of information on the abuse of drugs. For example: information on the prevalence of drug abuse among populations as a whole and youth population in particular, on drug treatments and on the capacity of Parties to collect drug abuse data.⁸⁶ In particular, Part II gathers detailed information on the situation of injection drug abuse (i.e. the practice of sharing needles, developing trends, the proportion of drug injectors); the situation of severe drug abuse (i.e. classification of drug abusers, new patterns, types of drugs used, and so on) and drug-related morbidity and mortality (i.e. estimates of infected drug users, residential areas and subgroups of drug injectors, the proportion of infected drug users among drug injectors, drug-related deaths and primary causes and trends). Information included in Part II is of immense importance for the assessment

⁸² See the ARQ E/NR, Part I, Question A1.

⁸³ See the ARQ E/NR, Part I, Questions D1 to D4.

⁸⁴ See the ARQ E/NR, Part I, Questions B1 to B 4.

⁸⁵ See the ARQ E/NR, Part I, Question C1.

⁸⁶ See the ARQ E/NR, Part II, structure of the questionnaire (page 2).

of drug abuse consequences and for developing policies on drug consumption reduction and drug harm reduction.

Part III is designed to collect data on the illicit supply of drugs, particularly the extent, patterns and trends in illicit drug cultivation, manufacture and trafficking. It contains six sections of questions concerning drug seizures and trafficking patterns; prices and purity levels of drugs available in the reporting country; related arrests by age, gender, nationality and occupation; illicit drug cultivation and production; and illicit drug manufacture and diversion from licit channels.⁸⁷ Information included in this Part is necessary for the Commission to evaluate the worldwide situation of drug trafficking and to develop strategies on drug supply reduction.

Noticeably, the ARQ consists of two types of questions, namely questions for qualitative information and questions for quantitative statistical estimates. Type-one questions do not focus on actual data; therefore, Parties can answer them on the basis of ‘summary expert opinions’.⁸⁸ In contrast, type-two questions focus on very specific and detailed information. Therefore, to complete these questions, a very comprehensive system of collecting information needs to be established. For example, regarding information on the estimated lifetime prevalence of drug abuse among the population, Parties are required to furnish the rate per 100 of drug abusers by age (i.e. a group from 15 to 64 years of age and a group of 15 to 16 years of age), sex (i.e. male and female) and each class of drugs (i.e. cannabis type, opioids, cocaine types, amphetamine type, sedatives and tranquilisers, hallucinogens, solvents and inhalants and other drugs).⁸⁹ Another example is information on drug seizure. Parties are asked for information on the quantity of drugs seized in accordance with each class and type of drugs, trafficking routes (i.e. countries of origin, transits and destinations) and means of transportation used (i.e. air, land, sea, rail and mail).⁹⁰

10.3.2 Responses by Vietnam to the ARQ and Its Legislation on Drug Statistics

The ARQ collects information relating to various aspects of national drug management as analyzed above. Therefore, a critical review of a country’s responses

⁸⁷ See the ARQ E/NR, Part III, structure of the questionnaire (page 2).

⁸⁸ See the ARQ E/NR, Part II, structure of the questionnaire (page 2).

⁸⁹ See the ARQ E/NR, Part II, Questions 8 to 14 (Q8 to Q 14).

⁹⁰ See the ARQ E/NR, Part III, Questions 1 to 7 (Q1 to Q7).

to the ARQs may disclose certain strengths and weaknesses of its national drug management system, including its national legal framework for drug control.

The Standing Office for Drug Control of Vietnam, as an assisting apparatus for the National Committee, is responsible for coordinating drug data provided by related authorities and for preparing national annual reports on the implementation of the DCCs. Due to unavailability of certain information, national ARQ responses are generally incomplete. However, some parts are more or less complete than others.

As mentioned above, Part I of the ARQ collects information on legislative and administrative measures for drug control. Vietnam faces no difficulties in providing that information. First, regarding laws and regulations to give effect to the DCCs, it should be mentioned again that legal instruments in Vietnam are hierarchical in authority.⁹¹ Subject to direction by the strong central government, local governments are only authorized to enact normative regulations that implement in detail laws and policies adopted centrally,⁹² but not to enact regulations that directly give effect to the DCC provisions. Therefore, at the national level, Vietnam needs to report on drug control laws and regulations issued by the National Assembly, the Standing Committee of National Assembly, the Government and its Ministries but not normative documents made by local People's Councils and People's Committees.

Secondly, regarding information on the national authorities empowered to issue drug import and export authorizations, under the *Decree on Controls of Domestic Licit Drug Activities 2001*, three national authorities are currently involved. The distinction between their respective jurisdictions are as follows: (i) the MOH (Pharmaceutical Department) issues authorizations relating to narcotic substances⁹³

⁹¹ See *Luat so 02/2002/QH-11 Sua Doi, Bo Sung Mot so Dieu cua Luan Ban Hanh Van Ban Quy Pham Phap Luat nam 1996, 2002* (Quoc Hoi) art 2 [trans: *Law 02/2002/QH-11 amending a Number of Articles of the Law on the Promulgation of Normative Documents issued in 1996, 2002* (Quoc Hoi)].

⁹² According to the Law on Organization of People's Committees and People's Councils, People's Committees at inferior levels are accountable to and directed by People's Committees at superior levels. People's Committees of Provinces are subjected to the central Government. See *Luat so 11/2003/QH11 To Chuc Hoi Dong Nhan Dan va Uy Ban Nhan Dan 2003* (Quoc Hoi) art 7 [trans: *Law 11/2003/QH11 on Organization of People's Councils and People's Committees 2003* (National Assembly)].

⁹³ Concerning the analysis of the case study of Vietnam, anywhere the term 'narcotic substances' is used its meaning should be referred back to Section 4.2 on controlled substances under Vietnamese legislation. Remember that narcotic substances under Vietnamese control include all narcotic drugs under the *1961 Convention* and psychotropic substances under the *1971 Convention*.

and precursors used for medical and scientific purposes; (ii) the Ministry of Public Security issues authorizations relating to narcotic substances and precursors used in the prevention and suppression of drug-related crimes and, (iii) the Ministry of Industry issues import and export authorizations of precursors used in industries, except the pharmaceutical industry.⁹⁴

Thirdly, Part I of the questionnaire requires Parties to furnish information on drug manufacturers and quantities of drugs manufactured. Under the *Decree on Controls of Domestic Licit Drug Activities 2001* and the *Addictive Drug and Psychotropic Drug Control Regimes*, only pharmaceutical enterprises licensed by the MOH are authorized to conduct drug manufacture,⁹⁵ and they must submit half-yearly and annual reports regarding quantities of each drug manufactured in the periods concerned.⁹⁶ As a result, data on the names and addresses of drug manufacturers in Vietnam and on the quantities of drugs they manufacture in the reporting year are available at the MOH. Thus, with the current national drug control regulations, Vietnam is able to supply detailed data in full response to relevant questions in Part I of the ARQ.

With respect to Part II of the ARQ, it is a matter of regret that Vietnam is unable to complete the majority of questions on drug abuse in its territory. It cannot provide estimates of drug abuse prevalence among its population with a breakdown into classes of drugs and sexes of drug abusers.⁹⁷ Estimated figures on drug injectors among all drug users and the proportion of drug users sharing needles or syringes are also non-existent.⁹⁸ Moreover, many questions regarding drug-related morbidity and mortality, such as the number of infected drug injectors, drug-related deaths and the

⁹⁴ See *Nghi Dinh so 80/2001/ND-CP Huong Dan viec Kiem Soat cac Hoat Dong Hop Phap Lien Quan den Ma Tuy o Trong Nuoc 2001* (Chinh Phu) arts 5 and 6(3) [trans: *Decree 80/2001/ND-CP Guiding the Control of Domestic Licit Activities in relation to Narcotics 2001* (Government)] (hereinafter *Decree on the Control of Domestic Licit Drug Activities 2001*).

⁹⁵ *Decree on the Control of Domestic Licit Drug Activities 2001*, above n 95, art 4(1) and *Addictive Drug Control Regime 1999*, above n 75, art 3(1) and *Psychotropic Drug Control Regime 2001*, above n 75, art 3(1).

⁹⁶ See *Nghi Dinh so 58/2003/ND-CP Quy Dinh Kiem Soat Nhap Khau, Xuat Khau, Van Chuyen Qua Canh Lanh Tho Viet Nam Chat Ma Tuy, Tien Chat, Thuoc Gay Nghien, Thuoc Huong Than 2003* (Chinh Phu) art 13 [trans: *Decree 58/2003/ND-CP Stipulating the Control of Importation, Exportation and Transit through Vietnam's Territory of Narcotic Substances, Precursors, Addictive Drugs and Psychotropic Drugs 2003* (Government)]. See also *Decision to Amend Addictive Drug Control Regime 2002*, above n 79, art 2(5) and *Decision to Amend Psychotropic Drug Control Regime 2002*, above n 79, art 2(5).

⁹⁷ See ARQ Responses by Vietnam for 2003, 2004 and 2005, Part II, Questions 8 and 9 (Q8 and Q9).

causes of death, are left unanswered.⁹⁹ Although a number of questions on drug treatment are answered, detailed responses on percentages of people receiving treatment for the first time broken down into sexes and mean age and on the proportion of drug injectors among general drug users are left blank.¹⁰⁰ It is even difficult for Vietnam to provide summary expert opinions on certain issues of drug abuse, such as the prevailing trend for each class and type of drugs being abused in the country,¹⁰¹ because national drug experts can hardly provide valuable opinions in the absence of reliable statistics.¹⁰²

With respect to legal aspects, it is observed that, in general, national legislation appears to be successful in pointing out the key authorities responsible for collecting statistical data on drug abuse at both the central and local levels. For example, under the *Law on Narcotics 2000*, at the central government level, the Ministry of Labor, War Invalids and Social Affairs (MOL) is responsible for collecting statistical data on drug abuse treatment and social rehabilitation over the whole country.¹⁰³ At the local government level, People's Committees of different administrative levels are charged with the collection of drug abuse information in their respective areas. Townlet and Ward People's Committees are the grassroots authorities responsible for collecting statistical figures on drug abuse in their local areas. In accordance with *Decree 56/2002/ND-CP on Organizing Family-based and Community-Based Drug Abuse Treatment 2002*, and *Decree 147/2003/ND-CP Promulgating Conditions and Procedures for Granting Permits to Establish Voluntary Drug Abuse Treatment Institutions 2003* (Voluntary Drug Abuse Treatment Decree 2003), these Townlet and Ward People's Committees are responsible for collecting data on drug

⁹⁸ See ARQ Responses by Vietnam for 2003, 2004 and 2005, Part II, Question 19 (Q19).

⁹⁹ See ARQ Responses by Vietnam for 2003, 2004 and 2005, Part II, Questions 23 and 42 (Q23 and Q42).

¹⁰⁰ See ARQ Responses by Vietnam for 2003, 2004 and 2005, Part II, Questions 53 to 57 (Q53 to Q57).

¹⁰¹ See ARQ Responses by Vietnam for 2003, 2004 and 2005, Part II, Questions 4 and 5 (Q4 and Q5).

¹⁰² Although certain information sought by the United Nations is not statistical in nature but interpretive, 'the accuracy of these interpretations is, however, dependent on the quality of the statistical data'. See Australian Bureau of Criminal Intelligence and National Crime Statistics Unit, *National Illicit Drug Statistics Framework: A Report by the Australian Bureau of Criminal Intelligence and National Crime Statistics Unit, June 1999* (1999) 19.

¹⁰³ Law on Narcotics 2000, above n 31, art 39(4). To perform its duty, this Ministry has recently enacted *Decision 1160/2004/QĐ-BLDTBXH on Periodical Statistical Reports and Initial Records of Drug Abuse Treatment and Rehabilitation 2004*.

abusers,¹⁰⁴ drug abuse treatment work and drug users returning to their local communities after treatment.¹⁰⁵ At the higher rank, Provincial People's Committees are generally charged with providing guidance and directions for inferior People's Committees to perform their statistical work.¹⁰⁶

Under the *Voluntary Drug Abuse Treatment Decree 2003*, drug abuse treatment and rehabilitation bodies are also bound to provide related drug abuse information to government authorities. They have responsibilities to make periodical reports on their work to the MOL in the manner and on the forms specified by this body.¹⁰⁷ In cases of drug-related deaths, they must report urgently to the local People's Procuracy.¹⁰⁸

Thus, the existing domestic laws and regulations have pointed out data collecting agencies but they are inadequate in respect of developing a comprehensive drug data system. The provisions of the *Law on Narcotics 2000* and relevant Decrees on drug abuse statistics are too general and are little more than frameworks. They are characterized by simplicity and lack of comprehensiveness, as they do not cover the collection, storage, dissemination and publication of information in detail.

The failure to provide for nationally-comparable drug abuse statistics is another shortcoming of the existing regulations. To establish a national drug statistics system comparable across sub-national administrative units, it is of importance that data items, definitions, classifications, standards and collecting rules be specified so that accurate drug abuse information is collected.¹⁰⁹ Unfortunately, the existing laws and implementing regulations omit to provide such specifications. *Decision 1160/2004/QĐ-BLDTBXH on Periodical Statistical Reports and Initial Records of*

¹⁰⁴ *Nghi Định số 56/2002/NĐ-CP về Tổ Chức Các Nghiệm Ma Túy tại Gia Đình và Cộng Đồng 2002* (Chính Phủ) art 19 [trans: *Decree 56/2002/ND-CP on Organizing Family-Based and Community-Based Drug Abuse Treatment 2002* (Government)].

¹⁰⁵ *Nghi Định số 147/2003/NĐ-CP Quy Định về Điều Kiện, Thủ Tục Cấp Giấy Phép và Quản Lý Hoạt Động của các Cơ Sở Các Nghiệm Ma Túy Tu Nguyễn 2003* (Chính Phủ) arts 27(2)(b) and 27(3)(a) [trans: *Decree 147/2003/ND-CP Promulgating Conditions and Procedures to Grant Permits to Establish Voluntary Drug Abuse Treatment Institutions 2003* (Government)] (hereinafter *Decree on Drug Abuse Treatment Institutions 2003*).

¹⁰⁶ *Decree on Drug Abuse Treatment Institutions 2003*, above n 105, art 27(1)(c).

¹⁰⁷ *Decree on Drug Abuse Treatment Institutions 2003*, above n 105, art 16(2)(d).

¹⁰⁸ *Decree on Drug Abuse Treatment Institutions 2003*, above n 105, art 17(2)(a).

¹⁰⁹ See, for example, Australian Bureau of Criminal Intelligence and National Crime Statistics Unit, above n 102, 3-5 and Economic and Social Commission for Asia and the Pacific of the United

Drug Abuse Treatment and Rehabilitation 2004 (Decision on Drug Abuse Statistics Reports and Records 2004) was enacted long delay after the *Law on Narcotics 2000* came into force but it also fails to provide rules to collect accurate information. The system of data items designed by this instrument is very simple (data on types of drugs commonly used by abusers and causes of drug-related deaths are not collected).

Additionally, discrepancies in data standards and classifications between the national statistical system and the internationally required information cause difficulties for Vietnam in implementing its obligations. For instance, the questionnaire generally focuses on two groups of drug abusers, namely those from 15 to 64 years of age and youth aged from 15 to 16 years. Moreover, the questionnaire asks for information on drug abusers who are considered ‘particularly problematic, chronic users or in need of help’.¹¹⁰ In contrast, under the *Decision on Drug Abuse Statistics Reports and Records 2004*, drug abusers in Vietnam are categorized into three groups, including young drug abusers (aged less than 12 years old); adolescent drug abusers (from 12 to 16 years of age) and general drug abusers (aged from and above 16 years old).¹¹¹ And, so far, Vietnam has not collected statistics on problematic or chronic drug abusers.¹¹² To cope with differences between drug statistics available in various countries, the questionnaire provides that Parties can submit figures on drug abusers for different age ranges if they do not have information for the preferred ages. However, Vietnam should consider making improvements in the national provisions on drug data statistics so that it can provide internationally comparable data.

Statistics are most useful when they can be related to other data, especially within the subject concerned, such as drug-related crimes.¹¹³ It is a shame that the present Vietnamese legal provisions for gathering drug abuse statistics do not lay down the

Nations, *Drug Abuse Data Collection, Analysis and Presentation: A Standard Format - Report of a Workshop* (1988) 13-4.

¹¹⁰ See the ARQ E/NR/, Part II, Questions 23 to 28 (Q23 to Q28).

¹¹¹ *Quyết Định số 1160/2004/QĐ-BLDTBXH về việc Quy Định Chế Độ Báo Cáo Thống Kê Dinh Dưỡng và Chế Độ Ghi Chép Ban Dấu và Công Tác Cải Nghiên Phục Hồi 2004* (Bộ Lao Động Thương Binh Xã Hội), report forms 01/BCNPH to 04/BCNPH [trans: *Decision 1160/2004/QĐ-BLDTBXH on Periodical Statistical Reports and Initial Records of Drug Abuse Treatment and Rehabilitation 2004* (Ministry of Labor, War Invalids and Social Affairs)].

¹¹² Ibid and see also ARQ Response by Vietnam for 2003, Part II, Question 23 (Q23).

¹¹³ See, eg, Department of Economic and Social Affairs, *Manual for the Development of System of Criminal Justice Statistics*, Studies in Method Series F No. 89 (2003) 3.

linkage of these data with other drug information. Consequently, Vietnamese authorities may be unable to keep track of persons across different health and police systems. The information network on illicit drugs is actually important for the coordination between law enforcement, health, social and other sectoral authorities engaged in drug control.¹¹⁴ For that reason, in the *Master Plan on Drug Control to 2010*, one of the goals that has been set is to establish a well-connected database on drug control.¹¹⁵

Part III of the questionnaire collects various data on drug trafficking, especially drug-related crimes. In comparison with drug abuse statistics (Part II), drug trafficking data in Vietnam are much more available, as they are an integral part of the national system of criminal justice statistics. From the year 2003, the criminal justice statistics system of the country has been strengthened. In accordance with *Decision 01/2003/VKSTC-TCCB on Organizing Apparatus of the Supreme People's Procuracy 2003*, the Statistics Bureau on Criminal Offenses under the Supreme People's Procuracy was established in that year to take responsibility for statistics on criminal offenses, including drug-related crimes.¹¹⁶ As a result, key data on drug-related cases, arrests and seizure are now available.

Nevertheless, again, due to some differences in data standards and classifications between the national system of criminal justice statistics and the international questionnaire, Vietnam faces certain difficulties in completing all of its questions. For example, the questionnaire focuses on three groups of drug offenders: (i) children under 15 years of age, (ii) youth from 15 to 24 years of age and (iii), adults from over 25 years of age.¹¹⁷ In contrast, under the *Criminal Code of Vietnam 1999*, criminal offenders in Vietnam are generally classified into three groups: (i) children from 14 to 16 years of age, (ii) youth from 16 to 18 years of age and (iii) adults from over 18 years of age. This Vietnamese classification is principally based on the humanitarian principle that juvenile offenders who are aged from 14 years and under 18 years are subjected to some exemptions and reduced penalties.¹¹⁸ Because of such

¹¹⁴ Australian Bureau of Criminal Intelligence and National Crime Statistics Unit, above n 102, 7-8.

¹¹⁵ Decision to Approve Drug Control Master Plan to 2010, above n 33, art 2(4).

¹¹⁶ See the text of Section 9.2.1.2 for cross-reference.

¹¹⁷ See the ARQ E/NR, Part III, Questions 20 and 23 (Q 20 and Q23).

¹¹⁸ Pursuant to Article 12 of the CCV 1999, only a person aged 14 or older is criminally liable for his or her conduct; and a person aged 14 or older but under 16 is only criminally responsible for serious

differences, Vietnam is unable to answer questions for details on drug-related arrests and offenders broken down into the age groups nominated in Part III.¹¹⁹

Many questions in Part III ask for quantities of drugs seized, broken down into classes and types of drugs measured in weight terms (kilograms/grams). Due to the lack of data classifications and standards, figures on drug seizures in Vietnam appear to be very crude. As heroin, cocaine and cannabis are popular illicit drugs, separate statistical figures on the seizure of these types of drugs exist, but separate statistics on other drug types (i.e. amphetamine type, hallucinogens, sedatives and tranquilisers and other drugs) are not available. All drugs other than those of opioids, coca type and cannabis type are generally considered ‘synthetic drugs’ and the quantity seized is measured in varied units dependent on the status quo, such as tablets, ampoules, bottles and doses.¹²⁰

To sum up, up until now, Vietnam has been unable to provide complete ARQ reports. The lack of domestic regulations on data standards, classifications, rules for collecting appropriate figures, and on some definitions used in the national system of statistics has been one of the causes of difficulties faced by Vietnam in providing internationally comparable drug information.

10. 4 Conclusion

In compliance with the DCC provisions on furnishing information, Vietnam has furnished the international drug control bodies with its responses to the ARQ, and estimates and statistics on quantities of drugs needed for medical and scientific purposes. Its fulfilment of drug estimates and statistics requirements, however, is more complete than its response to questionnaires. This partly originates from the fact that it has created an elaborate legal framework for domestic estimates of, and statistics on, quantities of drugs needed for medical and scientific purposes, whereas

crimes intentionally committed or particularly serious crimes. In addition, under Chapter IX of the *CCV 1999* (i.e. Article 68 to Article 77), juvenile persons under 18 are subject to some exemption and reduction of penalties. See *Bo Luat Hinh Su Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1999* (Quoc Hoi) art 12 and arts 68-77 [trans: *Criminal Code of Vietnam 1999* (National Assembly)].

¹¹⁹ For example, in the ARQ Responses of Vietnam for 2003 and 2004, Questions 20 and 23 (Q20 and Q23) are left unanswerable.

¹²⁰ See ARQ Responses by Vietnam for 2003, 2004 and 2005 for 2003 and 2004, Part III, Question 8 (Q8) and additional information.

it has not yet established detailed regulations on collecting, managing and disseminating data in regard to drug abuse and illicit drug trafficking.

As mentioned earlier, at the periodical meeting of the National Committee in 2005, the Prime Minister emphasized the need to enhance the national system for drug information and the need to promulgate detailed regulations on this issue. To develop a comprehensive system for drug statistics, it is necessary that national lawmakers consider the promulgation of a normative instrument particularly dealing with drug statistics. Such a document should be user-oriented¹²¹ and contain detailed specifications on key data items, accompanying definitions, classifications, standards and accounting rules required to collect accurate and meaningful information.¹²² Furthermore, such an instrument needs to develop a standardized format and model for drug data collection in order to provide national statistics comparable across the country. The establishment of a drug database should also aim at linkage with related bodies of statistics, such as databases of crimes, rehabilitation and so on, to enable national authorities to keep track of persons across different health and police systems.

From the comparative point of view, the ARQ and other report forms of the Commission and the Board, such as estimates and statistics reports, may serve as good reference points for Vietnam to embark on similar types of data collection. The convention requirements should be taken into account while drafting the national

¹²¹ See, for example, Economic and Social Commission for Asia and the Pacific of the United Nations, above n 127, 17 and Department of Economic and Social Affairs, above 131, 3.

¹²² Australian Bureau of Criminal Intelligence and National Crime Statistics Unit, above n 103, 9-10 and Economic and Social Commission for Asia and the Pacific of the United Nations, above n 127, 13 and 18.

provisions on drug statistics. Ideally, domestic data on drug control should be collected in the manner that permits inter-country comparison.

11 CONCLUSION

As set out in Chapter 1, the key concern of this Thesis is to examine the legislative implementation by Vietnam of its obligations under the DCCs and to seek to enhance its compliance with the DCCs in particular and to improve its legal framework for drug control in general. Using a comparative methodology, Chapters 4 to 10 have analyzed in detail the adequacy of Vietnamese domestic legislation in implementing drug controls by reference to the standards set out in the DCCs as benchmarks. The findings of this research are summarized here and recommendations are offered for improvements of Vietnam's national legislation in each specific area of drug control.

11.1 Controlled Substances

The Vietnamese *Law on Narcotics 2000* and its implementing regulations successfully bring all DCC-specified narcotic drugs, psychotropic substances and precursors under control. Based on the pattern introduced by the *Model Drug Abuse Bill 2000* of the United Nations International Drug Control Program, it lumps narcotic drugs together with psychotropic substances and calls them 'narcotic substances' (*Chat Ma Tuy*).¹ In this manner, it reduces the eight convention drug Schedules into three national Schedules that create significant uniformity and simplicity in domestic drug control legislation. It also brings together precursors and essential chemicals frequently used in illicit drug manufacture enumerated in Tables I and II of the *1988 Convention* and lists them in one Schedule entitled 'Precursors' (*Tien Chat*).

Additionally, and in contrast to the DCCs, the national law provides conceptual definitions of narcotic substances in addition to listing them in three Schedules. This dual approach, i.e. a combination of the enumerative and descriptive methods, appears to satisfy the national political circumstances that require a great number of individuals, families and the public organizations to be actively involved in the battle against narcotic substances. The conceptual definitions, which emphasize the dependence-producing characteristics of the controlled substances, provide the mass of people with an overall understanding of the reasons why they must combat illicit

¹ Hereinafter, whenever the term 'narcotic substances' is used, it refers to substances specified under Vietnamese law. See Section 4.2.2 for a detailed analysis of their definition and Schedules.

use and trafficking, without the need to refer to enumerated Schedules with complicated scientific names and chemical structures.

Although this combination of approaches is advantageous in the national political context, it creates some new problems. First, there are inconsistencies between the conceptual definition and their Schedules. According to their definition, ‘narcotic substances’ means addictive substances and psychotropic substances listed in Schedules. However, the Schedules do not point out which substances are addictive and which are psychotropic. Unfortunately, the Vietnamese control regime for licit drug activities require this distinction to be spelled out. Secondly, the definitions of narcotic substances, addictive substances and psychotropic substances under Vietnamese legislation appear to be incomplete due to the failure to elucidate several terms used in their wording.

Thus, first, to create consistency between the definition of narcotic substances under the *Law on Narcotics 2000* and the enumerative Schedules under *Decree 67/2001/ND-CP promulgating the Schedules of Narcotic Substances and Precursors 2001* (Narcotic Substance Schedules Decree 2001), the Schedules should indicate clearly which substances are addictive and which are psychotropic substances.

Secondly, to complete the definitions of nationally controlled substances, it is necessary that Article 2 of the *Law on Narcotics 2000* further explains the terms ‘abuse’, ‘independence’, ‘production’ and ‘manufacture’ used in the language of those definitions. The World Health Organization has provided definitions of ‘abuse’ and ‘independence’, and the *1961* and *1971 Conventions* provide definitions of ‘production’ and ‘manufacture’. Vietnamese lawmakers could refer to those valuable sources while drafting national provisions.

11. 2 Controls on Licit Drug Activities

Responding to the obligations in the DCCs to limit the availability of drugs of abuse exclusively for medical and scientific needs, Vietnam has brought licit drug activities in its jurisdiction under various control measures contemplated by these

Conventions. It has strictly prohibited the cultivation of opium poppy and other drug-producing plants over the whole territory of the country since 1997.²

The manufacture as well as importation of both narcotic drugs and psychotropic substances into Vietnam is subjected to quantitative restrictions. Manufacturers must annually submit their estimates of materials needed for drug manufacture, for each forthcoming year, to the Pharmaceutical Department of the Ministry of Health and have to limit the quantity of materials purchased to within the amount confirmed by this authority. Importers and exporters are similarly obliged to furnish annual estimates of anticipated quantities of drugs to be imported and exported for a forthcoming year and have to limit the imported amount to within the confirmed estimates. Precursor manufacturers must register their operational plans, for a forthcoming year, with the Ministry of Industry and must restrict their manufacture to within the approved plans.

Each importation and exportation of narcotic drugs, psychotropic substances and precursors into or out of Vietnam requires an authorization issued by the competent authority, namely the Ministry of Health and the Ministry of Industry, in which the name and quantity of drugs to be imported are clearly specified. Additionally, each lawful shipment of these substances transiting through the territory of Vietnam must obtain a transit authorization issued by the Ministry of Public Security.

Responding to the requirements of the *1961* and *1971 Conventions*, various licit drug activities in Vietnam are subject to licensing controls. To conduct the manufacture, import and export of narcotic substances, a relevant enterprise must obtain a special permit, issued by the Ministry of Health (Pharmaceutical Department). The wholesale and retail sale of drugs of abuse, except for the government monopoly on wholesale of addictive drugs, however, is not subject to licensing control.³ Departing from the DCCs, Vietnamese law imposes upon these activities controls based on estimates instead of licensing, i.e. all pharmaceutical enterprises conducting wholesale, and pharmacies conducting retail sale, of narcotic drugs and psychotropic substances are not required to obtain a special permit, but they must limit drug sales to within the estimates confirmed by the Pharmaceutical Department. This national

² In this year Vietnam ratified the three DCCs.

approach is advantageous as it creates a direct limitation on the quantity of drugs available for domestic sale. But, on the other hand, as compared to licensing, it does not enable the Ministry of Health to limit the number of pharmacies involved in drug sales by means of special permits.

Under Vietnamese drug control law, persons responsible for the manufacture, trade and distribution of narcotic substances must obtain specified qualifications in pharmaceutical studies and practical experience, such as a university pharmaceutical diploma and five years' working experience in drug manufacture. Those conditions are reduced to fill the shortage of qualified trained personnel in remote and under-developed areas. Persons convicted of criminal offenses and serving administrative sanctions for breaching medical and pharmaceutical regulations are prohibited from engaging in activities relating to narcotic drugs and psychotropic substances.

In line with the DCC requirements, drug retail sale and distribution in Vietnam is also subject to control through medical prescriptions. Drug labels must include the phrase 'Prescription Only' and must indicate their international non-proprietary name. They must also describe the exact drug content by weight or by percentage. Information necessary for the safety of users must be provided either on the labels or on leaflets accompanying retail packages containing drugs. The advertisement of both narcotic substances and precursors to the public is entirely prohibited.

In compliance with the *1961* and *1971 Convention* provisions, Vietnamese law requires all enterprises and persons involved in licit drug activities in the country to maintain records for at least five years. Those records must indicate the name and quantity of drugs involved.

Despite these successes in convention implementation, the failure to establish several control measures over domestic licit drug activities under Vietnamese law, as set out under the DCCs, makes the national licit drug control regime not fully compliant with Conventions' standards.

First, Vietnamese law fails to impose control by periodical licensing on drug manufacture, although this measure is mandatory under the *1961 Convention*. It also

³ See Section 5.4.2 for a detailed analysis.

omits to control the quantity of drugs that may be accumulated and stockpiled in the possession of manufacturers, traders and distributors during the course of their business, as required by this Convention.

Another gap is that it omits to apply licensing control over premises and buildings where licit drug activities take place. This omission may provide circumstances for theft or other diversions of licit drugs into illicit channels. This measure is mandatory under both the *1961* and *1971 Conventions*.

Moreover, under these Conventions, the importation and exportation of drugs to bonded warehouses is prohibited, unless the Government certifies that it is allowed in the import/export authorization. Vietnamese drug control law, however, is silent on this issue.

Thus, to create a DCC-compliant control regime in Vietnam, the *Decree on the Control of Domestic Licit Drug Activities 2001*, the *Addictive Drug Control Regime 1999* and the *Psychotropic Drug Control Regime 2001* need to impose periodical licensing on drug manufacture in order to enable the government authorities to adjust periodically the total amount of drugs available in the country. Further, to prevent drug manufacturers, traders and distributors from over-accumulating excessive stockpiles, the *Addictive Drug Control Regime 1999* and the *Psychotropic Drug Control Regime 2001* should also specify the maximum quantity of drugs that they are authorized to accumulate during their normal course of business, so as to avoid overstocks.

To be in line with the mandatory requirements of the *1961* and *1971 Conventions*, the abovementioned instruments also need to include a new provision requiring each establishment and premise in which drug activities (except for retail sale) take place to obtain a special permit.

Vietnamese lawmakers should also consider prohibiting the importation and exportation of drugs to bonded warehouses for the purpose of preventing theft or other diversions of drugs stored there.

Additionally, although Vietnamese law is substantially in compliance with the DCCs, a number of weaknesses concerning some aspects still exist. In respect of

quantitative controls on drug manufacture, its indirect control over materials used in drug manufacture is problematic, because the quantities of drugs obtained from the same amount of materials may be varied using different technologies. Furthermore, the current Vietnamese regulations on record keeping relating to precursors are merely of a framework nature. They do not prescribe any forms or templates to be used, leading to a wide divergence in data collection. Moreover, it appears to be impractical to require transporters to record data on the qualities of the transported precursors. It is recommended here that, to strengthen Vietnam's legal control on drug manufacture, direct control should be imposed on the quantity of drugs to be manufactured instead of the current indirect quantitative restrictions on raw materials. For the purpose of practical application, the *Precursor Control Regime 2003* should further provide for forms or templates relating to records of precursor activities. In addition, the requirement that drug transporters must keep records on qualities of transporting precursors is impractical and, therefore, should be removed.

11.3 Criminalization of Drug-Related Offenses

11.3.1 Drug-Related Offenses

The Vietnamese criminalization of drug-related offenses corresponds well with the penal provisions of the DCCs. The *Criminal Code of Vietnam 1999* (CCV 1999) criminalizes a wide range of drug-related offenses, including offenses that are newly prescribed under the *1988 Convention*, such as money laundering and offenses relating to precursors and equipment and materials used in illicit drug manufacture.

The *CCV 1999* combines several distinct convention offenses to create the following Vietnamese supply-related offenses:

- (i) Cultivating opium poppy and other kinds of plants bearing narcotic substances;
- (ii) Unlawful manufacturing of narcotic substances;
- (iii) Unlawful stockpiling, transporting, trading or appropriating of narcotic substances;
- (iv) Unlawful stockpiling, transporting, trading or appropriating of precursors to be used for the illicit manufacture of narcotic substances;
- (v) Unlawful manufacturing, stockpiling, transporting, trading or appropriating of equipments and tools to be used for the illicit manufacture of narcotic substances or the illegal use of narcotic substances;

- (vi) Breaching the regulations on management and use of addictive drugs and other narcotic substances;
- (vii) Legalizing money or property generated from crime;
- (viii) Harboring or consuming illicit property that other persons have obtained from the commission of a crime.

As analyzed in Chapter 6, the Vietnamese offenses listed in paragraph (i), (ii), (iii) and (v) above also deal with conduct committed merely for personal drug use. In contrast, the *1988 Convention* requires criminalization of only a few of these activities in relation to personal consumption, namely drug cultivation, possession and trade. Thus, some of these Vietnamese offenses go beyond the Convention's requirements. Additionally, departing from the DCC penal provisions, the *CCV 1999* creates a number of other consumption-related crimes, including (i) illegal use of narcotic substances, (ii) organizing the illegal use of narcotic substances, (iii) harboring the illegal use of narcotic substances, and (iv) forcing and inducing another to use narcotic substances illegally. Thus, compared to the DCCs, Vietnamese law criminalizes a considerably wider range of consumption-related offenses. It presents remarkably strong drug-related criminalization that goes beyond compliance requirements and could provide reference models for the official United Nations Commentary on *1988 Convention* implementation considerations.⁴

Regarding criminalization of inchoate and accessory offenses, the Vietnamese criminal law also successfully transforms the DCC provisions. Under the *CCV 1999*, a person who prepares or attempts to commit an offense must be criminally responsible for his or her conduct. A person who aids and abets the commission of an offense is also criminally liable for that offense. Such secondary participation may be: (i) organizing, managing or commanding the commission of a crime, (ii) inciting, inducing, encouraging or persuading others to commit a crime, and/or (iii) physically or mentally assisting others to commit a crime.

⁴ Upon the request of the Commission on Narcotic Drugs and the United Nations Economic and Social Council, the 1988 UN Commentary, as compared to the *1961* and *1971* UN Commentaries, has included a supplementary section on the practical implementation of the Convention which, in certain cases, summarizes practices in different countries as examples for others. See United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988: Done at Vienna on 20 December 1988* (1998) preface page.

Despite these instances of successful compliance, the criminal law of Vietnam omits to criminalize the unlawful manufacture of precursors, although this offense is mandatory under the *1988 Convention*. To attack every angle of illicit drug trafficking and to bring the Vietnamese criminalization of drug-related offenses completely in line with the DCCs, the *CCV 1999* needs to be amended to establish the unlawful manufacture of precursors as an offense. Thus, a new offense of ‘Unlawful manufacturing of precursors to be used for the illicit manufacture of narcotic substances’ should be inserted or the current offense of ‘Unlawful stockpiling, transporting, trading or appropriating of precursors to be used for the illicit manufacture of narcotic substances’ should be revised to cover this form of conduct.⁵

Not concerning the DCC compliance but, rather, the national drug-related criminalization in general, a few shortcomings in domestic law are noticeable. Vietnamese criminal law fails to provide a clear differentiation in physical and mental elements between some offenses, for example, between organizing the illegal use of narcotic substances and inducing the illegal use of narcotic substances, causing discrepancies in their practical application. To avoid inconsistency of interpretation by local courts of the elements of those offenses, official guidance by the Supreme People’s Court is needed. It is suggested here that the test used to differentiate between these two offenses should be whether an induced person is already a drug user or not.

The *CCV 1999* also omits to prescribe the threshold amount of drugs necessary to be criminally liable for the offenses of ‘Unlawful manufacturing of narcotic substances’ and ‘Unlawful stockpiling, transporting, trading or appropriating of narcotic substances’, causing uncertainty as to the legal base of the quantitative threshold specified in the *Joint Circular 01/TTLT/TANDTC/VKSNDTC/BNV Guiding the Application of the Amended 1985 Criminal Code 1998 (JC 1998)*. To ensure fair treatment for a person who possesses or purchases a small amount of drugs for personal use, as well as to avoid unnecessary arguments relating to the legal base of the *JC 1998* concerning the minimum amount of narcotic substances for the

⁵ I.e. Article 195 of the *CCV 1999* should be read as follows: ‘Unlawful *manufacturing*, stockpiling, transporting, trading or appropriating of precursors to be used for the illicit manufacture of narcotic

possessor to be criminally liable, the *CCV 1999* needs to straightforwardly address this issue.

11.3.2 Penalties

Responding to the DCC call for adequate punishments, gaol is the principal penalty for Vietnamese drug-related offenses. Life imprisonment or the death sentence can be imposed in major drug-trafficking cases. Furthermore, drug-related criminals may be subjected to pecuniary sanctions (i.e. fines) and confiscation of part or whole of their properties as additional penalties. However, in a departure from the DCCs, the *CCV 1999* does not establish education, treatment and rehabilitation as alternative measures to conviction or punishment. It also does not establish them as additional sanctions but, during the time of serving their sentences, criminals are provided with various education and rehabilitation programs and compulsory treatment if necessary.

Responding directly to various aggravating factors listed under the *1988 Convention*, the *CCV 1999* specifies a number of factors that Vietnamese courts must take into account in sentencing, i.e. aggravating factors. They include, for example, a prior conviction, the commission of a drug-related offense in organized crime, the fact that the offender employs his official position to facilitate the commission of a crime, the victimization and use of minors, and the use of dangerous means capable of causing harm to many persons.

Going beyond the DCC requirements, domestic law specifies some rules guiding the scale of gaol sentences for incomplete to complete offenses. This is an advantage of Vietnam's domestic law. However, it omits to specify the proportional pecuniary penalties applicable to inchoate as compared to complete offenses. Vietnamese lawmakers should consider amending Article 52 of the *CCV 1999* with a view to extending the application of the currently specified proportion for gaol sentences (termed 'principal penalties') to cover also fines (termed 'additional penalties').

Additionally, the *CCV 1999* specifies that the quantity of drugs involved in an offense is an objective factor in sentencing. However, its failure to specify a precise

proportional relationship between penalties and the quantity of various types of substances that have been involved in traffic has led to discrepancies in interpretation by local courts. A similar shortcoming is found in respect of precursors in solid form. Thus, the national criminal law would be more complete if the *CCV 1999* could also specify the proportional relationship between penalties and the quantities of various types of substances and of precursors in solid form. Due to the large number of narcotic substances, it may be impractical to tailor such proportions in terms of each substance. Therefore, it is recommended here that a penal relationship be established for each group of substances set out in the Schedules.

11. 4 Jurisdiction and Extradition

11.4.1 Jurisdiction

Vietnam asserts its criminal jurisdiction over all drug-related crimes committed within its national boundaries. It also customarily expands jurisdiction over offenses committed on board ships and aircrafts registered under its law. Thus, the Vietnamese territorial jurisdiction provisions are fully compliant with the DCC requirements for territorial jurisdiction.

The DCCs also call for extraterritorial jurisdiction. Based upon the relationship between a state and its citizens, Vietnam assumes jurisdiction over offenses committed by its nationals outside its territory, i.e. it assumes jurisdiction over extraterritorial offenses on the principle of nationality. Vietnam's exercise of jurisdiction in these cases, however, is only optional. Similarly, it exercises optional jurisdiction over extraterritorial offenses that have been committed by stateless persons who permanently reside in its territory. These Vietnamese provisions are in line with the *1988 Convention* provisions on optional territorial jurisdiction on the ground of the nationality principle.

However, Vietnam does not assume jurisdiction over drug-related offenses committed by foreign nationals outside its territory even when they are committed with a view to committing a crime inside its borders, i.e. it does not assume jurisdiction over extraterritorial offenses based on the international law principle of effects. Under the *1988 Convention*, this ground for establishing extraterritorial jurisdiction is only discretionary, with the result that current domestic law is in line

with the DCC standards. Nonetheless, this reflects a narrow approach to Vietnamese jurisdiction over extraterritorial offenses. It limits state judicial power. Thus, Vietnamese authorities cannot enforce their criminal rules against inchoate and accessory offenses committed by foreigners outside national boundaries with the aim of committing offenses inside its territory, even if those criminals are subsequently found in Vietnam. It is recommended here that, based on the principle of effects provided under Article 4(1)(b)(iii) of the *1988 Convention*, Article 5 of the *CCV 1999* be revised to allow local courts to enforce Vietnamese criminal rules against offenses committed by a foreigner outside national territory.

In addition, being a coastal country, the *CCV 1999* should allow Vietnamese courts to establish criminal jurisdiction over vessels exercising freedom of navigation in accordance with international law, and suspected of involvement in illicit drug trafficking, subject to the agreement of the flag state. This optional ground for exercising extraterritorial jurisdiction is innovatively introduced by Article 4(1)(b)(ii) of the *1988 Convention*.

11.4.2 Extradition

It is unfortunate that Vietnam made full reservations against all DCC provisions on extradition. Up until now, its domestic legislation on extradition remains poorly established. In 2003, the *Criminal Procedure Code of Vietnam 2003* (CPC 2003), for the first time, laid down some basic rules on extradition. These rules, however, are still of a skeletal framework nature although the pending *Law on Mutual Legal Assistance and Extradition* will provide an elaborate legal framework for extradition cooperation. When this law is enacted, Vietnam should consider the call of the International Narcotic Control Board to remove its reservation against the DCC provisions on extradition.

Under the draft *Law on Mutual Legal Assistance and Extradition* (Draft Law), refusal of extradition is mandatory in cases where the act or omission for which a person is requested does not amount to a crime under Vietnamese criminal law (i.e. for which there is a lack of dual criminality). Unfortunately, the *CPC 2003* makes this ground of refusal only optional. This inconsistency between the two instruments will cause confusion in their application and should be resolved. For several reasons,

it is recommended here that the relevant provision of the *Draft Law* should follow the pattern of the *CPC 2003*. First, as analyzed in Section 7.2.2.2, many bilateral treaties between Vietnam and others follow the pattern of the *CPC 2003*. Secondly, reflecting the increasing need for international cooperation in extradition, the *United Nations Model Treaty on Extradition* does not provide dual criminality as a ground for refusal of extradition. Vietnam should consider this model law while drafting its own provisions.

11. 5 Law Enforcement Cooperation

In a number of its normative documents, Vietnam explicitly indicates the willingness to enhance and to broaden cooperation with others for the purpose of suppressing illicit drug trafficking. Its national legislation in this field, however, is still sub-standard and needs further development.

11.5.1 Mutual Legal Assistance

It is again a matter of regret that, up until now, the DCC provisions on mutual legal assistance have not been adequately transformed into Vietnamese domestic law. The *Law on Narcotics 2000* and the *CPC 2003* only set out some basic principles as regards cooperation on the basis of reciprocity and optional grounds for refusal of assistance. Nevertheless, a strong point of Vietnamese legislation is that it does not make legal assistance conditional on the existence of a treaty. Another laudable point is that, in line with the *1988 Convention* provisions, bank secrecy and political/fiscal offenses are not provided as grounds for refusing legal assistance. Except for these, Vietnamese domestic law has not prescribed various specific issues relating to mutual legal assistance, such as the content and language of assistance requests, limitation on the use of information and evidence, rights and obligations of persons who consent to depart to foreign states to give evidence, and procedures for handling assistance requests. As a consequence, national authorities face still many legal procedural difficulties in international cooperation in this field which, in some cases, bring international cooperation to a standstill.

The lack of an elaborate legal framework for mutual legal assistance is the biggest obstacle to Vietnamese cooperation with other countries in the suppression of drug-related offenses. The enactment of the *Law on Mutual Legal Assistance and*

Extradition should overcome this problem. Furthermore, as it is hard to conclude a bilateral treaty with every individual state, it would be helpful if the draft of this Law could be amended to include a new provision that allows national authorities to rely on the *1988 Convention* as a legal basis for cooperation with others if there is no applicable bilateral treaty.

11.5.2 Confiscation

The *1988 Convention* requires the Parties to enable confiscation at the national level and to cooperate with one another at the international level for the purpose of enforcing extraterritorial confiscation. The national legal framework of Vietnam is strong on domestic confiscation but weak on international confiscation cooperation.

The forfeitable objects identified under Vietnamese domestic law correspond well with the requirements of the *1988 Convention*. They include four groups, i.e.: (i) materials, equipment, tools or other instrumentalities that are used in or intended for the commission of a crime; (ii) narcotic substances and precursors; (iii) properties generated from the commission of a crime and properties purchased or exchanged from money or properties gained from the commission of a crime; and (iv) properties under the ownership of a convicted criminal which are not relevant to a crime.

Confiscation of criminal proceeds may face difficulties because the properties cannot be located or have been rendered worthless or have been intermingled with other legitimate properties and, for this reason, the *1988 Convention* allows Parties to apply value-based confiscation. Vietnamese confiscation is principally property-based but value-based confiscation is permitted for the purpose of ensuring pecuniary sanctions or to secure the civil rights of victims or a third party.

In compliance with the *1988 Convention*, Vietnam's domestic legislation enables its national law enforcement authorities to apply temporary measures against properties pending their confiscation, so as to prevent offenders from circumventing confiscation.

In contrast to its elaborate framework for confiscation at the national level, Vietnam has no specific provisions dealing with international cooperation in confiscation. This matter is simply treated as a form of mutual legal assistance but, as mentioned

above, Vietnamese legislation on mutual legal assistance is sub-standard. The *Law on Mutual Legal Assistance and Extradition*, when enacted, will also apply to international cooperation in confiscations. Pursuant to Vietnamese criminal law, the confiscation of criminal proceeds and equipment, materials and instrumentalities involved in an offense depends entirely upon a person's first being convicted of a substantive crime. In contrast, confiscation of narcotic substances and precursors is not dependent on a criminal conviction. Thus, Vietnam opts principally for criminal forfeiture in relation to illicit drugs, concerning which civil forfeiture applies. In respect of international cooperation on confiscation, a question arises whether civil forfeiture should be enabled in response to a request by another country for the confiscation of property located in it. The DCCs do not regulate this issue but it is important to national law. To address this question, further study of Vietnamese criminal procedure and of international practice is needed.

11.5.3 Transfer of Proceedings

The *1988 Convention* requires its Parties to consider the possibility of transferring criminal proceedings to another state that may be in a better position to administer justice. This convention provision is merely of a recommendatory character. Vietnamese domestic law has long been silent on this form of law enforcement cooperation. However, the *CPC 2003*, for the first time, introduced a new provision enabling Vietnam to transfer criminal proceedings to another state when Vietnamese proceedings against a foreigner who has committed a crime in its territory cannot proceed further because that alleged criminal has left Vietnam and reached that other state. In this respect, Vietnamese law has responded to the DCC call.

However, the fact that Vietnamese domestic law limits the transfer of proceedings exclusively to cases in which an offense has been committed in its territory and the prosecutions cannot proceed further because the foreign criminal has left Vietnam narrows the effectiveness of its international cooperation in this field. National lawmakers should consider revising Article 345 of the *CPC 2003* to enable the transfer of proceedings against foreigners to the state in which the prosecution may be more effective due to the presence of the bulk of evidence in that state.

11.5.4 Controlled Delivery

In direct response to *1988 Convention* requirements for enabling the use of controlled delivery at the international level, the Vietnamese *Law on Narcotics 2000* and *Decree on International Cooperation in Drug Control 2003* allow national authorities to cooperate with others in using this technique for the purpose of identifying and prosecuting persons involved in drug-related crimes. Thus, Vietnam has created a legislative basis for the use of controlled delivery at the international level in investigations of extraterritorial drug-related offenses. This fully complies with the *1988 Convention* provisions.

It should be noted that the *1988 Convention* does not regulate the use of this technique at national level. While enabling its use at the international level, the Vietnamese criminal procedural law has not yet provided any legislative basis for the domestic conduct of this technique. Its use is left entirely to the discretion of law enforcement authorities. As this investigative measure is not prescribed under the *CPC 2003*, the legality of evidence collected using this technique may be questionable. Thus, to protect investigators involved and to secure the evidence collected as well as to ensure its appropriate use, it is recommended here that the national criminal procedural law provides a legislative basis for national controlled delivery and that it should address the following issues: (i) objects which controlled delivery can target, (ii) conditions for the conduct of clean delivery (i.e. alternative substances that can be used and the quantity of illicit drugs that should remain in the delivery for the purpose of prosecution and sentencing), and (iii) authorities that are authorized to issue an order on controlled delivery.

11.5.5 Prevention of the Use of Mail for Illicit Drug Trafficking

Transforming into domestic law the provisions of the *1988 Convention* on prevention of the use of mail for illicit drug trafficking, the Vietnamese *Joint Circular on the Interception of Postal and Express Delivery Services 2006* (JC 2006) empowers national law enforcement authorities to intercept postal and express mail, parcels and packages suspected of being involved in illicit drug trafficking. If evidence of a crime is found, the authorities are further empowered to suspend a mail delivery and to seize or to confiscate illicit drugs. The *JC 2006*, in fact, does not introduce new

rules but gives detailed guidance on the implementation of the law enforcement principles set out under the *CPC 2003*. Thus, it appears to be a specific response by Vietnam to the *1988 Convention*.

Under the *JC 2006*, interception is applicable to all forms of mail, parcels and packages, and all forms of postal and other express delivery services run by state-owned as well as private organizations. The interception can be imposed upon internal mail, mail forwarded to Vietnam and mail posted from Vietnam to others. As transit mail generally enjoys freedom of transit unless it is tainted by criminal activities, and because the *JC 2006* does not clearly state whether it allows the interception of transit mail whether or not there are sufficient grounds to believe they contain illicit drugs, there exists some ambiguity regarding its scope. Thus, the only recommendation made here is that Part I(1) of the *JC 2006* should clearly enable interception of transit mail if there are sufficient grounds to believe it is involved in illicit drug trafficking.

11. 6 Special Administration for Drug Control

The DCCs require each Party to establish and to maintain a special administration to coordinate the drug control work of their various domestic authorities and to facilitate international cooperation in drug control. Generally, the existing Vietnamese legal framework establishing special administrative arrangements for domestic drug control complies with the convention requirements. Nonetheless, a number of shortcomings are still noticeable.

Under *Decision 61/2000/QĐ-TTg to Establish the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution 2000* (Decision to Establish the National Committee 2000), the National Committee is charged with formulating state-wide drug control strategies and coordinating various authorities involved in drug management. Pursuant to the *Law on Narcotics 2000*, the Ministry of Public Security (MOPS) is a coordinating authority in the fight against illicit drug trafficking. Additionally, under *Decision 01/QĐ-UBQG Promulgating Duties, Powers and Organization of the Standing Office for Drug Control 1998*, the Standing Office for Drug Control, which is an assisting apparatus of the National Committee and is under direct administration of the Minister for Public Security, is designated as

the nominated contact point for Vietnam in international drug control cooperation. This authority has now become an important counterpart for United Nations Office on Drugs and Crime, regional organizations and various states.

However, the national law fails to provide a clear demarcation between the functions of different authorities involved in drug control. For example, the *Law on Narcotics 2000* and the *Decision to Establish the National Committee 2000* currently impose drug control coordination functions on both the National Committee and MOPS but do not clearly differentiate their scope of work. Overlaps in drug control tasks can lead to uncertainties in the responsibilities of the various authorities involved. Therefore, the duty to coordinate the drug control work of various state authorities should not be simultaneously imposed on the MOPS and the National Committee. General coordination responsibilities are better vested in the National Committee, because it is a horizontally integrative organization. Coordination functions for suppressing drug-related offenses, however, need to remain in the hands of the MOPS to facilitate prompt cooperation between law enforcement authorities in handling individual criminal cases. This is also in compliance with the DCC requirements. Thus, Articles 37(2) and 38(1) of the *Law on Narcotics 2000* regarding the drug control duties of the MOPS need to be revised.

The function of gathering ‘statistics on drug control’ assigned to the MOPS under the *Law on Narcotics 2000* and the function of gathering ‘statistics on criminal offenses’ assigned to the Supreme People’s Procuracy (SPP) under the *Law on the Organization of People’s Procuracies 2002* also suffer from overlap. To avoid involving both the MOPS and Supreme People’s Procuracy (SPP) in gathering statistics on drug-related crimes, it is important that Article 38(1)(g) of the *Law on Narcotics 2000* clarify the statistical duty of the MOPS. As each state authority gathers statistics within its sphere of work, including the SPP which gathers statistics on drug-related crimes, the duty of the MOPS should be confined to synthesizing and managing those statistics relating to drug control available from various sources (including the SPP) and providing guidance to relevant authorities to set up a state-wide drug control database.

The legal requirements for each of MOPS, Customs, Border Guards and Coast Guards to engage in drug education campaigns for the ethnic minorities, and for the

Ministry of Agriculture and Rural Development and the Committee for Ethnic Minorities and Mountainous Areas to be responsible for drug education for ethnic populations also largely overlap, and result in buck-passing. It also seems duplicative for Customs, Border Guards and Coast Guards to be simultaneously charged with cooperating with Police to escort transit drugs out of the territory of Vietnam under the *Drug Trade Decree 2003*. For the purpose of streamlining the national drug administration, Vietnamese drug control laws should take into account the principle ‘*One Task Principally Done by One Ministry*’. The Committee for Ethnic Minorities and Mountainous Areas, in accordance with its sphere of work, must be responsible for drug education for ethnic populations. Some drug education duties of the MOPS and Customs under the *Law on Narcotics 2000* should be refined, so that they can allocate more of their resources to law enforcement. Additionally, as it appears to be duplicative for many authorities to be under an obligation to cooperate in escorting transit drugs and, as Customs principally functions at checkpoints and border gates, its escort duty under Article 16(2) of the *Drug Trade Decree 2003* should be reconsidered.

The failure of the current legislation to clarify the drug control functions of People’s Committees at different levels, i.e. province, district and ward/townlet, leads to ambiguity as to their responsibilities. Thus, it is necessary to elaborate regulations on their duties in every technical aspect of drug control. The drafting of such regulations must be based on an in-depth study of the statutory functions and powers of People’s Committees at each administrative level.

Another shortcoming in the relevant domestic law of Vietnam is an inconsistency between the *Ordinance on Organizing Investigation of Criminal Offenses 2004* and the *Regime for Cooperation between Law Enforcement Authorities in Drug Control promulgated by Decision 133/2002/QĐ-TTg 2002* (Drug Law Enforcement Cooperation Regime 2002). Under the *Ordinance on Organizing Investigation of Criminal Offenses 2004*, the investigative jurisdiction of Customs is limited to the offenses of ‘Smuggling’ and ‘Illegal cross-border transportation of goods and/or currencies’. In contrast, under the later instrument, Customs are obliged to investigate drug-related offenses revealed in the areas under its supervision. Considering this inconsistency, it is suggested here that the recommendations

proposed by the General Department of Customs in *Project 1717/TCHQ-DT on Enhancing Capacity of Detecting and Combating Narcotics Passing through the Border Gates 2001* should be adopted. Those recommendations were that the investigative jurisdiction of Customs should be expanded to include certain drug-related offenses, i.e. ‘Unlawful stockpiling, transporting, trading in or appropriating narcotic substances’ (Article 194 of the *CCV 1999*), ‘Unlawful stockpiling, transporting, trading in or appropriating precursors used in the illicit manufacture of narcotic substances’ (Article 195 of the *CCV 1999*), and ‘Manufacturing, stockpiling, transporting and/or trading in means and/or tools used in the illicit manufacture or illegal use of narcotic substances’ (Article 196 of the *CCV 1999*). Such an expansion is appropriate to the Customs’ general sphere of work as well as to its tasks under the *Law on Narcotics 2000*.

11. 7 Submission of Drug Control Information

International drug control is predicated on state cooperation. Therefore, to monitor drug administration all over the world and to oversee convention compliance, the DCCs expressly oblige the Parties to furnish: (i) estimates of and statistics on the quantities of drugs needed for medical and scientific purposes and (ii) other specified drug control information in their countries, including annual reports on the working of the Conventions, information on changes in national legislation in relation to drug control, reports on illicit drug trafficking, and information on government authorities involved in national drug control. In a well-established practice, forms and questionnaires have been prepared to facilitate the Parties’ implementation. Except for separate forms on estimates and statistics on quantities of drugs used for medical and scientific purposes, the Annual Report Questionnaires (ARQs) collect all data across the three DCCs.

In compliance with DCC provisions on furnishing information, Vietnam has furnished to the Commission on Narcotic Drugs and the International Narcotics Control Board with its responses to the ARQ, and estimates and statistics on quantities of drugs needed for medical and scientific purposes. Its fulfilment of drug estimates and statistics requirements, however, is more complete than its responses to questionnaires. This originates partly from the fact that it has created an elaborate framework for domestic estimates of and statistics on quantities of drugs needed for medical and scientific purposes, whereas it has not yet established detailed

regulations on collecting, managing and disseminating of data in regard to drug abuse and illicit drug trafficking.

As noted in Chapter 10, Vietnamese legislation first dealt with drug estimates and statistics on quantities of drugs needed for medical and scientific purposes in 1995. Therefore, Vietnam was able to furnish estimates and statistics data even before it became a Party to the DCCs. Under the current law, all units involved in licit drug activities are obliged to furnish to the Pharmaceutical Department (Ministry of Health) their annual estimates. They have to submit also monthly, half-yearly and yearly statistical reports on the actual amount of drugs used. Additionally, importers must furnish statistics on each import transaction within 10 days of the date of actual importation. Thanks to these regulations, Vietnam is able to furnish its estimates and statistics to the International Narcotics Control Board.

In marked contrast, Vietnam continues to experience difficulties in providing complete annual questionnaire responses because quantitative information on drug abuse and trafficking is incomplete and sometimes non-existent. First, although a number of normative instruments attempt to regulate the issue of drug statistics, they are truly of a framework nature, being general and simplistic. They merely identify the collecting agencies but do not specify the collection, storage, dissemination and publication of information. Secondly, the failure of domestic law to specify data items, their definitions, classifications, standards and collecting rules causes some collected data to be non-comparable across sub-national administrative units. Thirdly, none of the existing drug control legislation deals with the issue of establishing a national drug data network, although at the periodical meeting of the National Committee in 2005, the Prime Minister emphasized the need to enhance the national system for drug information and the need to promulgate detailed regulations on this issue.

Discrepancies in data standards and classifications between the national statistics and the international questionnaire also prevent Vietnam from completing the ARQs. Thus, while drafting regulations for a national drug data network, national lawmakers should scrutinize the requirements of the ARQs and other international report forms in order to make domestically collected data internationally comparable. To develop a national comprehensive system for drug statistics, it is also important that those

regulations be user-oriented and contain detailed specifications on key data items, accompanying definitions, classifications, standards and accounting rules for collecting accurate and meaningful information. They would need also to adopt a standardized format and model for drug data collection in order to provide nationally comparable statistics. They should also require the establishment of a national drug database that would link different bodies of statistics, such as databases of crimes, rehabilitation, etc.

11. 8 Epilogue

While the international drug control regime has been evolving for over a hundred of years, Vietnam is a new-comer to the DCCs and has little experience in clarifying legal standards for drug control. However, some areas display sound evidence of its successes in transforming the DCC provisions into domestic law.

It is laudable that Vietnamese legislation brings all DCC-listed substances under national control. Interestingly, Vietnam provides for both definitions and schedules of controlled substances. Specific schedules facilitate the drug control work of government authorities, authorized enterprises and persons involved in drug activities, while their definitions facilitate the political mobilization of the masses into the battle against drugs of abuse. Yet the dual approach of definitions and schedules is not without its internal inconsistencies. Vietnamese criminal law is also successful in transforming the DCC penal provisions into domestic law. It establishes various DCC-listed forms of drug-related conduct as criminal offenses and imposes severe penalties upon them. Furthermore, going beyond DCC requirements, it criminalizes a number of drug-related offenses that are not enumerated under the DCCs.

Yet weaknesses exist in some other areas of Vietnamese drug control legislation. Up until now, DCC provisions on mutual legal assistance have still not been adequately transformed into Vietnamese domestic law. A lack of domestic law on extradition is one of the reasons that Vietnam made reservations against DCC extradition provisions. In addition, Vietnamese legislation on drug statistics is still inadequate, contributing to Vietnam's relative inability to complete its responses to the DCC annual report questionnaires.

The Author hopes that recommendations made in this research will be instructive in advancing Vietnamese implementation of the DCCs. She also hopes that the research methodology and findings will provide a useful model and insights for analyzing the DCC compliance of other countries, particularly within Indo-China.

LIST OF PUBLICATIONS

- Hoa Phuong Thi Nguyen, 'Hoan Thien Co So Phap Ly cho viec Ap Dung Ky Thuat Dieu Tra "Giao Hang Co Kiem Soat" trong Hoat Dong Dau Tranh voi Toi Pham Lien Quan den Ma Tuy' (2007) 1 *Tap Chi Khoa Hoc Phap Ly* 47 [trans: Hoa Phuong Thi Nguyen, 'Improving the National Legal Framework for the Use of "Controlled Delivery"' (2007) 1 *Legal Sciences Journal* 47].
- Hoa Phuong Thi Nguyen, 'Quyen Tai Phan doi voi Cac Toi Pham Ve Ma Tuy: So Sanh Quy Dinh Cua Cac Cong Uoc Quoc Te Ve Kiem Soat Ma Tuy Voi Phap Luat Viet Nam' (2007) 7 *Luat Hoc* 22 [trans: Hoa Phuong Thi Nguyen, 'Jurisdiction over Drug-Related Crimes: A Comparison between the Provisions of the UN Drug Control Conventions and Vietnamese Regulations' (2007) 7 *Legal Study* 22].
- Hoa Phuong Thi Nguyen, 'Hoan Thien Khai Niem "Chat Ma Tuy" trong Phap Luat Viet Nam' (2006) 3 *Tap Chi Khoa Hoc Phap Ly* 22 [trans: Hoa Phuong Thi Nguyen, 'Over the Term of "Narcotic Substances" in Vietnamese Law' (2006) 3 *Legal Sciences Journal* 22].
- Hoa Phuong Thi Nguyen, 'Co Che Kiem Soat Ma Tuy Quy Dinh tai Cac Cong Uoc Quoc Te Ve Kiem Soat Ma Tuy', (2006) 12 *Luat Hoc* 64 [trans: Hoa Phuong Thi Nguyen, 'The Mechanism of Drug Control under the United Nations Drug Control Conventions' (2006) 12 *Legal Study* 64].

BIBLIOGRAPHY

Articles/Books/Reports

- Alford, Duncan E, 'Anti-Money Laundering Regulations: A Burden on Financial Institutions' (1994) 19 *International Law & Commercial Regulation* 437
- Andrew Tartaglino and the Staff of the Office of Criminal Investigations - Bureau of Narcotics and Dangerous Drugs, 'International Opiate Traffic' in Richard H Blum and Associates (ed), *Drug Dealers - Taking Action*, The Jossey-Bass Behavioral Science Series (1973)
- Antidrug Police Department, 'Difficulties in Precursors Control' (2004) 11 *Narcotic Drugs Prevention and Suppression* 18
- Association of South East Asian Nations, *ASEAN Plan of Action on Drug Abuse Control: ASEAN Secretariat, January 1995* (1995)
- Attorney General's Department, *Mutual Assistance in Criminal Matters Manual* (2000)
- Australian Bureau of Criminal Intelligence and National Crime Statistics Unit, *National Illicit Drug Statistics Framework: A Report by the Australian Bureau of Criminal Intelligence and National Crime Statistics Unit, June 1999* (1999)
- Barnett, Hilaire, *Britain Unwrapped Government and Constitution Explained* (2002)
- Bassiouni, Cherif M, *International Extradition and World Public Order* (1974)
- Bassiouni, Cherif M, *International Extradition: United States Law and Practice* (4th ed, 2002)
- Bassiouni, Cherif M, 'International Drug Control System' in Bassiouni M C (ed), *International Criminal Law* (1999) vol 1, 905
- Bayer, Istvan, 'The Problem of Analogues vs International Drug Treaties' in M Klein et al (eds), *Clandestinely Produced Drugs, Analogues and Precursors: Problems and Solutions* (1989) 319
- Bedi, Satya Deva, *Extradition in International Law and Practice* (1968)
- Bell, D S, 'Drug Addiction' (1970) (2) *Bulletin on Narcotics* 21
<http://www.unodc.org/unodc/bulletin/bulletin_1970-01-01_2_page005.html>
- Bentham, Mandy, *The Politics of Drug Control* (1998)

- Bentivoglio, John T et al, *State Laws and Procedures Affecting Drug Trafficking Control: A National Overview* (1985)
- Berridge, Virginia, 'The Origins of the English Drug "Scene" 1890-1930' in Nigel South (ed), *Drugs, Crime and Criminal Justice* (1995) vol 1, 3
- Blakesley, Christopher L, *Terrorism, Drugs, International Law, and the Protection of Human Liberty* (1992)
- Blakesley, Christopher L, 'United States Jurisdiction over Extraterritorial Crime' (1982) 73 *The Journal of Criminal and Criminology* 1109
- Blum, Richard, Kaplan, John and Lind, Robert, 'Elements for Drug Policy: International Implications for Crime and Justice' (1976) 32 *International Review of Criminal Policy* 35
- Blum, Richard H, 'International Classification' in Richard H Blum et al (eds), *Controlling Drugs* (1974) 48
- Blum, Richard H, Bovet, Daniel and Moore, James (eds), *Controlling Drugs* (1974)
- Bo Lao Dong - Thuong Binh Va Xa Hoi, 'Hai Nam Thuc Hien Luat Phong, Chong Ma Tuy ve Cong Tac Cai Nghien Phuc Hoi' (2003) 4 *Ban Tin Phong Chong Ma Tuy* 18 [trans: Ministry of Labor, War Invalids and Social Affairs, 'The Two-Year Implementation of the Law on Narcotics Prevention and Suppression in Respect of Rehabilitation' (2003) 4 *Bulletin on Narcotics Prevention and Suppression* 18]
- Bo Thuong Mai, *Thuong Mai Viet Nam va APEC* (2006) [trans: Ministry of Trade, *Vietnam and APEC Trade* (2006)]
- Bo Y Te, *Kiem Soat Tien Chat tai Viet Nam* (1999) [trans: Ministry of Health, *Control of Precursors in Viet Nam* (1999)]
- Boister, Neil, *Penal Aspects of the UN Drug Conventions* (2001)
- Brown, Alastair N, 'Drug Trafficking and the Control of Precursor and Essential Chemicals: UK Domestic Law and Practice' in William C Gilmore and Alastair N Brown (eds), *Drug Trafficking and the Chemical Industry* (1996) 25
- Bruun, Kettil, Pan, Lynn and Rexed, Ingemar, *The Gentlemen's Club - International Control of Drugs and Alcohol* (1975)
- Bui, Manh Cuong, 'Can Huong Dan Xu Ly Cac Vu An Ma Tuy co Lien Quan den Thuoc Gay Nghien, Thuoc Huong Than' (2004) 23 *Toa An Nhan Dan* 25 [trans: Bui, Manh Cuong, 'A Need for Implementing Regulations on Trials

- for Criminal Offenses Relating to Addictive and Psychotropic Drugs' (2004) 23 *People's Court* 25]
- Bui, Vinh The, *Xay Dung Co Cau To Chuc cho Cac Co Quan Hanh Chinh cua Nha Nuoc Viet Nam* (1998) [trans: Bui, The Vinh, *Design an Organizational Structure for Administrative Bodies of the Vietnamese Government* (1998)]
- Bui, Xuan Duc, 'Cai Cach Quan Ly Nha Nuoc Hien Nay o Viet Nam' (1997) 3 *Nha Nuoc va Phap Luat* 11 [trans: Bui, Xuan Duc, 'Current Reform of the State Administration in Vietnam' (1997) 3 *State and Law* 11]
- Bui, Xuan Duc, 'Mot So Van De Can Hoan Thien trong To Chuc va Hoat Dong cua Uy Ban Nhan Dan Cac Cap' (2000) 10 *Nha Nuoc va Phap Luat* 3 [trans: Bui, Xuan Duc, 'Several Issues on the Amelioration of the Organization and Operation of the People's Committees at All Levels of Administration' (2000) 10 *State and Law* 3]
- Bui, Xuan Duc, 'Ve Van De Hoan Thien Cau Truc Nha Nuoc Viet Nam Hien Tai' (2000) 4 *Luat Hoc* 13 [trans: Bui, Xuan Duc, 'The Issue of Amelioration of Vietnam's State Structure at the Present Time', (2000) 4 *State and Law* 13]
- Cao, Hung Thai, 'Thuc Trang va Giai Phap Nang Cao Nang Luc, Hieu Qua Hoat Dong cua Co Quan Quan Ly Nha Nuoc ve Duoc' (2004) 2A *Luat Hoc* 5 [trans: Cao, Hung Thai, 'The Current State and Proposals to Improve the Efficiency of the Operation of State Authorities on Drug Management' (2004) 2A *Drug Study* 5]
- Cao, Thi Oanh, 'Van De Mat Chu Quan cua Dong Pham' (2002) 2 *Luat Hoc* 27 [trans: Cao, Thi Oanh, 'Some Issues on the Subjective Side of Accomplices' (2002) 2 *Law Study* 27]
- Central Ideologic and Cultural Department, *Materials for Study of the Ninth Vietnam Communist Party Congress's Resolutions* (2001)
- Central Steering Board on the Compilation of Textbooks on Teaching Subjects Relating to Marxism, Leninism and Hochiminh Ideology, *Textbook on History of the Vietnamese Communist Party* (2004)
- Center for Studying Science of Management and Organization, *Reform Bureaucracy: An Urgent Issue for Renovation of the Governmental Mechanism* (2004)
- Center of International Study and Hemmer, Hans Rimbert, *Globalization and Developing Countries* (2002)

- Chalk, Peter, 'Southeast Asia and the Golden Triangle's Heroin Trade: Threat and Response' (2000) 23 *Studies in Conflict and Terrorism* 89
- Chatterjee, S D, *Legal Aspects of International Drug Control* (1981)
- Chatterjee, S K, *Drug Abuse and Drug-Related Crimes: Some Unresolved Legal Problems* (1989)
- Chemical Action Task Force, 'Chemical Action Task Force: Final Report, June 1991' (1991)
- Truong Chinh, *Cai Cach la Mot Nhu Cau Cap Thiet cua Dat Nuoc va Thoi Dai* (1987) [trans: Truong Chinh, *Renovation is An Urgent Need for the Country in this Modern Time* (1987)]
- Chrusciel, Tadeusz L, 'International Aspects of Problems associated with the Use of Psycho-active drugs' (1976) 2 *Bulletin on Narcotics* 35
<http://www.unodc.org/unodc/bulletin/bulletin_1976-01-01_2_page005.html>
- Cinat, Marianne E et al, 'Significant Correlation of Trauma Epidemiology with the Economic Conditions of a Community: Discussion' (2004) 139 *Archives of Surgery* 1350
- Clutterbuck, Richard, *Drugs, Crime and Corruption* (1995)
- Co Quan Thuong Truc Phong Chong Ma Tuy Cua Uy Ban Quoc Gia Phong Chong Aids Phong Chong Ma Tuy Va Mai Dam, 'Bao Cao Tinh Hinh va Ket Qua 5 Nam Thi Hanh Luat Phong, Chong Ma Tuy' (304/2006/BCA(VPU), 2006) [trans: Standing Office for Drug Control of the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution, 'Report on the Five-Year Implementation of the Law on Narcotics Prevention and Suppression' (35/2006/BCA(VPU), 2006)]
- Collins, David J. and Lapsley, Helen M., *Counting the Cost: Estimates of the Social Costs of Drug Abuse in Australia in 1998-1999* (2002)
- Cong, Gon, 'Cai Nghien Ma Tuy Ba Giai Doan va Nguyen Tac Quan Ly "Mot Viec Mot Bo Lam la Chu Yeu" o Tuyen Quang - Mot Mo Hinh Tot Can Duoc Nhan Rong' (2002) 9 *Ban Tin Phong Chong Ma Tuy* 18 [trans: Cong, Gon, 'Narcotic Drugs Treatment with the Three-Period Method and the Management Rule 'One Task Done Principally by One Ministry' in Tuyen Quang - A Good Model to Be Duplicated' (2002) 9 *Bulletin on Narcotics Prevention and Suppression* 18]

- Cooper, James R et al (eds), *Impact of Prescription Drug Diversion Control Systems on Medical Practice and Patient Care* (1992)
- Cotic, Dusan, *Drugs and Punishment: An Up-To-Date Interregional Survey on Drug-Related Offenses* (1988)
- Cuc Canh Sat Dieu Tra Toi Pham Ve Ma Tuy, 'Nhưng Kho Khan trong Công Tác Quản Lý, Kiểm Soát Tiền Chất' (2004) 11 *Ban Tin Phong Chong Ma Tuy* 18 [trans: Institution of Investigating Drug-Related Crimes, 'Difficulties in the Management and Control of Precursors' (2004) 11 *Bulletin on Narcotics Prevention and Suppression* 18]
- Dai Hoc Luat Ha Noi, *Giao Trinh Luat Hinh Su Viet Nam* (1998) [trans: The Law University of Hanoi, *Textbook on Criminal Law* (1998)]
- Dam, Huu Dac, 'Thúc Trạng Công Tác Cải Nghiên Phục Hồi Năm 2002 và Các Giải Pháp Nhằm Tăng Cường Hiệu Quả của Công Tác Cải Nghiên Phục Hồi trong Năm 2003' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 20 [trans: Dam, Huu Dac, 'The State of Drug Rehabilitation in 2002 and Proposals for Enhancing the Efficiency of Drug Rehabilitation in 2003' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 20]
- Dang, Anh, 'Ban về Định Lượng trong Bộ Luật Hình Sự năm 1999' (2002) 7 *Toa An Nhan Dan* 26 [trans: Dang, Anh, 'Discussions on the Issue of Specifying Quantity under the Criminal Code 1999' (2002) 7 *People's Court* 26]
- Dang Cong San Viet Nam, *Chien Luoc Phat Trien Kinh Te Xa Hoi 2001 - 2010* (2001) [trans: Communist Party, *Strategies for Socio-Economic Developments of the Country from 2001 to 2010* (2001)]
- Dang Cong San Viet Nam, 'Kiểm Diem việc Thực Hiện Nghị Quyết Đại Hội Đảng Lần Thứ IX về Phương Hướng Nhiệm Vụ Phát Triển Kinh Tế Xã Hội năm 2001-2005 và Phương Hướng Nhiệm Vụ Phát Triển Kinh Tế Xã Hội 5 năm 2006-2010' (2006) [trans: The Communist Party of Vietnam, 'Review of the Implementation of the Party Resolution at the Ninth Party National Congress on Directions and Tasks to Develop the National Socio-Economy in 2001-2005 and Directions and Tasks to Develop the National Socio-Economy in the Five-Year Period, 2006-2010' (2006)]
- Dang, Ngoc Hung, *Nhung Van De Kiem Soat Tien Chat Ma Tuy* (2002) [trans: Dang, Ngoc Hung, *Matters Concerning Precursor Control* (2002)]

- Dang, Ngoc Hung, 'Tien Chat va Cong Tac Quan Ly Tien Chat o Viet Nam' (2004) 11 *Ban Tin Phong Chong Ma Tuy* 9 [trans: Dang, Ngoc Hung, 'Precursors and Precursor Control in Vietnam' (2004) 11 *Bulletin on Narcotics Prevention and Suppression* 9]
- Dang, Xuan Dao, 'Mot So Noi Dung Moi cua Cac Quy Dinh ve Cac Tinh Tiet Giam Nhe, Tang Nang Trach Nhiem Hinh Su trong Bo Luat Hinh Su Viet Nam 1999' (2000) 8 *Toa An Nhan Dan* 3 [trans: Dang, Xuan Dao, 'Some New Contents Elements in the Regulations on Alleviating and Aggravating Factors under the 1999 Criminal Code' (2000) 8 *People's Court* 3]
- Dao, Hung, *Thuoc Phien va Cuoc Chien voi Thuoc Phien* (1997) [trans: Dao, Hung, *Opium and Opium War* (1997)]
- Dao, Tri Uc, 'Co So Khoa Hoc cho viec Hoan Thien Cau Truc Nha Nuoc cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam trong Thoi Ky Cong Nghiep Hoa va Hien Dai Hoa' (2001) 11 *Luat Hoc* 3 [trans: Dao, Tri Uc, 'Scientific Grounds for Improving Governmental Organization of the Socialist Republic of Vietnam within the Industrialization and Modernization Period' (2001) 11 *State and Law* 3]
- Dao, Tri Uc, *Nha Nuoc va Phap Luat cua Chung Ta trong Su Nghiep Doi Moi* (1997) [trans: Dao, Tri Uc, *Our State and Law in the Renovation Period* (1997)]
- Dao, Tri Uc, 'Tim Hieu Khai Niem va Nhung Dac Trung Co Ban cua Toi Pham theo Luat Hinh Su Viet Nam' (2001) 6 *Nha Nuoc va Phap Luat* 3 [trans: Dao, Tri Uc, 'Study of the Conceptual Definition and Main Characteristics of a Crime under Vietnamese Criminal Law' (2001) 6 *State and Law* 3]
- David, E Hojman, 'Inequality, Unemployment and Crime in Latin American Cities' (2004) 41 *Crime, Law & Social Change* 33
- Denenberg, Tia Schneider, *Alcohol and Other Drugs: Issues in Arbitration* (1991)
- Department of Economic and Social Affairs, *Manual for the Development of System of Criminal Justice Statistics*, Studies in Method Series F No. 89 (2003)
- Diamond, Pamela M, *Study Guide for David Weisburd and Chester Britt's: Statistics in Criminal Justice* (2nd ed, 2003)
- Dinh, Khac Tien, 'Van De Xac Dinh Trong Luong Heroin trong viec Xu Ly cac Hanh Vi Tang Tru Trai Phep chat Ma Tuy' (1998) 3 *Tap Chi Kiem Sat* 19 [trans: Dinh, Khac Tien, 'The Issue of Specifying the Quantity of Heroin

- Involved for the Purpose of Prosecuting the Crime of "Unlawful Stockpiling of Narcotic Substances" (1998) 3 *Procuracy's Journal* 19]
- Dinh, Van Que, *Binh Luan Khoa Hoc Bo Luat Hinh Su Phan Cac Toi Pham: Cac Toi Pham ve Ma Tuy* (2004) [trans: Dinh, Van Que, *Commentary on Specific Types of Crimes in the Second Part of the Criminal Code 1999: Drug-Related Crimes* (2004)]
- Dinh, Van Que, 'Mot So Diem Moi cua Bo Luat Hinh Su nam 1999 ve Hinh Phat va Quyet Dinh Hinh Phat' (2000) 3 *Toa An Nhan Dan* 19 [trans: Dinh, Van Que, 'Some New Regulations in the Criminal Code 1999 on Penalty and Sentencing' (2000) 3 *People's Court* 19]
- Dinh, Van Que, 'Mot So Van De ve Hieu Luc cua Bo Luat Hinh Su nam 1999' (2000) 8 *Toa An Nhan Dan* 6 [trans: Dinh, Van Que, 'Some Issues on the Enforcement of the 1999 Criminal Code' (2000) 8 *People's Court* 6]
- Dinh, Xuan Ly, *Qua Trinh Hoi Nhap cua Viet Nam vao Asean Pacific Duoi Su Lanh Dao cua Dang* (2003) [trans: Dinh, Xuan Ly, *Integration Process of Vietnam into Asian Pacific under the Leadership of the Communist Party* (2003)]
- Division of Narcotic Drugs, *Extradition for Drug-Related Offenses - A Study of Existing Extradition Practices and Suggested Guidelines for Use in Concluding Extradition Treaties* (1985)
- Division of Narcotic Drugs, *The United Nations and Drug Control* (1982)
- Do, Ngoc Quang, *Moi Quan He giua Co Quan Dieu Tra voi Cac Co Quan Tham Gia To Tung Hinh Su - Sach Tham Khao cho Sinh Vien Luat, Can Bo Nghien Cuu, Giang Day va Cac Can Bo Truc Tiep Dau Tranh Chong Toi Pham* (1997) [trans: Do, Ngoc Quang, *The Interrelationship between Investigating Authorities and Others Engaged in the Judicial Process - Reference Material for Law Students, Researchers and Executive Staff Working in the Field of Crime Control* (1997)]
- Do, Ngoc Quang, 'Pham Toi co To Chuc, To Chuc Pham Toi va Toi Pham co To Chuc' (1997) 3 *Luat Hoc* 53 [trans: Ngoc Quang Do, 'Commission of a Crime in the Organized Manner, Criminal Organizations and Organized Crimes' (1997) 3 *Law Study* 53]
- Doanh, Le Dang, 'Economic Reforms in Vietnam: Legal and Social Aspects and Impacts' (1996) 6(2) *Australian Journal of Corporate Law* 289

- Duong, Tuyet Mien, 'Cac Tinh Tiet Giam Nhe, Tang Nang Trach Nhiem Hinh Su theo Bo Luat Hinh Su nam 1999' (2003) 1 *Toa An Nhan Dan* 18 [trans: Duong, Tuyet Mien, 'Alleviating and Aggravating Factors under the Criminal Code 1999' (2003) 1 *People's Court* 18]
- Duong, Tuyet Mien, 'Quyet Dinh Hinh Phat trong Truong Hop Chuan Bi Pham Toi, Pham Toi Chua Dat' (2001) 4 *Luat Hoc* 34 [trans: Tuyet Mien Duong, 'Sentencing in Cases of Criminal Preparatory Acts and Attempt' (2001) 4 *Law Study* 34]
- Economic and Social Commission for Asia and the Pacific of the United Nations, *Drug Abuse Data Collection, Analysis and Presentation: A Standard Format - Report of a Workshop* (1988)
- Economy Studying Central Institution (ed), *Renovation of the Economy and Development Policy in Vietnam - An International Conference on 12-15 December 1989* (1990)
- Eisenlohr, Louis Elisabeth, *International Narcotics Control* (1934)
- Erickson, Patrica G and Cheung, Yuet W, 'Drug Crime and Legal Control: Lessons from the Canadian Experience' (1992) 19 *Contemporary Drug Problems* 247
- Failer, Philip Le, *Opium and the Colonial Governments in ASEAN: From Monopoly to Prohibition* (2000)
- Farrell, Epsey Cooke, *The Socialist Republic of Vietnam and the Law of the Sea: An Analysis of Vietnamese Behavior within the Emerging International Oceans Regime*, Publication on Ocean Development - A Series of Studies on the International, Legal, Institutional and Policy Aspects of Ocean Development (1998)
- Ferguson, Patricia, Lennox, Thomas and Lettieri, Dan J (eds), *Drugs and Family - Peer Influence: Family and Peer Influences on Adolescent Drug Use* (1974)
- Fortson, Rudi, *Misuse of Drugs: Offenses, Confiscation and Money Laundering* (5th ed, 2005)
- Gardner, Sharon A, 'A Global Initiative to Deter Drug Trafficking: Will Internationalizing the Drug War Work?' (1993) 7 *Temple International and Comparative Law* 287
- General State Organization, *Vietnam's Economy and Society in Three-Year Period: 2001 - 2003* (2003)

- Gillespie, John, 'Receiving Bankruptcy Law into Vietnam' (2004) 16 *Australian Journal of Corporate Law* 146
- Gilmore, William C, *Combating International Drugs Trafficking: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (1991)
- Gilmore, William C, 'Drug Trafficking and the Control of Precursors and Essential Chemicals: the International Dimension' in William C Gilmore and Alistair N Brown (eds), *Drug Trafficking and the Chemical Industry* (1996) 1
- Gilmore, W C (ed), *International Efforts to Combat Money Laundering* (1992)
- Gilmore, Williams C and Brown, Alistair N (eds), *Drug Trafficking and the Chemical Industry* (1996)
- Goode, Mathew, *Drugs and the Law: Research Paper 7* (1979)
- Greig, Joanne, 'Combating Money Laundering' (1997) 8(3) *Criminal Law Forum* 485
- Gurule, Jimmy, 'The 1988 U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances - A Ten Year Perspective: Is International Cooperation Merely Illusory?' [1998] *Fordham International Law* 74
- Hallums, Melanie R, 'Bolivia and Coca: Law, Policy, and Drug Control' (1997) 30 *Vanderbilt Journal of Transnational Law* 817
- Harris, Lorna and Murray, Christopher, *Mutual Assistance in Criminal Matters: International Cooperation in the Investigation and Prosecution of Crime* (2000)
- Hemarajata, Chaiyos, *The Narcotics Problem: A Study and Analysis of Its Legal Aspects*, Chlalongkorn University Research Report Series No 4 (1981)
- Henrichs, Wilhelm, 'Problems of Competence in International Law with regard to the Punishment of Narcotic Drug Offenses and the Extradition of Narcotic Offenses' (1960) (1) *Bulletin on Narcotics* 1
<http://www.unodc.org/unodc/en/bulletin/bulletin_1960-01-01_1_page002.html>
- Hoang, Cong Dung, 'Cong Tac Xoa Bo va Thay The Cay Thuoc Phien o cac Tinh Mien Nui, Vung Cao Phia Bac' (2003) 4 *Ban Tin Phong Chong Ma Tuy* 25
[trans: Hoang, Cong Dung, 'Opium Eradication and Alternative Programs in Northern Upland and Mountainous Areas' (2003) 4 *Bulletin on Narcotics Prevention and Suppression* 25]

- Hoang, Nghia Mai, 'Nhưng Van De Dat Ra doi voi Cong Tac Kiem Sat Dieu Tra An An Ninh - Ma Tuy' (2000) 7 *Tap Chi Kiem Sat* 43 [trans: Hoang, Nghia Mai, 'Some Issues of Control and Supervision over Investigating Activities in Cases in relation to Public Security and Narcotic Substances' (2000) 7 *Procuracy's Journal* 43]
- Hoang, Van Tu and Tran, Van Thuan, 'Van De Toi Pham va Hinh Phat: Mot Trong Nhung Noi Dung Moi Duoc Sua Doi, Bo Sung Trong Bo Luat Hinh Su Nam 1999' (2000) 4 *Toa An Nhan Dan* 17 [trans: Hoang, Van Tu and Tran, Van Thuan, 'Crimes and Penalties: One of the Amended Regulations in the Criminal Code 1999' (2000) 4 *People's Court* 17]
- Hoffman, Joan, 'Macroeconomic Indicators and New York City Women's Drug Arrests' (1997) 24 *Social Justice* 82
- Hoi Dong Trung Uong Chi Dao Bien Soan Giao Trinh Quoc Gia Cac Bo Mon Khoa Hoc Mac-Lenin Va Tu Tuong Ho Chi Minh, *Giao Trinh Lich Su Dang Cong San Viet Nam* (2004) [trans: Central Council for Directing the Editing of National Textbooks on Subjects concerning the Theory of Marx and Lenin and Ideology of President Hochiminh, *Textbook on the History of the Communist Party of Vietnam* (2004)]
- House of Representatives Standing Committee on Community Affairs, *A Report on the Prescription and Supply of Drugs: Prescribed Health, Part I: Regulation and the Pharmaceutical Industry* (1992)
- Howell, David, *Vietnam Legal System: Brief* (1993)
- Hsu, L N, 'The Dynamic Interaction between Family and Substance Dependence: An International Perspective' (1994) (1) *Bulletin on Narcotics* 3 <http://www.unodc.org/unodc/bulletin/bulletin_1994-01-01_1_page003.html>
- Hubbard, Robert W et al, *Money Laundering & Proceeds of Crime* (2004)
- Huyen Minh, 'Mot so Van De ve Nhu Cau Phat Trien He Thong Phap Luat Viet Nam den nam 2010' (2002) 8 *People's Court* 3 [trans: Huyen, Minh, 'Some Issues on the Need to Develop the Vietnamese Legal System towards 2010' (2002) 8 *People's Court* 3]
- Inciardi, James A (ed), *Handbook of Drug Control in the United States* (1990)

International Narcotics Control Board, *Effectiveness of the International Drug Control Treaties: Supplement to the Report of the International Narcotics Control Board for 1994* (1995)

International Narcotics Control Board, *Hearing before a Subcommittee of the Committee on Appropriations United States Senate Ninety-Ninth Congress First Session: Special Hearing, Congressional Witnesses, Department of Justice, Department of State, Department of Transportation, Nondepartmental Witnesses, United Nations* (1985)

International Narcotics Control Board, *Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances: Report of the International Narcotics Control Board on the Implementation of Article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* (1993)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 1996' (E/INCB/1996/1, 1997)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 1997' (E/INCB/1997/1, 1998)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 1998' (E/INCB/1998/1, 1999)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 1999' (E/INCB/1999/1, 2000)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 2000' (E/INCB/2000/1, 2001)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 2001' (E/INCB/2001/1, 2002)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 2002' (E/INCB/2002/1, 2003)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 2003' (E/INCB/2003/1, 2004)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 2004' (E/INCB/2004/1, 2005)

International Narcotics Control Board, 'Report of the International Narcotics Control Board for 2005' (E/INCB/2005/1, 2006)

- International Narcotics Control Board, 'Report of the International Narcotics Control Board for 2006' (E/INCB/2006/1, 2007)
- International Narcotics Control Board, 'Report, [11], U.N Doc. ' (E/INCB/17, 1972)
- International Working Group on the Convention on Psychotropic Substances, *Report of the "International Working Group on the Convention on Psychotropic Substances, 1971" - September 8 -12, 1980* (1981)
- International Working Group on the Single Convention on Narcotic Drugs, *Report of the International Working Group on the Single Convention on Narcotic Drugs, 1961 - September 20 - 24, 1982* (1983)
- Jayasuriya, D C, Nayak, R K and Wells, A (eds), *Global Drugs Law: Selected Papers Presented at the Indian Law Institute /UNDCP/ International Law Association, Regional Branch, India International Conference on Global Drugs Law, New Delhi, 28 February - 3 March 1997* (1997)
- Joshua, Laurie, 'Nigeria, Drug Trafficking and Structural Adjustment: Overcoming the Impediments to Dialogue' in Penny Green (ed), *Drug Couriers: A New Perspective* (1996) 21
- Joubert, Chantal and Bevers, Hans, *Schengen Investigated: A Comparative Interpretation of the Schengen Provisions on International Police Cooperation in the Light of the European Convention on Human Rights* (1996)
- Khlat, Myriam, Sermet, Catherine and Pape, Annick Le, 'Increased Prevalence of Depression, Smoking, Heavy Drinking and Use of Psycho-Active Drugs among Unemployed Men in France' (2004) 19 *Epidemiology* 445
- Khuat, Van Nga, 'Nhưng Tu Tuong Moi cua Bo Luat To Tung Hinh Su nam 2003' (2004) 4 *Tap Chi Kiem Sat* 13 [trans: Khuat, Van Nga, 'New Ideas in the Criminal Procedure Code 2003' (2004) 4 *Procuracy's Journal* 13]
- Kieu, Cao Chung, 'Mot So Van De ve Ke Bien Tai San de Dam Bao Thi Hanh An' (2001) 4 *Nha Nuoc va Phap Luat* 36 [trans: Kieu, Cao Chung, 'Some Problems Concerning Property Confiscation to Ensure the Implementation of Court Verdicts' (2001) 4 *State and Law* 36]
- Kieu, Cao Chung, 'Nhưng Quy Dinh Moi trong Bo Luat To Tung Hinh Su nam 2003' (2000) 2 *Ban Tin Phong Chong Ma Tuy* 10 [trans: Kieu, Cao Chung, 'New Regulations in the Criminal Procedure Code 2003' (2000) 2 *Narcotic Drugs Prevention and Suppression* 10]

- Kim Lien, 'To Chuc va Hoat Dong Phong Chong Ma Tuy tai Thai Lan va Trung Quoc' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 49 [trans: Kim Lien, 'Organization and Operation of Drug Control in Thailand and China' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 49]
- Kinney, Jack A et al, *A Study of International Control of Narcotics and Dangerous Drugs* (1972)
- Labrousse, Alain, 'Dependence on Drugs: Unemployment, Migration and an Alternative Path to Development in Bolivia' (1990) 129 *International Labor Review* 333
- Le, Cam, 'Hoan Thien Che Dinh Loi trong Phap Luat Hinh Su Viet Nam Hien Hanh: Mot So Van De Ly Luan va Thuc Tien' (1998) 12 *Toa An Nhan Dan* 1 [trans: Le, Cam, 'Improving the Legal Provisions on Guilt in Vietnam's Current Criminal Law: Some Theoretical and Practical Issues' (1998) 12 *People's Court* 1]
- Le, Dang Doanh, 'Ve Hanh Vi Pham Toi To Chuc Su Dung Trai Phep Chat Ma Tuy' (1999) 2 *Luat Hoc* 3 [trans: Le, Dang Doanh, 'Organizing the Illegal Use of Narcotic Substances' (1999) 2 *Law Study* 3]
- Le, Hong Anh, 'Tang Cuong Moi Quan He Phoi Hop, Hiep Dong Cong Tac giua Nghanh Cong An va Nghanh Kiem Sat Nhan Dan' (2003) 3 *Tap Chi Kiem Sat* 6 [trans: Le, Hong Anh, 'The Need to Enhance Co-Operation between Police Forces and Prosecutors' (2003) 3 *Procuracy's Journal* 6]
- Le, Hong Anh, 'Tinh Hinh va Ket Qua Trien Khai Thuc Hien Luat Phong, Chong Ma Tuy trong 2 nam 2001 - 2002' (2003) 4 *Ban Tin Phong Chong Ma Tuy* 2 [trans: Le, Hong Anh, 'Current State and Outcomes of the Two-Year Implementation of the Law on Narcotics Prevention and Suppression, from 2001 to 2002' (2003) 4 *Bulletin on Narcotics Prevention and Suppression* 2]
- Le, Minh Huong, 'Ket Qua Thuc Hien Chuong Trinh Hanh Dong Phong Chong Ma Tuy Giai Doan 1998 - 2000 va Phuong Huong Trien Khai Chuong Trinh Hanh Dong Phong Chong Ma Tuy Giai Doan 2001 - 2005' (2001) 4 *Ban Tin Phong Chong Ma Tuy* 6 [trans: Le, Minh Huong, 'Results of the Action Plans on Narcotics Prevention and Suppression in the Three-Year Period from 1998 to 2000, and Orientation on the Deployment of the Action Plan in the next Five-Year Period, from 2001 to 2005' (2001) 4 *Bulletin on Narcotics Prevention and Suppression* 6]

- Le, Minh Thong, 'Vai Tro cua Nha Nuoc trong cuoc Dau Tranh Phong, Chong cac Te Nan Xa Hoi o Nuoc Ta' in Tri Uc Dao and Khanh Vinh Vo (eds), *Nhung Van De Ly Luan va Thuc Tien cua viec Dau Tranh Phong, Chong cac Te Nan Xa Hoi o Nuoc Ta* (2002) 143 [trans: Le, Minh Thong, 'The Role of the State in the Combat against Social Evils' in Tri Uc Dao and Khanh Vinh Vo (eds), *Some Theoretical and Practical Issues in the Fight against Social Evils in Our Country* (2002) 143]
- Le, Thong, Nguyen, Van Phu and Nguyen, Minh Tue, *Dia Ly Kinh Te Xa Hoi Viet Nam* (2004) [trans: Le, Thong, Nguyen, Van Phu and Nguyen, Minh Tue, *Vietnam's Economic and Social Geography* (2004)]
- Le, Thi Son, 'Ve Cac Giai Doan Thuc Hien Hanh Vi Dong Pham' (1998) 3 *Luat Hoc* 29 [trans: Le, Thi Son, 'Discussions on Different Stages in the Commission of Accessory Crimes' (1998) 3 *Law Study* 29]
- Le, Thi Son, 'Ve Trach Nhiem Hinh Su cua Hanh Vi Chuan Bi Pham Toi va Pham Toi Chua Dat' (2002) 4 *Luat Hoc* 50 [trans: Le, Thi Son, 'Criminal Liability for Preparation to Commit a Crime and for Incompleteness in Committing a Crime' (2002) 4 *Law Study* 50]
- Le, Thi Thoa, 'Ban ve Dinh Toi Danh doi voi Mot So Toi Pham ve Ma Tuy theo Quy Dinh cua Bo Luat Hinh Su nam 1999' (2004) 9 *Tap Chi Kiem Sat* 38 [trans: Le, Thi Thoa, 'Some Discussions on Determining the Type of Drug-Related Crimes under the Criminal Code 1999' (2004) 9 *Procuracy's Journal* 38]
- Le, The Tiem, 'Hop Tac Phong Chong Ma Tuy giua Vietnam, Campuchia, Lao vi Muc Tieu Xay Dung Mot Khu Vuc On Dinh, Ben Vung va Phat Trien Lanh Manh' (2006) 9 *Ban Tin Phong Chong Ma Tuy* 2 [trans: Le, The Tiem, 'Cooperation in the Fight against Illicit Drugs between Vietnam, Cambodia and Laos to Establish a Region for Sustainable and Healthy Development' (2006) 9 *Bulletin on Narcotics Prevention and Suppression* 2]
- Le, The Tiem, 'So Ket Hai Nam Thuc Hien Ke Hoach Lien Tich so 696 ve Phoi Hop Phong Chong Ma Tuy trong Cong Nhan, Vien Chuc - Lao Dong giua Bo Cong An va Tong Lien Doan Lao Dong Viet Nam' (2004) 7 *Ban Tin Phong Chong Ma Tuy* 2 [trans: Le, The Tiem, 'Partial Assessment of the Implementation of Joint Plan 969 between the Ministry of Public Security and the General Confederation of Labor Unions on Cooperation in Drug

- Prevention in the Labor Force' (2004) 7 *Bulletin on Narcotics Prevention and Suppression* 2]
- Le, The Tiem, *Thuc Hien Chuong Trinh Quoc Gia Phong, Chong Toi Pham trong Thoi Ky Day Manh Cong Nghiep Hoa va Hien Dai Hoa Dat Nuoc* (2002) [trans: Le, The Tiem, *Implementation of the National Crime Prevention Strategy in the Period of Enhancing Industrialization and Modernization in the Country* (2002)]
- Le, The Tiem, 'Tinh Hinh, Ket Qua Cong Tac Phong, Chong Ma Tuy nam 2002 va nhung Nhiem Vu Trong Tam Phong, Chong Ma Tuy nam 2003' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 13 [trans: Le, The Tiem, 'The Situation and Results of Drug Control in 2002 and Main Tasks of Drug Control in 2003' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 13]
- Le, Thi Thu Thuy and Nguyen, Anh Son, 'Rua Tien va Phap Luat ve Chong Rua Tien o Viet Nam' (2004) 11 *Tap Chi Kiem Sat* 37 [trans: Le, Thi Thu Thuy and Nguyen, Anh Son, 'Money Laundering and Anti-Money Laundering Law in Vietnam' (2004) 11 *Procuracy's Journal* 37]
- Le, Van Kien, 'Can Tang Cuong Luc Luong Canh Sat Phong, Chong Ma Tuy o Co So' (2002) 8 *Ban Tin Phong Chong Ma Tuy* 6 [trans: Le, Van Kien, 'The Need to Increase the Staff of the Antidrug Police at Grassroots Levels' (2002) 8 *Bulletin on Narcotics Prevention and Suppression* 6]
- Lee, Gregory D, *Global Drug Enforcement: Practical Investigative Techniques* (2004)
- Lessem, Louis, 'Towards an International System of Drug Control' (1974) 8 *Law Reform* 103
- Lopez-Rey, Manuel, *A Guide to United Nations Criminal Policy* (1985)
- Luu, Trung Thanh, 'Vai Tro Giam Sat cua Quoc Hoi' (1998) 1 *Nha Nuoc va Phap Luat* 22 [trans: Luu, Trung Thanh, 'Supervision of the National Assembly' (1998) 1 *State and Law* 22]
- Lyman, Michael D, *Narcotics and Crime Control* (1987)
- Lyman, Michael D, *Practical Drug Enforcement* (3rd ed, 2007)
- Maas, Frank, 'Alternatives to Indirect Control of International Narcotics Traffic' (1975) 8 *International Law and Politics* 241
- Mahathir, Mohamad, *Globalization and New Practice* (2004)

- Makkai, Toni and Payne, Jason, *Drugs and Crime: A Study of Incarcerated Male Offenders* (2003)
- May, Herbert L, 'The Evolution of the International Control of Narcotic Drugs' (1950) 1(1) *Bulletin on Narcotics* 1
<http://www.unodc.org/unodc/bulletin/bulletin_1950-01-01_1_page003.html>
- McClellan, David, *International Judicial Assistance* (1992)
- McConville, Molly, 'A Global War on Drugs: Why the United States Should Support the Prosecution of Drug Traffickers in the International Criminal Court' (2000) 37 *American Criminal Law Review* 75
- McCoy, Alfred W, 'South Vietnam's Heroin Trade' in Alfred W McCoy (ed), *The Politics of Heroin - CIA Complicity in the Global Drug Trade: Afghanistan, Southeast Asia, Central America, Colombia* (2nd ed, 2003) 193
- McKinnon, Raymond J, 'Investigative Techniques of Controlled Substances Cases' in M Klein, F Sapienza and H McClain (eds), *Clandestinely Produced Drugs, Analogues and Precursors: Problems and Solutions* (1989) 285
- Ministry of Justice (ed), *Making Asean a Community of Nations with Sustainable Development, Equality and Cooperation - Synopsis of the International Conference in Vietnam on 17-18 November 1998* (1998)
- Mitchell, Chester Nelson, *The Drug Solution* (1990)
- Moore, James, 'Issues and Recommendations' in Richard H Blum et al (eds), *Controlling Drugs* (1974) 332
- Moore, James J, Joyce, C R B and Woodcock, Jasper (eds), *Psychoactive Drug Control: Issues and Recommendations - a Summary of "Controlling Drugs: International Handbook on Classification" Prepared by the International Research Group on Drug Legislation and Programs* (1973)
- Murray, Glenn F and Smart, Reginald G, 'The History and Rationale for the Convention on Psychotropic Substances' in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and Their International Control* (1981) 1
- Musto, David F, *The American Disease: Origin of Narcotic Control* (1973)
- Nadelmann, Ethan A, *Cops across Borders: The Internationalization of U.S. Criminal Law Enforcement* (1993)

- National Drug Strategy, *The Social Costs of Drug Abuse in Australia in 1988 and 1992, Monograph Series*, Monograph Series (1996)
- National Police Research Unit, *Measuring the Success of Law Enforcement Agencies in Australia in Targeting Major Drug Offenders Relative to Minor Drug Offenders*, Report Series: 127 (1996)
- Navaratnam, Vis and Singam, N P, 'The Convention on Psychotropic Substances 1971 - A Malaysian Perspective' in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and Their International Control* (1981) 114
- Nghiem, Xuan Dat and Nguyen, Minh Phong, *Ha Noi Trong Qua Trinh Hoi Nhap Kinh Te Quoc Te* (2002) [trans: Nghiem, Xuan Dat and Nguyen, Minh Phong, *Hanoi in the On-Going Process of International Integration* (2002)]
- Nguyen, Cong Son, 'Tinh Hinh va Ket Qua Cong Tac Phong Chong Ma Tuy 6 Thang Dau Nam 2006 va Mot So Nhiem Vu Trong Tam trong Thoi Gian Toi' (2006) 8 *Ban Tin Phong Chong Ma Tuy* 2 [trans: Nguyen, Cong Son, 'The Situation and Results of the Work on Drug Prevention and Suppression in the First Six Months of 2006 and Main Tasks in the Coming Year' (2006) 8 *Bulletin on Narcotics Prevention and Suppression* 2]
- Nguyen, Duy Cuong, 'Chan Chinh Cong Tac Xuat Nhap Khau trong Nganh Duoc' (1994) 1 *Duoc Hoc* 2 [trans: Nguyen, Duy Cuong, 'Reorganizing the Import and Export in Pharmaceutical Industry' (1994) 1 *Pharmacy* 2]
- Nguyen, Dang Dung and Ngo, Duc Tuan, *Luat Hien Phap Viet Nam* (1996) [trans: Nguyen, Dang Dung and Ngo, Duc Tuan, *Constitutional Law of Vietnam* (1996)]
- Nguyen, Duy Gia, *Cai Cach Nen Hanh Chinh Quoc Gia o Nuoc Ta* (1995) [trans: Nguyen, Duy Gia, *The Reform of State Administration in Vietnam* (1995)]
- Nguyen, Duc Luan, 'Tang Cuong Che Do Kiem Soat Tien Chat va Cac Hoa Chat Co Ban Su Dung Trong Viec San Xuat Trai Phep Ma Tuy' (1996) 11 *Duoc Hoc* 4 [trans: Nguyen, Duc Luan, 'Enhancing the Control of Precursors and Essential Chemicals Used in Illicit Narcotics Manufacture' (1996) 11 *Pharmacy* 4]
- Nguyen, Duc Thuan, 'Cong Tac Dieu Tra, Xu Ly cac Vu An ve Ma Tuy qua 4 nam 1994 - 1997' (1998) 7(123) *Nha Nuoc va Phap Luat* 44 [trans: Nguyen, Duc

- Thuan, 'Investigation and Trial of Drug-Related Crimes in the Four Years from 1994 to 1997' (1998) 7 *State and Law* 44]
- Nguyen, Dinh Trung, 'Nong Bong Te Nan Ma Tuy tren cac Tuyen, Phuong Tien Giao Thong Van Tai' (2005) 1 *Ban Tin Phong Chong Ma Tuy* 21 [trans: Nguyen, Dinh Trung, 'The Serious Situation of Illicit Drug Trafficking on Varying Transportation Routes and Methods' (2005) 1 *Bulletin on Narcotics Prevention and Suppression* 21]
- Nguyen, Huu Loc et al, *Ke Don va Pha Che Don Thuoc* (1974) [trans: Nguyen, Huu Loc et al, *Medical Prescription and Drug Preparation in Accordance with Prescription* (1974)]
- Nguyen, Hong Sinh, 'Van De Dinh Luong va Dinh Khung trong "Toi Tang Tru, Van Chuyen Trai Phep Chat Ma Tuy"' (2004) 7 *Tap Chi Kiem Sat* 31 [trans: Nguyen, Hong Sinh, 'The Issue of Specifying the Quantity of Narcotic Substances Involved and Sentencing in respect of the Crime of "Unlawful Stockpiling and Transporting Narcotic Substances"' (2004) 7 *Procuracy's Journal* 31]
- Nguyen, Huu Thanh, 'Ve Hanh Vi "Rua Tien" theo Quy Dinh cua Phap Luat Hinh Su Viet Nam' (2001) 6 *Luat Hoc* 36 [trans: Nguyen, Huu Thanh, 'Discussion on "Money Laundering Activities" under Vietnamese Criminal Law' (2001) 6 *Law Study* 36]
- Nguyen, Kim Ngan, 'Nhung Van De ve Thuc Hien Dieu Uoc Quoc Te tren Lanh Tho Quoc Gia' (2002) 4 *Luat Hoc* 35 [trans: Nguyen, Kim Ngan, 'The issue of Implementing International Agreements in National Territory' (2002) 4 *Law Study* 35]
- Nguyen, Mai Bo, *Bien Phap Ngan Chan, Kham Xet, Ke Bien Tai San trong Bo Luat To Tung Hinh Su* (2004) [trans: Nguyen, Mai Bo, *Restraining Measures, and Search and Confiscation under the Criminal Procedure Code* (2004)]
- Nguyen, Mai Bo, 'Mot So Y Kien ve viec Sua Doi Chuong V Bo Luat To Tung Hinh Su ve Nhung Bien Phap Ngan Chan' (1998) 7(123) *Nha Nuoc va Phap Luat* 20 [trans: Mai Bo Nguyen, 'Some Discussion on Amendments to Chapter V of the Criminal Code with respect to Preventive Measures' (1998) 7(123) *State and Law* 20]
- Nguyen, Mai Bo, 'Toi San Xuat, Tang Tru, Van Chuyen, Buon Ban Hang Cam' (2001) 4 *Toa An Nhan Dan* 15 [trans: Mai Bo, 'The Crime of Manufacture,

- Stockpiling, Transportation and Trade in Banned Goods' (2001) 4 *People's Court* 15]
- Nguyen, Mai Bo and Nguyen, Sy Dai, *Tim Hieu Phap Luat To Tung Hinh Su Viet Nam - Nhung Bien Phap Ngan Chan va Kham Xet, Thu Giu, Tam Giu, Ke Bien Tai San* (2003) [trans: Nguyen, Mai Bo and Nguyen, Sy Dai, *Studying the Criminal Procedure Laws of Vietnam: Restraining Measures, Search, Confiscation and Temporary Assuming of Custody* (2003)]
- Nguyen, Minh Duc, 'Can Co Mot Thong Tu Lien Tich Moi Huong Dan Ap Dung Mot So Dieu Luat Thuoc Chuong "Cac Toi Pham ve Ma Tuy" (2000) 7 *Tap Chi Kiem Sat* 20 [trans: Nguyen, Minh Duc, 'The Need for a New Joint Circular on the Application of Several Articles in Chapter "Drug-Related Crimes" (2000) 7 *Procuracy's Journal* 20]
- Nguyen, Minh Duc, 'Mot So Kien Nghi khi Huong Dan Ap Dung Mot So Dieu cua Bo Luat Hinh Su doi voi cac Toi Pham ve Ma Tuy' (2000) 5 *Toa An Nhan Dan* 15 [trans: Nguyen, Minh Duc, 'Some Recommendations for Guiding the Application of the Provisions of Several Articles on Drug-Related Crimes under the Criminal Code 1999' (2000) 5 *People's Court* 15]
- Nguyen, Minh Duc, 'Mot so Luu Y khi Kiem Sat Hoat Dong Dieu Tra Ban Dau doi voi cac Vu An Ma Tuy' (2001) 4 *Tap Chi Kiem Sat* 13 [trans: Nguyen, Minh Duc, 'Some Calls for Control and Supervision over the Initial Investigation of Drug-Related Cases' (2001) 4 *Procuracy's Journal* 13]
- Nguyen, Minh Duc, 'Mot so Van De ve Chung Cu trong cac Vu An Ma Tuy' (2002) 3 *Tap Chi Kiem Sat* 11 [trans: Nguyen, Minh Duc, 'Some Issues on Evidence in Drug-Related Crimes' (2002) 3 *Procuracy's Journal* 11]
- Nguyen, Minh Duc, 'Nhưng Kho Khan, Vương Mac trong Qua Trình Giải Quyết các Vụ An và Ma Tuy' (2003) 2 *Tap Chi Kiem Sat* 42 [trans: Nguyen, Minh Duc, 'Difficulties in Law Enforcement Regarding Drug-Related Crimes' (2003) 2 *Procuracy's Journal* 42]
- Nguyen, Minh Duc, 'Phan Biet giua Hanh Vi Vi Pham Hanh Chinh va Pham Toi ve Ma Tuy' (2003) *Tap Chi Kiem Sat* 24 [trans: Nguyen, Minh Duc, 'Differentiating between Administrative Violations and Drug-Related Crimes' (2003) *Procuracy's Journal* 24]
- Nguyen, Minh Duc, 'Tiep Tuc Nang Cao Chat Luong Cong Tac Thong Ke va Cong Nghe Thong Tin cua Nganh Kiem Sat Nhan Dan' (2006) 9 *Tap Chi Kiem Sat*

- 10 [trans: Nguyen, Minh Duc, 'Continuing to Improve the Quality of Statistical Work by the Procuracies', (2006) 9 *Procuracy's Journal* 10]
- Nguyen, Manh Hien, 'Nhưng Kho Khan Vương Mac trong Giai Quyet Cac Vu An ve Toi Pham Ma Tuy trong Thoi Gian Gan Day' (2003) 11 *Tap Chi Kiem Sat* 24 [trans: Nguyen, Manh Hien, 'Difficulties in Trials for Drug-Related Crimes in Recent Times' (2003) 11 *Procuracy's Journal* 24]
- Nguyen, Manh Khang, 'Hinh Phat: Mot So Van De Ly Luan' (2000) 10 *Nha Nuoc va Phap Luat* 21 [trans: Nguyen, Manh Khang, 'Punishment: Some Theoretical Issues' (2000) 10 *State and Law* 21]
- Nguyen, Minh Thong, 'Cai Cach Co Cau To Chuc va Hoat Dong cua Hoi Dong Nhan Dan va Uy Ban Nhan Dan o Tat Ca Cac Cap Hanh Chinh' (1999) 6 *Nha Nuoc va Phap Luat* 27 [trans: Nguyen, Minh Thong, 'Reforming the Organization and Operation of the People's Council and People's Committees at All Levels of Administration' (1999) 6 *State and Law* 27]
- Nguyen, Ngoc Diep and Doan, Tat Minh, *Tim Hieu cac Toi Pham ve Tham Nhung, Ma Tuy va Xam Pham Tinh Duc Doi Voi Ngươi Chưa Thanh Nien* (1998) [trans: Nguyen, Ngoc Diep and Doan, Tat Minh, *Study on Crimes Relating to Corruption, Drugs and Sexual Assault with the Juvenile* (1998)]
- Nguyen, Ngoc Hoa (ed), *Giao Trinh Luat Hinh Su Viet Nam* (2001) [trans: Nguyen, Ngoc Hoa (ed), *Textbook on the Criminal Law of Vietnam* (2001)]
- Nguyen, Ngoc Hoa, 'Muc Dich cua Hinh Phat' (1999) 1 *Luat Hoc* 9 [trans: Nguyen, Ngoc Hoa, 'Purposes of Penalty' (1999) 1 *Law Study* 9]
- Nguyen, Ngoc Hien, *Nhung Giai Phap Thuc Day Cai Cach Hanh Chinh o Viet Nam* (2001) [trans: Nguyen, Ngoc Hien, *Solutions to Speed up Administrative Reforms in Vietnam* (2001)]
- Nguyen, Ngoc Huy and Ta, Van Tai, *The Le Code: Law in Traditional Vietnam: A Comparative Sino-Vietnamese Legal Study with Historical-Juridical Analysis and Annotations* (1987)
- Nguyen, Phong Hoa, *Cac Toi Pham ve Ma Tuy: Dac Diem Hinh Su, Dau Hieu Phap Ly, cac Bien Phap Phat Hien Dieu Tra* (1998) [trans: Nguyen, Phong Hoa, *Drug-Related Crimes: Criminal Characteristics, Legal Constituents, Measures to Discover and to Investigate Offenses* (1998)]

- Nguyen, Phong Hoa and Dang, Ngoc Hung, *Ma Tuy va nhung Van De ve Cong Tac Kiem Soat Ma Tuy* (1994) [trans: Nguyen, Phong Hoa and Dang, Ngoc Hung, *Narcotics and Matters Concerning Narcotics Control* (1994)]
- Nguyen, Phu Trong, *Dang Cong San Viet Nam trong Tien Trinh Doi Moi* (2002) [trans: Nguyen, Phu Trong, *Vietnam's Communist Party in the Process of Renovation* (2002)]
- Nguyen, Son, 'Ban ve Ban Chat va Chuc Nang cua Hinh Phat' (2002) 9 *Nha Nuoc va Phap Luat* 41 [trans: Nguyen, Son, 'Discussions on the Nature and Functions of Penalty' (2002) 9 *State and Law* 41]
- Nguyen, Tien Dung, 'Thuc Trang va Giai Phap Ngan Chan Tinh Hinh Tai Trong cay Thuoc Phien o nhung Dia Ban thuoc Tinh Yen Bai Giap Ranh voi cac Tinh' (2002) 9 *Ban Tin Phong Chong Ma Tuy* 22 [trans: Nguyen, Tien Dung, 'The Reality and Solutions to Prevent Opium Poppy Re-Cultivation in the Border Villages of Yen Bai' (2002) 9 *Bulletin on Narcotics Prevention and Suppression* 22]
- Nguyen, Trung Kien, 'Mot So Giai Phap Gop Phan Nang Cao Hieu Qua Cong Tac Phat Hien, Dieu Tra Toi Tang Tru, Van Chuyen, Mua Ban Trai Phep Chat Ma Tuy tren Dia Ban Tinh Lang Son' (2005) 3 *Ban Tin Phong Chong Ma Tuy* 16 [trans: Trung Kien Nguyen, 'Some Solutions to Enhance the Effectiveness of Detecting and Investigating the Criminal Offense of “Illegal Stockpiling, Transporting, Trading in Narcotic Drugs” in Lang Son Province' (2005) 3 *Bulletin on Narcotics Prevention and Suppression* 16]
- Nguyen, Trinh Kiem, 'Xem Xet Kinh Nghiem Phong Chong Ma Tuy tai Tuyen Quang Duoi Goc Do Khoa Hoc Quan Ly Nha Nuoc' (2003) 4 *Ban Tin Phong Chong Ma Tuy* 12 [trans: Nguyen, Trinh Kiem, 'Experience of Drug Control in Tuyen Quang from the State Management Perspective' (2003) 4 *Bulletin on Narcotics Prevention and Suppression* 12]
- Nguyen, Tuyet Mai, 'Toi Su Dung Trai Phep Chat Ma Tuy trong Bo Luat Hinh Su Viet Nam nam 1999' (2006) 5 *Ban Tin Phong Chong Ma Tuy* 6 [trans: Nguyen, Tuyet Mai, 'The Crime of Illegal Use of Narcotic Substances under the Criminal Code of Vietnam 1999' (2006) 5 *Bulletin on Narcotics Prevention and Suppression* 6]
- Nguyen, Thi Mai Nga and Pham, Quoc Huynh, *Nhung Van De Co Ban trong Cong Tac Kiem Sat Dieu Tra va Kiem Sat Xet Xu cac Toi Pham ve Ma Tuy o Viet*

- Nam (2003) [trans: Nguyen, Thi Mai Nga and Pham, Quoc Huynh, *Basic Issues on the Supervision of Investigations and Trials for Drug-Related Crimes* (2003)]
- Nguyen, Trong Phuc, *Vai Tro Lanh Dao cua Dang Cong San trong Thoi Ky Doi Moi* (1999) [trans: Nguyen, Trong Phuc, *The Leading Role of the Communist Party in the Period of Reform in the Country* (1999)]
- Nguyen, Thi Phuong Cham, 'Quan Ly Thuoc Doc, Nghien, Huong Than, Tien Chat trong Benh Vien' (1999) 2 *Duoc Hoc* 2 [trans: Nguyen, Thi Phuong Cham, 'Control of Toxic, Addictive, Psychotropic Drugs and Precursors in Hospitals' (1999) 2 *Pharmacy* 2]
- Nguyen, Trung Thanh, 'Du Bao Tinh Hinh Toi Pham co To Chuc o Viet Nam tu Nay den Nam 2010' (2002) 8 *Ban Tin Phong Chong Ma Tuy* 12 [trans: Nguyen, Trung Thanh, 'Forecast on Organized Crime in Vietnam Towards 2010' (2002) 8 *Bulletin on Narcotics Prevention and Suppression* 12]
- Nguyen, Van Chinh et al, *Kinh Te Viet Nam Doi Moi: Nhung Phan Tich va Danh Gia Quan Trong* (2002) [trans: Nguyen, Van Chinh et al, *Economic Reform in Vietnam: Major Analysis and Comments* (2002)]
- Nguyen, Van Hien, 'Mot So Van De ve Trach Nhiem Hinh Su doi voi cac Toi Pham Ma Tuy theo Phap Luat Viet Nam tu 1945 den nay' (1998) 3 *Toa An Nhan Dan* 11 [trans: Nguyen, Van Hien, 'Some Issues on Criminal Liability for Drug-Related Crimes under Vietnamese Law and Regulations since 1945 to the Present' (1998) 3 *People's Court* 11]
- Nguyen, Van Hoan, 'Mot So Van De ve Xu Ly cac Vi Pham Hanh Chinh Lien Quan den Ma Tuy' (1996) 3 *Toa An Nhan Dan* 11 [trans: Van Hoan Nguyen, 'Some Issues on Sanctions Imposed on Administrative Infringements Relating to Narcotics' (1996) 3 *State and Law* 11]
- Nguyen, Van Hoan, 'Phap Luat ve Phong Chong va Kiem Soat Ma Tuy o Nuoc Ta' (1995) 1 *Nha Nuoc va Phap Luat* 24 [trans: Van Hoan Nguyen, 'Laws and Regulations on Narcotics Prevention and Suppression, and Drug Control in Our Country' (1995) 1 *State and Law* 24]
- Nguyen, Van Hien, 'Thuc Tien Ap Dung va Yeu Cau Sua Doi Bo Sung cac Dieu 96a va 203 Bo Luat Hinh Su' (1995) 1 *Nha Nuoc va Phap Luat* 29 [trans: Nguyen, Van Hien, 'The Practical Application and Need for Amendment of Articles 96a and 203 of the Criminal Code' (1995) 1 *State and Law* 29]

- Nguyen, Van Hop and Truong, Dac Linh, 'Mot Vai Van De ve Quan Ly cua Chinh Quyen Dia Phuong' (1999) 1 *Thong Tin Khoa Hoc Phap Ly* 7 [trans: Nguyen, Van Hop and Truong, Dac Linh, 'Several Issues on the Management of Local Authorities' (1999) 1 *Information on Legal Science* 7]
- Nguyen, Van Thanh (ed), *Nhung Mat Trai cua Toan Cau Hoa* (2003) [trans: Nguyen, Van Thanh (ed), *Negative Impacts of Globalization* (2003)]
- Nguyen, Van Thanh, 'Quan Ly Tien Chat Su Dung Lam Thuoc trong Nganh Y Te' (2004) 11 *Ban Tin Phong Chong Ma Tuy* 14 [trans: Nguyen, Van Thanh, 'Control of Precursors Used in the Pharmaceutical Industry' (2004) 11 *Bulletin on Narcotics Prevention and Suppression* 14]
- Nguyen, Van Yeu, 'Directions for Perfection on the Legal System in the Coming Time' (2004) 12 *Vietnam Law and Legal Forum* 2
- Nguyen, Xuan Yem, 'Dan Do Toi Pham va Tuong Tro Tu Phap Hinh Su trong Dau Tranh Phong Chong Toi Pham o Viet Nam' (2000) 1 *Toa An Nhan Dan* 15 [trans: Nguyen, Xuan Yem, 'Extradition and Mutual Legal Assistance in Crime Prevention in Vietnam' (2000) 1 *People's Court* 15]
- Nguyen, Xuan Yem, *Dan Do Toi Pham, Tuong Tro Phap Ly ve Hinh Su va Chuyen Giao Pham Nhan Quoc Te trong Phong Chong Toi Pham* (2000) [trans: Nguyen, Xuan Yem, *Extradition, Mutual Assistance in Criminal Matters and Transfer of Transnational Criminals in Crime Prevention and Suppression* (2000)]
- Nguyen, Xuan Yem, *Luat Phong Chong Ma Tuy va Phong Chong Ma Tuy trong Nha Truong* (2004) [trans: Nguyen, Xuan Yem, *Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions* (2004)]
- Nguyen, Xuan Yem, *Mai Dam, Ma Tuy, Co Bac, Toi Pham Thoi Hien Dai* (2003) [trans: Nguyen, Xuan Yem, *Prostitution, Narcotics and Gambling: Crimes at the Morden Time* (2003)]
- Nguyen, Xuan Yem, 'Te Nan Ma Tuy o Nuoc Ta Hien Nay - Thuc Trang, Nguyen Nhan va Giai Phap' in Tri Uc Dao and Khanh Vinh Vo (eds), *Nhung Van De Ly Luan va Thuc Tien cua viec Dau Tranh Phong, Chong cac Te Nan Xa Hoi o Nuoc Ta* (2002) 225 [trans: Nguyen, Xuan Yem, 'Narcotics in Vietnam at the Present Time: Realities, Reasons and Solutions' in Tri Uc Dao and Khanh Vinh Vo (eds), *Some Theoretical and Practical Issues in the Fight against Social Evils in Our Country* (2002) 225]

- Nguyen, Xuan Yem, *Toi Pham Co To Chuc, Mafia va Toan Cau Hoa Toi Pham* (2003) [trans: Nguyen, Xuan Yem, *Organized Crimes, the Mafia and Globalization of Crimes* (2003)]
- Nguyen, Xuan Yem, *Toi Pham Hoc Hien Dai va Phong Ngua Toi Pham* (2001) [trans: Nguyen, Xuan Yem, *Modern Criminology and Crime Prevention* (2001)]
- Nguyen, Xuan Yem and Vu, Quang Vinh, *Nhung Van De Co Ban ve Cong Tac Phong Chong Ma Tuy* (2002) [trans: Nguyen, Xuan Yem and Vu, Quang Vinh, *Basic Issues on the Prevention of Drug-Related Crimes* (2002)]
- Noll, Alfons, 'Drug Abuse and Its Prevention as Seen by the International Legal Profession' (1976) 5 *Contemporary Drug Problems* 71
- Noll, Alfons, 'International Treaties and the Control of Drug Use and Abuse' (1977) 6 *Contemporary Drug Problems* 17
- Oppenheimer, T M, 'Projections for the Future Development of International Drug Control Policies' (1990) 1(1) *Bulletin on Narcotics* 3
<http://www.unodc.org/unodc/bulletin/bulletin_1990-01-01_1_page002.html>
- Painter, Martin, 'Public Administration Reform in Vietnam' in Anthony B L Cheung and Ian Scott (eds), *Governance and Public Sector Reform in Asia - Paradigm Shifts or Business as Usual?* (2003) 208
- Palier, Bruno, *Social Policy and Globalization's Processes* (2003)
- Parliamentary Joint Committee on the National Crime Authority, *Drugs, Crime and Society: Reported by the Parliamentary Joint Committee on the National Crime Authority* (1989)
- Peck, David F and Plan, Martin A, 'Unemployment and Illegal Drug Use: Concordant Evidence from a Prospective Study and National Trends' in Nigel South (ed), *Drugs, Crime and Criminal Justice* (1995) vol 1, 179
- Pham, Gia Khiem, 'Bai Khai Mac cua Pho Thu Tuong Pham Gia Khiem, Chu Tich Uy Ban Quoc Gia Phong, Chong AIDS va Phong, Chong Te Nan Ma Tuy, Mai Dam tai Hoi Nghi' (2001) 4 *Ban Tin Phong Chong Ma Tuy* 5 [trans: Pham, Gia Khiem, 'Opening Speech of the Deputy Prime Minister - the Head of the National Committee for Prevention and Suppression of AIDS, Narcotics and Prostitution' (2001) 4 *Bulletin on Narcotics Prevention and Suppression* 5]

- Pham, Gia Khiem, 'Huy Dong Suc Manh cua Ca He Thong Chinh Tri vao Cuoc Dau Tranh Phong Chong Ma Tuy' (2005) 1 *Ban Tin Phong Chong Ma Tuy* 4 [trans: Gia Khiem Pham, 'Mobilizing Strengths of the Whole Political System in the Combat against Illicit Narcotics' (2005) 1 *Bulletin on Narcotics Prevention and Suppression* 4]
- Pham, Minh Tuyen, 'Trach Nhiem Hinh Su doi voi cac Toi ve Ma Tuy theo Bo Luat Hinh Su 1999' (2003) 3 *Toa An Nhan Dan* 13 [trans: Minh Tuyen Pham, 'Criminal Liability for Drug-Related Crimes under the Criminal Code 1999' (2003) 3 *People's Court* 13]
- Pham, Minh Tuyen, 'Viec Dinh Luong doi voi cac Toi Pham ve Ma Tuy trong Bo Luat Hinh Su 1999' (2003) 9 *Tap Chi Kiem Sat* 38 [trans: Pham, Minh Tuyen, 'The Issue of Specifying the Quantity of Narcotic Substances Involved in Drug-Related Crimes under the Criminal Code 1999' (2003) 9 *Procuracy's Journal* 38]
- Pham, Quoc Tru et al, *Viet Nam Hoi Nhap Kinh Te trong Xu The Toan Cau Hoa: Van De va Giai Phap* (2002) [trans: Pham, Quoc Tru et al, *Vietnam's Economic Integration in the Trend to Globalization: Problems and Solutions* (2002)]
- Pham, Tuan Hai, *Nhung Van De Phap Ly Co Ban ve Cai Cach To Chuc va Hoat Dong cua Co Quan Thanh Tra Nha Nuoc* (1998) [trans: Pham, Tuan Hai, *Some Basic Legal Issues concerning the Organizational and Operational Reforms of State Inspection Authorities* (1998)]
- Pham, Van Duc, 'Tinh Hinh va Ket Qua Mot Nam Trien Khai Luat Phong Chong Ma Tuy' (2002) 8 *Ban Tin Phong Chong Ma Tuy* 4 [trans: Pham, Van Duc, 'The Situation and Results of the One-Year Implementation of the Law on Narcotics Prevention and Suppression' (2002) 8 *Bulletin on Narcotics Prevention and Suppression* 4]
- Phan, Huy Le et al (eds), *Cac Nha Viet Nam Hoc Nuoc Ngoai Viet ve Viet Nam* (2002) [trans: Phan, Huy Le et al (eds), *Writing about Vietnam by Foreign Researchers* (2002)]
- Phan, Van Khai, 'Huy Dong Suc Manh cua ca He Thong Chinh Tri va Toan Xa Hoi trong Cong Tac Phong Chong Ma Tuy' (2001) 4 *Ban Tin Phong Chong Ma Tuy* 2 [trans: Phan, Van Khai, 'Mobilizing the Strength of All Political

- Systems and Social Units in Drug Control' (2001) 4 *Bulletin on Narcotics Prevention and Suppression* 2]
- Phan, Van Khai, 'Ngan Chan va Bai Tru cac Te Nan Xa Hoi Nhat la Te Nan Ma Tuy, Mai Dam nham Xay dung Loi Song Van Minh, Lanh Manh' (2003) 3 *Ban Tin Phong Chong Ma Tuy* 8 [trans: Phan, Van Khai, 'Prevention and Suppression of Social Evils, Especially Drug Abuse and Prostitution, to Establish a Civilized and Healthy Lifestyle' (2003) 3 *Bulletin on Narcotics Prevention and Suppression* 8]
- Phan, Xuan Tuy, 'Mot So Van De Thong Ke Toi Pham trong Luat Phong Chong Ma Tuy' (2003) 7 *Ban Tin Phong Chong Ma Tuy* 3 [trans: Phan, Xuan Tuy, 'Some Issues on Crime Statistics Pursuant to the Law on Narcotics Prevention and Suppression' (2003) 7 *Bulletin on Narcotics Prevention and Suppression* 3]
- Phong Vien, 'Bo Cong Nghiep: Kiem Soat Tien Chat Can Co su Phoi Hop Chat Che Giua Cac Co Quan Quan Ly Nha Nuoc' (2004) 11 *Ban Tin Phong Chong Ma Tuy* 12 [trans: Phong Vien, 'Ministry of Industries: The Need for Cooperation among State Authorities in Controlling Precursors' (2004) 11 *Bulletin on Narcotics Prevention and Suppression* 12]
- Plant, Moira L et al, 'The Sex Industry, Alcohol and Illicit Drugs: Implications for the Spread of HIV Infection' in Nigel South (ed), *Drugs, Crime and Criminal Justice* (1995) vol 1, 183
- Potas, Ivan and Poletti, Patrizia, *Sentencing Drug Offenders: An Analysis of Sentences Imposed in the Higher Courts of New South Wales: 1 January 1992 to 31 December 1997*, Monograph Series Number 19 (1999)
- Project Search Statistical Advisory Committee, *Technical Report No. 3: Designing Statewide Criminal Justice Statistics Systems - The Demonstration of a Prototype* (1970)
- Puttler, Adelheid, 'Extraterritorial Application of Criminal Law: Jurisdiction to Prosecute Drug Traffic Conducted by Aliens Abroad' in Karl M. Meessen (ed), *Extraterritorial Jurisdiction in Theory and Practice* (1996) 103
- Raustiala, Kal, 'Law, Liberalization & International Narcotics Trafficking' (1999) 32 *International Law and Politics* 89
- Reaves, Brian A, Smith, Pheny Z and Wash, D C, *Law Enforcement Management and Administrative Statistics, 1993* (1993)

- Reichel, Philip (ed), *Handbook of Transnational Crime & Justice* (2005)
- Reid, Sue Titus, *Criminal Law* (2 ed, 1992)
- Renborg, Bertil A, *International Drug Control - A Study of International Administration by and through the League of Nations* (2nd ed, 1972)
- Rexed, Bror et al, *Guidelines for the Control of Narcotic and Psychotropic Substances in the Context of the International Treaties* (1984)
- Rhyne, Charles S, Mutuc, Amelito R and Libow, Brian M, *International Control of Narcotic Drugs: The Law-Making Activities of the United Nations Commission on Narcotic Drugs and the International Narcotics Control Board* (1976)
- Rufencer, Brent L, Rachal, J Valley and Cruze, Alvin M, 'Costs of Drug Abuse to Society' in Irving Leveson (ed), *Quantitative Exploration in Drug Abuse Policy* (1980) 1
- Russel, Philip S, 'Money Laundering: A Global Challenge' (2004) 5 *American Academy of Business* 259
- Schroder, Oscar, 'The Ratification and Implementation of the Convention on Psychotropic Substances in the Federal Republic of Germany' in Reginald G Smart, Gleen F Murray and H David Archibald (eds), *Psychotropic Substances and Their International Control* (1981) 77
- Schroeder, Richard C, *The Politics of Drugs* (1975)
- Science of Economic Association of Vietnam, Information and Development Consultant Center, *Information and Development Consultant Center, An Overview of Planning the Vietnamese Economy and Society* (2002)
- Shearer, I A, *Extradition in International Law* (1971)
- Smart, Reginald G, Murray, Gleen F and Archibald, H David (eds), *Psychotropic Substances and Their International Control* (1981)
- Snider, William J, 'Developments in Criminal Law and Criminal Justice: International Cooperation in the Forfeiture of Illegal Drug Proceeds' (1995) 6 *Criminal Law Forum* 377
- SouEIF, Mustapha I, 'The Psychotropic Convention in Egypt' in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and their International Control* (1981) 61
- South, Nigel (ed), *Drugs, Crime and Criminal Justice: Histories and Use, Theories and Debates* (1995)

- Spielmann, S, 'The Family in Thailand and Drug Demand Reduction: Problem of Urban Thai Society in Transition' (1994) 4(1) *Bulletin on Narcotics* 45
<http://www.unodc.org/unodc/bulletin/bulletin_1994-01-01_1_page005.html>
- Standing Office for Drug Control, *Drug Control Activities in Viet Nam* (2003)
- Stares, Paul B, *Global Habit - The Drug Problem in a Borderless World* (1996)
- State and Law Institution, *Some Basic Theoretical Issues on State and Law* (1995)
- State General Statistics Office, *Report on the Results of Vietnam's Population Forecast: 1999 - 2024* (2000)
- State General Statistics Office, *Scio-Economic Situation in Vietnam During Three-Year Period, from 2001 to 2003* (2003)
- State Planning Department, *Administrative Management in the Market Economy: Special Subject* (1991)
- Stimson, G V, 'The Global Diffusion of Injecting Drug Use: Implications for Human Immunodeficiency Virus Infection' (1993) 1(001) *Bulletin on Narcotics* 3
<http://www.unodc.org/unodc/bulletin/bulletin_1993-01-01_1_page002.html>
- Tan, Poh-Ling (ed), *Asian Legal Systems - Law, Society and Pluralism in East Asia* (1997)
- Teff, Harvey, *Drugs, Society and the Law* (1975)
- The Communist Party, 'Documents of the Ninth National Party Congress' (The Communist Party, 2001)
- The Communist Party, 'To Promote the Entire Nation's Strength, Continue with the Renewal Process, Step up Industrialisation and Modernization, Build and Safeguard the Socialist Vietnamese Homeland (The Communist Party of Vietnam Central Committee's Political Report presented to the Ninth National Congress)' (2001) 4 *Vietnam Law and Legal Forum* 1
- The Law Study Institution, *Basic Theoretical Issues on Crime in Criminal Law* (1986)
- To, Xuan Dan and Do, Duc Binh (eds), *Viet Nam Hoi Nhap Kinh Te Toan Cau: Nhung Co Hoi va Thach Thuc - Tom Tat cua Hoi Thao Khoa Hoc* (1999)
[trans: To, Xuan Dan and Do, Duc Binh, *Vietnam's Integration into the Global Economy: Opportunities and Challenges - Synopsis of the Scientific Conference* (1999)]

- Tong Cuc Thong Ke, *Dong Thai va Thuc Trang Kinh Te Xa Hoi Viet Nam sau 10 nam Doi Moi tu 1986 den 1995* (1996) [trans: State General Statistics Office, *Momentum and Present Situation of Vietnam's Economy and Society after Ten Years of Renovation from 1986 to 1995* (1996)]
- Tong Cuc Thong Ke, *Nien Giam Thong Ke cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 2005* (2006) [trans: State General Statistics Office, *Statistical Yearbook of the Socialist Republic of Vietnam for 2005* (2006)]
- Tong Cuc Thong Ke, *Nien Giam Thong Ke cua Nuoc Cong Hoa Xa Hoi Chu Nghia Vietnam nam 2003* (2003) [trans: State General Statistics Office, *Statistical Yearbook of the Socialist Republic of Vietnam for 2003* (2003)]
- Tong Cuc Thong Ke, *So Lieu Thong Ke ve Tinh Hinh Kinh Te Xa Hoi Vietnam tu nam 1975 den 2001* (2002) [trans: State General Statistics Office, *Statistical Data on Vietnam's Economy and Society from 1975 to 2001* (2002)]
- Tong Cuc Thong Ke, *Tinh Hinh Kinh Te Xa Hoi Viet Nam trong ba nam tu 2001 den 2003* (2003) [trans: State General Statistics Office, *Vietnam's Economy and Society in Three Years from 2001 to 2003* (2003)]
- Tongue, Eva, 'Reflections on the Development, Content and Acceptance of the Convention on Psychotropic Substances' in Reginald G Smart, Glenn F Murray and H David Archibald (eds), *Psychotropic Substances and Their International Control* (1981) 30
- Tonry, Michael and Wilson, James Q (eds), *Drugs and Crime - Volume 13* (1990)
- Tran, Dinh Huynh and Manh, Quang Thang, *Dang Cong San Viet Nam trong He Thong Chinh Tri Viet Nam* (1991) [trans: Tran, Dinh Huynh and Manh, Quang Thang, *The Communist Party in the Political System of Vietnam* (1991)]
- Tran, Dinh Nha, 'Co Quan Chuyen Trach va Khong Chuyen Trach Dau Tranh Phong, Chong Te Nan Xa Hoi o Nuoc Ta Hien Nay - Thuc Trang To Chuc va Hoat Dong' in Tri Uc Dao and Khanh Vinh Vo (eds), *Nhung Van De Ly Luan va Thuc Tien cua viec Dau Tranh Phong, Chong cac Te Nan Xa Hoi o Nuoc Ta* (2002) 176 [trans: Tran, Dinh Nha, 'Professional and Non-Professional Bodies Dealing with Social Evils in Vietnam at the Present Time: the Situation in relation to Their Organization and Operation' in Tri Uc Dao and Khanh Vinh Vo (eds), *Some Theoretical and Practical Issues in the Fight against Social Evils in Our Country* (2002) 176]

- Tran, Duc Thin, 'Ban Ve Tinh Tiet "Co Tu Hai Chat Ma Tuy Tro Len"' (2003) 12 *Nha Nuoc va Phap Luat* 54 [trans: Tran, Duc Thin, 'Discussion on Circumstance "More Than One Type of Narcotic Substance Involved in Drug-Related Offenses"' (2003) 12 *State and Law* 54]
- Tran, Duc Thin, 'Nhưng Dạng Hành Vi của Tội Tổ Chức Sử Dụng Trái Phép Chạy Ma Tuy' (2002) 10 *Nha Nuoc va Phap Luat* 46 [trans: Tran, Duc Thin, 'Various Forms of the Criminal Offense of "Organizing the Illegal Use of Narcotic Substances"' (2002) 10 *State and Law* 46]
- Tran, Hoang, 'Bo Doi Bien Phong Ngan Chan "Dong Chay" Ma Tuy qua Bien Gioi' (2004) 12 *Ban Tin Phong Chong Ma Tuy* 19 [trans: Tran, Hoang, 'Border Guards in the Combat against "Drug Flows" across National Borders' (2004) 12 *Bulletin on Narcotics Prevention and Suppression* 19]
- Tran, Huu Ung, 'Ve Khai Niem "Toi Pham Co To Chuc"' (2000) 12 *Toa An Nhan Dan* 1 [trans: Tran, Huu Ung, 'Conception: "Organized Crimes"' (2000) 12 *People's Court* 1]
- Tran, Minh Huong, *Tim Hieu Bo Luat Hinh Su Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam: Binh Luan va Chu Giai* (2002) [trans: Tran, Minh Huong, *Studying the Criminal Code of Vietnam: Comments and Annotations* (2002)]
- Tran, Minh Huong, 'Toi Pham Rua Tien va Cac Giai Phap Nang Cao Hieu Qua Cong Tac Phong Chong Toi Pham Rua Tien' (2003) 12 *Tap Chi Kiem Sat* 29 [trans: Tran, Minh Huong, 'Money Laundering and Solutions to Enhance the Effectiveness of Money Laundering Prevention' (2003) 12 *Procuracy's Journal* 29]
- Tran, Quang Tiep, 'Hoan Thien Quy Dinh cua Bo Luat Hinh Su ve Xui Giuc Thuc Hien Toi Pham' (1999) 4 *Toa An Nhan Dan* 14 [trans: Tran, Quang Tiep, 'Improving the Regulations of the Criminal Code on Inducing Others to Commit Criminal Offenses' (1999) 4 *People's Court* 14]
- Tran, Quang Tiep, 'Mot So Van De ve Loi Trong Luat Hinh' (1999) 11 *Nha Nuoc va Phap Luat* 33 [trans: Tran, Quang Tiep, 'Some Issues in respect of the Regulations on Fault in Criminal Law' (1999) 11 *State and Law* 33]
- Tran, Trong Luong, 'Can Phai co Giai Phap de Thong Nhat Nhan Thuc trong Cong Tac Dieu Tra Xu Ly Toi Pham Ma Tuy Dang Thuoc Huong Than' (2004) 7 *Ban Tin Phong Chong Ma Tuy* 11 [trans: Tran, Trong Luong, 'The Need to Create A Uniform Understanding in the Investigation and Trial of Crimes

- Relating to Psychotropic Substances' (2004) 7 *Bulletin on Narcotics Prevention and Suppression* 11]
- Tran, Thi Quang Vinh, 'Dinh Luong Cac Can Cu Danh Gia Tinh Nguy Hiem cho Xa Hoi cua Toi Pham' (1999) 1999 *Thong Tin Khoa Hoc Phap Ly* 25 [trans: Tran, Thi Quang Vinh, 'Specifying Quantities for the Purpose of Evaluating the Seriousness of Criminal Conduct' (1999) 1999 *Information on Legal Study* 25]
- Tran, Van Do, 'Hoan Thien cac Quy Dinh cua Bo Luat Hinh Su ve Cac Giai Doan Thuc Hien Toi Pham' (1999) (5) *Toa An Nhan Dan* 4 [trans: Tran, Van Do, 'Improving the Provisions of the Criminal Code in respect of the Different Stages of Crime Commission' (1999) (5) *People's Court* 4]
- Tran, Van Dan et al, *Vietnam: My Homeland* (1989)
- Tran, Van Luyen, 'Dac Tinh Hinh Su cua Cac Toi Tang Tru, Van Chuyen, Mua Ban Trai Phep cac Chat Ma Tuy' (1998) 9 *Toa An Nhan Dan* 5 [trans: Tran, Van Luyen, 'Criminal Characteristics of the Offense of Illegal Stockpiling, Transporting and Trading of Narcotic Substances' (1998) 9 *People's Court* 5]
- Tran, Van Luyen, 'Nhưng Thu Doan "Tay Rua Tien" cua Bon Buon Ban Ma Tuy' (1999) 1 *Toa An Nhan Dan* 24 [trans: Van Luyen Tran, 'Tricks of Drug Traffickers in "Money Laundering"' (1999) 1 *People's Court* 24]
- Tran, Van Luyen, *Trach Nhiem Hinh Su doi voi cac Toi Pham ve Ma Tuy* (1998) [trans: Tran, Van Luyen, *Criminal Liability for Drug-Related Crimes* (1998)]
- Tran, Van Luyen, 'Ve Dinh Luong cac Chat Ma Tuy trong Luat Sua Doi, Bo Sung Mot So Dieu cua Bo Luat Hinh Su' (1998) 11 *Toa An Nhan Dan* 15 [trans: Tran, Van Luyen, 'The Issue of Specifying the Quantity of Narcotic Substances Involved in Drug-Related Crimes under the Law Amending Some Articles of the Criminal Code 1999' (1998) 11 *People's Court* 15]
- Tran, Van Son, 'Mot So Y Kien ve cac Toi Pham ve Ma Tuy trong Luat Sua Doi, Bo Sung Mot So Dieu cua Bo Luat Hinh Su' (1998) 2 *Toa An Nhan Dan* 4 [trans: Tran, Van Son, 'Some Comments on Regulations on Drug-Related Crimes in the Amended Criminal Code' (1998) 2 *People's Court* 4]
- Tran, Viet Trung, 'Hieu Qua Cai Nghien Phuc Hoi Chua Cao, nhung Nguyen Nhan Co Ban can Khac Phuc' (2003) 7 *Ban Tin Phong Chong Ma Tuy* 7 [trans: Tran, Viet Trung, 'Low Efficiency of Drug Abuse Rehabilitation: Principal

- Reasons and Solutions' (2003) 7 *Bulletin on Narcotics Prevention and Suppression* 7]
- Tran, Xuan Kien, *Cac Giai Phap Phat Trien Kinh Te Xa Hoi Viet Nam The Ky XXI* (2003) [trans: Xuan Kien Tran, *Socio-Economic Solutions for Vietnam in the Twenty-First Century* (2003)]
- Trebach, Arnold S and Zeese, Kevin B (eds), *Drug Prohibition and the Conscience of Nations* (1990)
- Trinh, Ngoc Huyen, 'Phong Chong Ma Tuy o Dia Ban Bien Gioi: Nhiem Vu Thuong Xuyen cua Bo Doi Bien Phong' (2001) 4 *Ban Tin Phong Chong Ma Tuy* 15 [trans: Trinh, Ngoc Huyen, 'Drug Control in Border Areas: A Permanent Task of the Border Guards' (2001) 4 *Bulletin on Narcotics Prevention and Suppression* 15]
- Trinh, Tien Viet, 'Cac Tinh Tiet Giam Nhe va Tang Nang Trach Nhiem Hinh Su trong Bo Luat Hinh Su nam 1999 va Mot So Kien Nghi' (2004) 3 *Phap Ly* 12 [trans: Trinh, Tien Viet, 'Alleviating and Aggravating Factors in the Criminal Code 1999 and Some Comments' (2004) 3 *Legal Study* 12]
- Trinh, Tien Viet, *Phap Luat Hinh Su va Thuc Tien Ap Dung* (2003) [trans: Trinh, Tien Viet, *Criminal Law and Its Practical Application* (2003)]
- Truong Dai Hoc Luat Ha Noi, *Giao Trinh Ly Luan ve Nha Nuoc va Phap Luat* (1996) [trans: Law University of Hanoi, *Textbook on Theories of State and Law* (1996)]
- Truong Dai Hoc Phap Ly Ha Noi, *Giao Trinh Luat Hinh Su Viet Nam Phan Chung* (1992) [trans: The Law University of Hanoi, *Textbook on the Criminal Law of Vietnam: General Part* (1992)]
- Truong, Duc Ngai and Phan, Thang (eds), *Viet Nam Huong Toi The Ky XXI* (2000) [trans: Truong, Duc Ngai and Phan, Thang (eds), *Vietnam Towards the Twenty-First Century* (2000)]
- Truong, Huu Quoc, 'Luc Luong Cong An Nhan Dan Day Manh Cong Tac Dau Tranh Chong Toi Pham Ma Tuy' (2001) 4 *Ban Tin Phong Chong Ma Tuy* 20 [trans: Truong, Huu Quoc, 'The People's Police Enhance the Combat against Drug-Related Crimes' (2001) (4) *Bulletin on Narcotics Prevention and Suppression* 20]
- Truong, Quang Vinh, 'Ban ve Khai Niem "Toi Pham" trong Bo Luat Hinh Su Viet Nam nam 1999' (2003) 3 *Luat Hoc* 67 [trans: Quang Vinh Truong, 'Some

- Thoughts on the Conception 'Crime' under the Criminal Code 1999' (2003) 3 *Law Study* 67]
- Truong, Quang Vinh, 'Hinh Phat Tien trong Bo Luat Hinh Su nam 1999' (2002) 4 *Luat Hoc* 62 [trans: Truong, Quang Vinh, 'Fines in the Criminal Code 1999' (2002) 4 *Law Study* 62]
- Tullis, Lamond, *Illicit Drug Taking and Prohibition Laws: Public Consequences and the Reform of Public Policy in the United States* (1991)
- United Nations, *Commentary on the Convention on Psychotropic Substances, done at Vienna on 21 February 1971* (1976)
- United Nations, *Commentary on the Protocol amending the Single Convention on Narcotic Drugs, 1961: done at Geneva on 25 March 1972* (1976)
- United Nations, *Commentary on the Single Convention on Narcotic Drugs, 1961* (1973)
- United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988: Done at Vienna on 20 December 1988* (1998)
- United Nations, *Report on the International Conference on Drug Abuse and Illicit Trafficking: Vienna, 17-26 June 1987* (1987)
- United Nations, *Towards the Future: General Report on Vietnam's Situation* (1999)
- United Nations, 'Twenty Years of Narcotics Control under the United Nations' (1966) 1(1) *Bulletin on Narcotics* 1
<http://www.unodc.org/unodc/bulletin/bulletin_1966-01-01_1_page002.html>
- United Nations, *United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances - Vienna, 25 November - 20 December 1988, Official Records* (1994)
- United Nations, *United Nations Conference for the Adoption of a Protocol on Psychotropic Substances, Vienna 11 January - 19 February 1971, Official Records* (1971)
- United Nations Development Program (ed), *Vietnam Towards 2010: A Selected Collection of Co-operation Study Reports on Strategy for Economic and Social Development Written by Vietnamese and Foreign Experts* (2001)
- United Nations Office on Drugs and Crime, 'World Drug Report 2004,' (2005)
- United Nations Office on Drugs and Crime, 'World Drug Report 2005' (2006)

- United Nations Office on Drugs and Crime, 'World Drug Report 2006' (2007)
- United States Department of Justice, *Bureau of Justice Statistics* (1994)
- United States Department of State Bureau of International Narcotics Matters, *International Narcotics Control Strategy Report, March 1922* (1922)
- United States Department of State International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report, March 2000* (2000)
- Uy Ban Nhan Dan Thanh Pho Ho Chi Minh, 'Bao Cao Tinh Hinh va Ket Qua Thuc Hien Quyet Dinh so 150/QD-TTg cua Thu Tuong Chinh Phu ve Chuong Trinh Hanh Dong Phong Chong Ma Tuy Giai Doan 2001 - 2005' (91/BC-UBND, 2005) [trans: People's Committee of Hochiminh City, 'Report on the Situation and Results of the Implementation of Decision 150/QD-TTg of the Prime Minister concerning the Master Plan on Drug Control from 2001 to 2005' (91/BC-UBND, 2005)]
- Uy Ban Quoc Gia Phong Chong Aids Phong Chong Ma Tuy Va Mai Dam, 'Bao Cao Tinh Hinh Cong Tac Phong Chong Ma Tuy Nam 2006 va Phuong Huong Cong Tac Nam 2007' (35 BC/BCA(VPU), 2007) [trans: National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution, 'The Situation of Drug Control in 2006 and Directions for 2007' (35 BC/BCA(VPU), 2007)]
- Van, Duc Duat, 'Can Giai Quyet Kip Thoi Mot So Vuong Mac khi Ap Dung Phap Luat trong viec Giai Quyet cac Vu An Ma Tuy' (1998) 4 *Tap Chi Kiem Sat* 27 and 33 [trans: Van, Duc Duat, 'The Need for a Timely Solution to Entanglements in the Application of Laws and Regulations in Drug-Related Cases' (1998) 4 *Procuracy's Journal* 27]
- Vo, Khanh Vinh (ed), *Binh Luan Bo Luat To Tung Hinh Su* (2004) [trans: Vo, Khanh Vinh, *Commentary on the Criminal Procedure Code* (2004)]
- Vo, Nguyen Giap (ed), *Mot So Bai Viet Chon Loc ve Doi Moi o Viet Nam* (2001) [trans: Vo, Nguyen Giap, *Selected Speeches and Papers about Vietnam's Renovation* (2001)]
- Vo, Tho, *Mot So Van De ve Luat To Tung Hinh Su* (1986) [trans: Vo, Tho, *Some Issues on Criminal Procedure Law* (1986)]
- Vo, Van Binh, 'Ve Viec Xay Dung He Thong Thong Tin Khoa Hoc va Cong Nghe Nganh Duoc' (1994) 6 *Duoc Hoc* 3 [trans: Van Binh Vo, 'Setting up an

- Advanced System of Communication in Pharmaceutical Industry' (1994) 6 *Pharmacy* 3]
- Vo, Van Kiet, 'Ket Luan tai cuoc Hoi Thao ve Doi Song cua Dan Toc Thieu So H'Mong o Vung Cao Phia Bac nam 1992' (1994) 1 *Ban Tin Phong Chong Ma Tuy* 19 [trans: Vo, Van Kiet, "Conclusions at the Conference on H'Mong Ethnic Groups Living in the Northern Mountainous Areas in the Year 1992" (1994) 1 *Bulletin on Narcotics Prevention and Suppression* 19]
- Vu, Hung Vuong, 'Buoc Truong Thanh Nam nam Tuoi cua Luc Luong Canh Sat Phong Chong Toi Pham ve Ma Tuy' (2002) 8 *Ban Tin Phong Chong Ma Tuy* 16 [trans: Vu, Hung Vuong, 'The State of Development of the Anti-Drug Police after its first Five Years' (2002) 8 *Bulletin on Narcotics Prevention and Suppression* 16]
- Vu, Ngoc Bung, *Phong Chong Ma Tuy trong Nha Truong* (1997) [trans: Vu, Ngoc Bung, *Narcotics Prevention in Education Institutions* (1997)]
- Vu, Quang Vinh, '5 Nam Thi Hanh Luat Phong Chong Ma Tuy: Ve Viec To Chuc Cai Nghien Ma Tuy tai Co So Chua Benh' (2006) 7 *Ban Tin Phong Chong Ma Tuy* 2 [trans: Vu, Quang Vinh, 'On the 5 Years of Implementing the Law on Narcotic Drug Prevention and Suppression: Organizing Drug Abuse Treatments at Medical Units' (2006) 7 *Bulletin on Narcotics Prevention and Suppression* 2]
- Vu, Quang Vinh, 'Hop Tac Quoc Te trong Dau Tranh Phong Chong toi San Xuat, Tang Tru, Mua Ban, Van Chuyen cac Chat Ma Tuy' (1996) 2 *Nha Nuoc va Phap Luat* 19 [trans: Quang Vinh Vu, 'International Cooperation in the Fight against the Crime of Manufacture, Stockpiling, Trade and Transportation of Narcotics' (1996) 2 *State and Law* 19]
- Vu, Tu Lap, *Vietnam: Geographical Data* (1979)
- Vu, Trong Quan, 'Mot So Van De Rut Ra tu Cong Tac Dieu Tra Toi Pham Tang Tru, Van Chuyen, Mua Ban Trai Phep Chat Ma Tuy tren Dia Ban Tinh Ninh Binh' (2006) 7 *Ban Tin Phong Chong Ma Tuy* 9 [trans: Vu, Trong Quan, 'What We Can Learn from Investigations of the Criminal Offense of Stockpiling, Transporting and Trading in Narcotic Substances in Ninh Binh Province' (2006) 7 *Bulletin on Narcotics Prevention and Suppression* 9]
- Vu, Van Thiep, 'Tim Hieu cac Nguyen Nhan cua nhung Han Che, Thieu Sot trong Cong Tac Phong Ngua, Dau Tranh Phong, Chong cac Toi Pham ve Ma Tuy

- cua Luc Luong Cong An, Hai Quan, Bo Doi Bien Phong' (2001) 6 *Ban Tin Phong Chong Ma Tuy* 8 [trans: Vu, Van Thiep, 'Studying the Reasons for Shortcomings in Narcotics Prevention and Suppression by the Polices, Border Guards and Customs' (2001) 6 *Bulletin on Narcotics Prevention and Suppression* 8]
- Wagstaff, Adam and Maynard, Alan, *Economic Aspects of the Illicit Drug Market and Drug Enforcement Policies in the United Kingdom* (1988)
- Walker, Jeffery T and Maddam, Sean, *Criminal Justice Illuminated: Statistics in Criminology and Criminal Justice Analysis and Interpretation* (2nd ed, 2005)
- Walsh, Stephen, 'Some Aspects of International Drug Control and Illicit Drug Trafficking' in Dennis Rowe (ed), *International Drug Trafficking* (1988) 101
- Wangenheim, Georg Von, *Games and Public Administration* (2004)
- Wiener, Tally M, 'Drug Policy Priorities in the Wake of the June 1998 Drug Summit' (1999) 25 *Brooklyn Journal of International Law* 759
- Williams, J Chambliss, 'Markets, Profits, Labor and Smack' in Nigel South (ed), *Drugs, Crime and Criminal Justice* (1995) vol 1, 361
- Williams, Phil and Savona, Ernesto U (eds), *The United Nations and Transnational Organized Crime* (1996)
- Wisotsky, Steven, 'Exposing the War on Cocaine: The Futility and Destructiveness of Prohibition' [1983] *Wisconsin Law Review* 1305
- Woodcock, Jasper, 'Administrative Considerations' in Richard H Blum et al (eds), *Controlling Drugs* (1974) 305
- World Health Organization, *Assessment of Public Health and Social Problems associated with the Use of Psychotropic Drugs: Report of the Who Expert Committee on Implementation of the Convention on Psychotropic Substances, 1971* (1981)
- World Health Organization, 'World Health Organization Expert Committee on Addiction-producing Drugs: Thirteenth Report' (1964) (2) *Bulletin on Narcotics* <http://www.unodc.org/unodc/bulletin/bulletin_1964-01-01_2_page006.html>
- Yi-Mak, Kam and Harrison, Larry, 'Globalization, Culture Change and the Modern Drug Epidemics: the Case of Hong Kong' (2001) 3 *Health, Risk & Society* 39

Legislation

Bo Luat Hang Hai Viet Nam so 40/2005/QH11 2005 (Quoc Hoi) [trans: Maritime Code of Vietnam 40/2005/QH11 2005 (National Assembly)]

Bo Luat Hinh Su Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1985 (Quoc Hoi) [trans: Criminal Code of the Socialist Republic of Vietnam 1985 (National Assembly)]

Bo Luat Hinh Su Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1999 (Quoc Hoi) [trans: Criminal Code of the Socialist Republic of Vietnam 1999 (National Assembly)]

Bo Luat To Tung Hinh Su cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2003 (Quoc Hoi) [trans: Criminal Procedure Code of the Socialist Republic of Vietnam 2003 (National Assembly)]

Cong Van so 01/KKH-BCD 138 CP ve Ke Hoach Trien Khai Thuc Hien Chi Thi so 37/2004/CT-TTg 08/11/2004 cua Thu Tuong Chinh Phu ve Tiep Tuc Thuc Hien Nghi Dinh 09/CP ve Chuong Trinh Quoc Gia Phong Chong Toi Pham den nam 2010, 2005 (Ban Chi Dao) [trans: Official Document 01/KKH-BCD 138 CP on Plans for the Implementation of Direction 37/2004/CT-TTg 08/11/2004 of the Prime Minister on the Performance of Decree 09/CP of Government on the Master Plan to Combat Crime to 2010, 2005 (Ban Chi Dao)]

Danh Muc Chi Tiet Hang Hoa Cam Luu Thong, Dich Vu Thuong Mai Cam Thuc Hien, Hang Hoa va Dich Vu Han Che Kinh Doanh, Kinh Doanh Co Dieu Kien ban hanh Quyet Dinh so 0088/2000/QD-BTM 2000 (Bo Thuong Mai) [trans: Lists of Prohibited Goods, Prohibited Commercial Services, Goods and Commercial Services Restricted or Circulated or Conducted under Specified Conditions promulgated by Decision 0088/2000/QD-BTM 2000 (Ministry of Trade)]

De An 1717/TCHQ-DT ve Tang Cuong Nang Luc Phat Hien, Ngan Chan Ma Tuy qua Cua Khau 2001 (Tong Cuc Hai Quan) [trans: Project 1717/TCHQ-DT on Enhancing Capacity of Detecting and Combating Narcotics Passing through the Border Gates 2001 (General Department of Customs)]

De An 'To Chuc Quan Ly, Day Nghe va Giai Quyet Viec Lam cho Ngnoi sau Cai Nghien' tai Thanh Pho Ho Chi Minh kem theo Quyet Dinh so 205/2003/QD-TTg 2003 (Thu Tuong Chinh Phu) [trans: Project on 'Vocational training, Job Creation and Control of Drug Abusers after Medical Treatment' in

Hochiminh City, attached to Decision 205/2003/QĐ-TTg 2003 (Prime Minister)]

Dinh Huong Chien Luoc Phat Trien Ben Vung cua Viet Nam ban hanh kem theo Quyét Dinh so 153/2004/QĐ-TTg 2004 (Thu Tuong Chinh Phu) [trans: Strategic Orientations for Sustainable Development (Vietnam's Agenda 21), issued by Decision 153/2004/QĐ-TTg 2004 (Prime Minister)]

Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1980 (Quoc Hoi) [trans: Constitution of the Socialist Republic of Vietnam 1980 (National Assembly)]

Hien Phap Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam nam 1992, sua doi bo sung nam 2001 theo Nghi Quyét 51/2001/QH10 [trans: Constitution of the Socialist Republic of Vietnam 1992, amended by Resolution 51/2001/QH10 2001 (National Assembly)]

Luat Duoc so 34/2005/QH11 cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2005 (Quoc Hoi)

Luat Hang Khong Dan Dung Viet Nam so 66/2006/QH11 2006 (Quoc Hoi) [trans: Law 34/2005/QH11 on Drugs 2005 (National Assembly)]

Luat Quoc Tich Viet Nam so 07/1998/QH10 1998 (Quoc Hoi) [trans: Law on Nationality of Vietnam 07/1998/QH10 1998 (National Assembly)]

Luat so 02/2002/QH-11 Sua Doi, Bo Sung Mot so Dieu cua Luan Ban Hanh Van Ban Quy Pham Phap Luat nam 1996, 2002 (Quoc Hoi) [trans: Law 02/2002/QH-11 amending a Number of Articles of the Law on the Promulgation of Normative Documents issued in 1996, 2002 (Quoc Hoi)]

Luat so 05/2003/QH11 ve Hoat Dong Giam Sat cua Quoc Hoi nam 2003 [trans: Law 05/2003/QH11 on the Control of the National Assembly 2003 (National Assembly)]

Luat so 06/2003/QH11 ve Bien Gioi Quoc Gia 2003 (Quoc Hoi) [trans: Law 06/2003/QH11 on National Borders 2003 (National Assembly)]

Luat so 11/2003/QH11 To Chuc Hoi Dong Nhan Dan va Uy Ban Nhan Dan 2003 (Quoc Hoi) [trans: Law 11/2003/QH11 on Organization of People's Councils and People's Committees 2003 (National Assembly)]

Luat so 22/2004/QH11 ve Thanh Tra 2004 (Quoc Hoi) [trans: Law 22/2004/QH11 on Inspection 2004 (National Assembly)]

Luật số 23/2000/QH10 về Phòng, chống ma túy năm 2000 (Quốc Hội) [trans: Law 23/2000/QH10 on Narcotics Prevention and Suppression 2000 (National Assembly)]

Luật số 25/2004/QH11 về Bảo vệ, Chăm sóc và Giáo dục Trẻ em 2004 (Quốc Hội) [trans: Law 25/2004/QH11 on Protecting, Taking Care of and Educating Minors 2004 (National Assembly)]

Luật số 29/2001/QH10 về Hải Quan 2001 (Quốc Hội) [trans: Law 29/2001/QH10 on Customs 2001 (National Assembly)]

Luật số 30/2001/QH10 về Tổ chức Quốc Hội 2001 (National Assembly) [trans: Law 30/2001/QH10 on the Organization of the National Assembly 2001 (Quốc Hội)]

Luật số 32/2001/QH10 về Tổ chức Chính Phủ 2001 (Quốc Hội) [trans: Law 32/2001/QH10 on the Organization of the Government 2001 (National Assembly)]

Luật số 34/2002/QH10 Tổ chức Viện Kiểm sát Nhân Dân 2002 (Quốc Hội) [trans: Law 34/2002/QH10 on the Organization of People's Procuracies 2002 (National Assembly)]

Luật Sửa đổi, Bổ sung một số Điều của Bộ Luật Hình Sự năm 1985, 1997 (Quốc Hội) [trans: Law on Amendment and Addition to a Number of Articles in the 1985 Criminal Code 1997 (Quốc Hội)]

Nghị Định số 02/1998/ND-CP Quy Định Chi Tiết Thi Hành Một Số Điều của Pháp Lệnh Bộ Đối Biên Phòng 1998 (Chính Phủ) [trans: Decree 02/1998/ND-CP Guiding in Detail the Implementation of A Number of Articles of the Ordinance on Border Guards 1998 (Government)]

Nghị Định số 05/2003/ND-CP về Hợp Tác Quốc Tế trong Lĩnh Vực Phòng, chống Ma Túy 2003 (Chính Phủ) [trans: Decree 05/2003/ND-CP on International Cooperation in Drug Control 2003 (Government)]

Nghị Định số 29/2003/ND-CP Quy Định Chức Năng, Nhiệm vụ, Quyền Hạn và Cơ Cấu Tổ Chức của Bộ Lao Động, Thương Binh và Xã Hội 2003 (Chính Phủ) [trans: Decree 29/2003/ND-CP Promulgating Functions, Tasks, Powers and Organizational Structure of the Ministry of Labor, War Invalids and Social Affairs 2003 (Government)]

Nghị Định số 34/2002/ND-CP Quy Định về Trình Tự, Thủ Tục và Chế Độ Cải Nghiên đối với Người Nghiên Ma Túy đưa vào Cơ Sở Cải Nghiên Bắt Buộc

2003 (Chinh Phu) [trans: *Decree 34/2002/ND-CP Promulgating Sequences, Procedures and Treatment Regimes Applicable to Drug Abusers at Compulsory Treatment Centers 2002 (Government)*]

Nghi Dinh so 41/2001/ND-CP ban hanh Quy Che Phoi Hop Thuc Hien Quan Ly Nha Nuoc ve Hoat Dong cua Luc Luong Canh Sat Bien va viec Phoi Hop Hoat Dong giua cac Luc Luong tren cac Vung Bien va Them Luc Dia cua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2001 (Chinh Phu) [trans: Decree 41/2001/ND-CP promulgating the Cooperation Regime on Implementing State Management of the Operation of the Coast Guards over the Seas and over the Contiguous Customs and Security Zone of Vietnam 2001 (Government)]

Nghi Dinh so 49/2003/ND-CP Quy Dinh Chuc Nang, Nhiem Vu, Quyen Han va Co Cau To Chuc cua Bo Y Te 2003 (Chinh Phu) [trans: Decree 49/2003/ND-CP Promulgating Functions, Tasks, Powers and the Organizational Structure of the Ministry of Health 2003 (Government)]

Nghi Dinh so 49/CP ve Xu Phat Vi Pham Hanh Chinh trong Lanh Vuc An Ninh, Trat Tu 1996 (Chinh Phu) [trans: Decree 49/2003/ND-CP Promulgating Functions, Tasks, Powers and the Organizational Structure of the Ministry of Health 2003 (Government)]

Nghi Dinh so 56/2002/ND-CP ve To Chuc Cai Nghien Ma Tuy tai Gia Dinh va Cong Dong 2002 (Chinh Phu) [trans: Decree 56/2002/ND-CP on Organizing Family-Based and Community-Based Drug Abuse Treatment 2002 (Government)]

Nghi Dinh so 58/2003/ND-CP Quy Dinh Kiem Soat Nhap Khau, Xuat Khau, Van Chuyen Qua Canh Lanh Tho Viet Nam Chat Ma Tuy, Tien Chat, Thuoc Gay Nghien, Thuoc Huong Than 2003 (Chinh Phu) [trans: Decree 58/2003/ND-CP Stipulating the Control of Importation, Exportation and Transit through Vietnam's Territory of Narcotic Substances, Precursors, Addictive Drugs and Psychotropic Drugs 2003 (Government)]

Nghi Dinh so 59/1998/ND-CP ve Chuc Nang, Nhiem Vu, Quyen Han va To Chuc Bo May cua Uy Ban Dan Toc va Mien Nui 1998 (Chinh Phu) [trans: Decree 59/1998/ND-CP on Functions, Tasks, Powers and the Organizational Structure of the Committee for Ethnic Minorities and Mountainous Areas 1998 (Government)]

- Nghi Dinh so 61/2003 Quy Dinh Chuc Nang, Nhiem Vu, Quyen Han va Co Cau To Chuc cua Bo Ke Hoach va Dau Tu 2003 (Chinh Phu) [trans: Decree 61/2003/ND-CP Promulgating Functions, Tasks, Powers and the Organizational Structure of the Ministry of Planning and Investment 2003 (Government)]*
- Nghi Dinh so 62/2003ND-CP Quy Dinh Chuc Nang, Nhiem Vu, Quyen Han va Co Cau To Chuc cua Bo Tu Phap 2003 (Chinh Phu) [trans: Decree 62/2003/ND-CP Promulgating Functions, Tasks, Powers and the Organizational Structure of the Ministry of Justice 2003 (Government)]*
- Nghi Dinh so 67/2001/ND-CP ban hanh Cac Danh Muc Chat Ma Tuy va Tien Chat 2001, duoc Sua Doi, Bo Sung theo Nghi Dinh 133/2003/ND-CP nam 2003 (Chinh Phu) [trans: Decree 67/2001/ND-CP promulgating the Schedules of Narcotic Substances and Precursors 2001, amended by Decree 133/2003/ND-CP 2003 (Government)]*
- Nghi Dinh so 74/2005/ND-CP ve Phong, Chong Rua Tien 2005 (Chinh Phu) [trans: Decree 74/2005/ND-CP on Prevention and Suppression of Money Laundering 2005 (Government)]*
- Nghi Dinh so 77/2003/ND-CP Quy Dinh Chuc Nang, Nhiem Vu, Quyen Han va Co Cau To Chuc cua Bo Tai Chinh 2003 (Chinh Phu) [trans: Decree 77/2003/ND-CP Prescribing Functions, Duties, Powers and the Organizational Structure of the Ministry of Finance 2003 (Government)]*
- Nghi Dinh so 80/2001/ND-CP Huong Dan viec Kiem Soat cac Hoat Dong Hop Phap Lien Quan den Ma Tuy o Trong Nuoc 2001 (Chinh Phu) [trans: Decree 80/2001/ND-CP on the Control of Domestic Licit Activities in relation to Narcotics 2001 (Government)]*
- Nghi Dinh so 103/2003/ND-CP Quy Dinh Chi Tiet Thi Hanh Mot So Dieu cua Phap Lenh Hanh Nghe Y Duoc Tu Nhan 2003 (Chinh Phu) [trans: Decree 103/2003/ND-CP detailing the Implementation of the Ordinance on Private Medical and Pharmaceutical Practice 2003 (Government)]*
- Nghi Dinh so 107/2002/ND-CP Quy Dinh Pham Vi Dia Ban Hoat Dong cua Hai Quan; Quan He Phoi Hop trong Phong Chong Buon Lau, Van Chuyen Trai Phep Hang Hoa qua Bien Gioi va cac Hanh Vi Khac Vi Pham Phap Luat Hai Quan 2002 (Chinh Phu) [trans: Decree 107/2002/ND-CP on Areas of Activities of Customs; Cooperation in Preventing and Suppressing Smuggling*

of Goods, Unlawful Cross-border Transportation of Goods and Other Conduct that Violate Customs Law 2002 (Government)]

Nghi Dinh so 135/2004/CP Quy Dinh Che Do Ap Dung Bien Phap Dua Vao Co So Chua Benh va To Chuc Hoat Dong cua Co So Chua Benh theo Phap Lenh Xu Ly Vi Pham Hanh Chinh va Che Do Ap Dung doi voi Nguoi Chua Thanh Nien, Nguoi Tu Nguyen vao Co So Chua Benh 2004 (Chinh Phu) [trans: Decree 135/2004/CP Promulgating Regulations on the Compulsory Treatment and Organization of Treatment and Rehabilitation Centers pursuant to the Ordinance on Administrative Sanction, Regulations on Treatment of Juveniles, and Regulations on Voluntary Treatment 2004 (Government)]

Nghi Dinh so 137/2004/ND-CP Quy Dinh Xu Phat Vi Pham Hanh Chinh tren cac Vung Bien va Them Luc Dia cua nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam 2004 (Chinh Phu) [trans: Decree 137/2004/ND-CP on Administrative Sanctions on the Seas and in the Contiguous Customs and Security Zones of Vietnam 2004 (Government)]

Nghi Dinh so 138/2004/ND-CP ve Xu Phat Vi Pham Hanh Chinh trong Lanh Vuc Hai Quan 2004 (Chinh Phu) [trans: Decree 138/2004/ND-CP on Administrative Sanctions for Customs 2004 (Chinh Phu)]

Nghi Dinh so 146/2004/ND-CP Quy Dinh Chuc Nang, Tham Quyen Quyet Dinh Dua Vao Co So Quan Ly, Day Nghe va Giai Quyet Viec Lam doi voi Nguoi sau Cai Nghien Ma Tuy 2004 (Chinh Phu) [trans: Decree 146/2004/ND-CP promulgating Functions and Jurisdiction over Cases of Compulsory Vocational Training and Working in Rehabilitation Bodies after Drug Abuse Treatment 2004 (Government)]

Nghi Dinh so 147/2003/ND-CP Quy Dinh ve Dieu Kien, Thu Tuc Cap Giay Phep va Quan Ly Hoat Dong cua cac Co So Cai Nghien Ma Tuy Tu Nguyen 2003 (Chinh Phu) [trans: Decree 147/2003/ND-CP Promulgating Conditions and Procedures to Grant Permits to Establish Voluntary Drug Abuse Treatment Institutions 2003 (Government)]

Nghi Dinh so 194/CP ve Hoat Dong Quang Cao tren Lanh Tho Viet Nam 1994 (Chinh Phu) [trans: Decree 194/CP on Advertising Activities in the Territory of Vietnam 1994 (Government)]

Nghi Quyet so 02/HDTP Huong Dan Bo Sung Nghi Quyet 02/HDTP ngay 5 January 1986 cua Hoi Dong Tham Phan Toa An Nhan Dan Toi Cao 1988 (Hoi Dong Tham Phan Toa An Nhan Dan Toi Cao) [trans: Resolution 02/HDTP Supplementing the Resolution 02/HDTP dated 5 January 1986 of the Council of Judges of the People's Supreme Court 1988 (Council of Judges of the People's Supreme Court)]

Nghi Quyet so 06/CP ve Tang Cuong Chi Dao Cong Tac Phong, Chong Ma Tuy 1993 (Chinh Phu) [Trans: Resolution 06/CP on Enhancing Directions on Drug Prevention and Suppression 1993 (Chinh Phu)]

Nghi Quyet so 49/2005/QH11 ve Chuong Trinh Xay Dung Luat, Phap Lenh nam 2006, 2005 (Quoc Hoi) [trans: Resolution 49/2005/QH11 on Lawmaking Program for the year 2006, 2005 (National Assembly)]

Nghi Quyet so 72/2006/QH11 ve Chuong Trinh Xay Dung Luat, Phap Lenh nam 2007, 2006 (Quoc Hoi) [trans: Resolution 72/2006/QH11 on Lawmaking Program for the Year 2007, 2006 (National Assembly)]

Phap Lenh so 04/1998/PL-UBTVQH10 ve Luc Luong Canh Sat Bien Viet Nam 1998 (Uy Ban Thuong Vu Quoc Hoi) [trans: Ordinance 04/1998/PL-UBTVQH10 on Coast Guards of Viet Nam 1998 (Standing Committee of National Assembly)]

Phap Lenh so 07/1998/PL-UBTVQH10 ve Ky Ket va Thuc Hien Dieu Uoc Quoc Te nam 1998 (Uy Ban Thuong Vu Quoc Hoi) [trans: Ordinance 07/1998/PL-UBTVQH10 on Signing and Implementing International Agreements 1998 (Standing Committee of National Assembly)]

Phap Lenh so 07/2003/PL-UBTVQH11 Hanh Nghe Y Duoc Tu Nhan (Uy Ban Thuong Vu Quoc Hoi) [trans: Ordinance 07/2003/PL-UBTVQH11 on Private Medical and Pharmaceutical Practice 2003 (Standing Committee of National Assembly)]

Phap Lenh so 23/2004/PL-UBTVQH11 ve To Chuc Dieu Tra Hinh Su 2004 (Uy Ban Thuong Vu Quoc Hoi) [trans: Ordinance 23/2004/PL-UBTVQH11 on Organizing Investigation of Criminal Offenses 2004 (National Assembly)]

Phap Lenh so 39/2001/UBTVQH10 ve Quang Cao 2001 (Uy Ban Thuong Vu Quoc Hoi) [trans: Ordinance 39/2001/UBTVQH10 on Advertisement 2001 (Standing Committee of National Assembly)]

Phap Lenh so 44/2002/PL-UBTVQH10 Xu Ly Vi Pham Hanh Chinh 2002 (Uy Ban Thuong Vu Quoc Hoi) [trans: Ordinance 44/2002/PL-UBTVQH10 on Administrative Sanctions 2002 (National Assembly)]

Phap Lenh so 55/1997/PL-UBTVQH ve Bo Doi Bien Phong 1997 (Uy Ban Thuong Vu Quoc Hoi) [trans: Ordinance 55/1997/PL-UBTVQH on Border Guards 1997 (Standing Committee of National Assembly)]

Quy Che ve Thong Tin, Quang Cao Thuoc Dung Cho Nguoi, My Pham Anh Huong Truc Tiep den Suc Khoe Con Nguoi ban hanh kem theo Quyet Dinh so so 2557/2002/QD-BYT 2002 (Bo Y Te) [trans: Control Regime on Providing Information and Advertising Drugs and Cosmetics that Affect Human Health promulgated by Decision 2557/2002/QD-BYT 2002 (Ministry of Health)]

Quy Che Hoat Dong cua Uy Ban Quoc Gia Phong, Chong AIDS, va Phong, Chong Te Nan Ma Tuy, Mai Dam Ban Hanh kem theo Quyet Dinh so 01/QD-UBQG61 2000 (Chu Tich Uy Ban Quoc Gia Phong, Chong AIDS va Phong, Chong Te Nan Ma Tuy, Mai Dam) [trans: The Operational Regime of the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution promulgated by the Decision 01/QD-UBQG61 2000 (Chairman of the National Committee for Prevention and Control of AIDS, Drugs and Prostitution)]

Quy Che Ke Don Thuoc va Ban Thuoc Theo Don ban hanh kem theo Quyet Dinh so 1847/2003/QD-BYT 2003 (Bo Y Te) [trans: Control Regime on Medical Prescriptions, promulgated by Decision 1847/2003/QD-BYT 2003 (Ministry of Health)]

Quy Che Phoi Hop giua Luc Luong Cong An, Bo Doi Bien Phong, Canh Sat Bien va Hai Quan trong Dau Tranh Phong, Chong cac Toi Pham ve Ma Tuy tai Dia Ban Bien Gioi, Cua Khau va Tren Bien ban hanh kem theo Quyet Dinh so 133/2002/QD-TTg cua Thu Tuong Chinh Phu 2002 (Thu Tuong Chinh Phu) [trans: The Regime for Cooperation between the Police Force, Border Guard, Coast Guard and Customs Force in Preventing and Combating Drug-Related Crimes in the Areas of Border Lines, Border Gates and on the Seas, Promulgated by Decision 133/2002/QD-TTg of the Prime Minister 2002 (Prime Minister)]

Quy Che Quan Ly Thuoc Gay Nghien ban hanh kem theo Quyet Dinh 2033/1999/QD-BYT 1999 (Bo Y Te) [trans: Control Regime applicable to

Addictive Drugs promulgated by Decision 2033/1999/QĐ-BYT 1999 (Ministry of Health)]

Quy Che Quan Ly Thuoc Huong Tam Than ban hanh kem theo Quyet Dinh 3047/2001/QĐ-BYT 2001 (Bo Y Te) [trans: Control Regime Applicable to Psychotropic Drugs Promulgated by Decision 3047/2001/QĐ-BYT 2001(Ministry of Health)]

Quy Che Quan Ly Tien Chat Su Dung trong Linh Vuc Cong Nghiep ban hanh kem theo Quyet Dinh 134/2003/QĐ-BCN 2003 (Bo Cong Nghiep) [trans: Control Regime applicable to Precursors used in Industries, promulgated by Decision 134/2003/QĐ-BCN 2003 (Ministry of Industries)]

Quyet Dinh 01/QĐ-UBQG61 ban hanh Quy Che Hoat Dong cua Uy Ban Quoc Gia Phong, Chong AIDS va Phong, Chong Te Nan Ma Tuy, Mai Dam 2000 (Uy Ban Quoc Gia Phong, Chong AIDS va Phong, Chong Te Nan Ma Tuy, Mai Dam) [trans: Decision 01/QĐ-UBQG61 Promulgating the Operational Regime of the National Committee for the Prevention and Suppression of AIDS, Drugs and Prostitution 2000 (National Committee for Prevention and Control of AIDS, Drugs and Prostitution)]

Quyet Dinh 18/1998/QĐ-TTg ve viec Thanh Lap Van Phong Uy Ban Quoc Gia Phong, Chong Ma Tuy (Thu Tuong Chinh Phu) [trans: Decision 18/1998/QĐ-TTg to Establish the Standing Office for Drug Control 1998 (Prime Minister)]

Quyet Dinh 134/2003/QĐ-BCN ban hanh Danh Muc va Quy Che Quan Ly Tien Chat Su Dung trong Linh Vuc Cong Nghiep 2003 (Bo Cong Nghiep) [trans: Decision 134/2003/QĐ-BCN promulgating the List of Precursors used in Industries and the Control Regime applicable to them 2003 (Ministry of Industries)]

Quyet Dinh so 01/QĐ-UBQG ve Nhiem Vu, Quyen Han va To Chuc cua Van Phong Uy Ban Quoc Gia Phong, Chong Ma Tuy 1998 (Uy Ban Quoc Gia Phong, Chong Ma Tuy) [trans: Decision 01/QĐ-UBQG Promulgating Duties, Powers and Organization of the Standing Office for Drug Control 1998 (National Committee for Prevention and Suppression of Narcotics)]

Quyet Dinh so 49/2005/QĐ-TTg ve viec Phe Duyet Ke Hoach Tong The Phong Chong Ma Tuy den nam 2010 (Thu Tuong Chinh Phu) [trans: Decision 49/2005/QĐ-TTg to Approve the Master Plan on Drug Control to 2010 (Prime Minister)]

Quyết Định số 61/2000/QĐ-TTg về việc Thành lập Ủy ban Quốc gia Phòng, chống AIDS và Phòng, chống tệ nạn ma túy, mại dâm 2000 (Thủ tướng Chính phủ) [trans: Decision 61/2000/QĐ-TTg to Establish the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution 2000 (Prime Minister)]

Quyết Định số 0088/2000/QĐ-BTM về Ban hành Danh mục hàng hóa cấm lưu thông, dịch vụ thương mại cấm thực hiện, hàng hóa và dịch vụ hạn chế kinh doanh, kinh doanh có điều kiện 2000 (Bộ Thương mại) [trans: Decision 0088/2000/QĐ-BTM promulgating the Lists of Prohibited Goods, Prohibited Commercial Services, Goods and Commercial Services Restricted or Circulated or Conducted under Specified Conditions 2000 (Ministry of Trade)]

Quyết Định số 133/2002/QĐ-TTg ban hành Quy chế Phối hợp giữa Lực lượng Công an, Bộ đội Biên phòng, Cảnh sát Biển và Hải Quan trong đấu tranh phòng, chống các tội phạm về ma túy tại địa bàn biên giới, cửa khẩu và trên biển 2002 (Thủ tướng Chính phủ) [trans: Decision 133/2002/QĐ-TTg Promulgating Regime for Cooperation between the Police Force, Border Guard, Coast Guard and Customs Force in Preventing and Combating Drug-Related Crimes in the Areas of Border Lines, Border Gates and on the Seas 2002 (Prime Minister)]

Quyết Định số 187/2005/QĐ-TTg về việc Phê duyệt Dự án Tổng thể Kiểm soát Ma túy qua Biên giới đến năm 2010 (Thủ tướng Chính phủ) [trans: Decision 187/2005/QĐ-TTg to Approve the Master Project to Combat Cross-Border Drug Trafficking to 2010 (Prime Minister)]

Quyết Định số 205/2003/QĐ-TTg về việc Phê duyệt Dự án "Tổ chức Quản lý, Day Nghe và Giải quyết Việc làm cho Người sau Cải tạo" tại Thành phố Hồ Chí Minh 2003 (Thủ tướng Chính phủ) [trans: Decision 205/2003/QĐ-TTg to Approve the Project on 'Vocational Training, Job Creation, and Control of Drug Abusers after Medical Treatment' in Hochiminh City 2003 (Prime Minister)]

Quyết Định số 686/QĐ-TTg về việc Thành lập Ủy ban Quốc gia Phòng, chống Ma túy 1997 (Thủ tướng Chính phủ) [trans: Decision 686/QĐ-TTg to Establish the National Committee for Drugs Prevention and Suppression 1997 (Prime Minister)]

Quyết Định số 798/QĐ-CTN ngày 01/09/1997 của Chủ tịch nước Cộng hòa Xã hội Chủ nghĩa Việt Nam Tham gia 3 Công ước của Liên Hiệp Quốc về Kiểm soát Ma túy năm 1997 [trans: Decision 798/QĐ-CTN to Ratify the Three United Nations Drug Control Conventions 1997 (President)]

Quyết Định số 939/QĐ-BYT ban hành Quy chế Quản lý Thuốc Gay Nghiện và Danh mục Thuốc Gay Nghiện 1995 (Bộ Y tế) [trans: Decision 939/QĐ-BYT Promulgating the Control Regimes Applicable to Addictive Drugs and the Lists of Addictive Drugs under Control 1995 (Ministry of Health)]

Quyết Định số 1160/2004/QĐ-BLDTBXH về việc Quy định Chế độ Bảo Cao Thông Ke Dinh Ky và Chế độ Ghi Chép Ban Dấu và Công Tác Cải Nghiện Phục Hồi 2004 (Bộ Lao Động Thương Binh Xã Hội) [trans: Decision 1160/2004/QĐ-BLDTBXH on Periodical Statistical Reports and Initial Records of Drug Abuse Treatment and Rehabilitation 2004 (Ministry of Labor, War Invalids and Social Affairs)]

Quyết Định số 1442/2002/QĐ-BYT về việc Sửa Đổi, Bổ Sung Một số Điều của Quy chế Quản lý Thuốc Gay Nghiện ban hành kèm theo Quyết Định số 2033/1999/QĐ-BYT 2002 (Bộ Y tế) [trans: Decision 1442/2002/QĐ-BYT on Amendments and Supplements to Some Articles of the Control Regime Applicable to Addictive Drugs attached to Decision 2033/1999/QĐ-BYT 2002 (Ministry of Health)]

Quyết Định số 1443/2002/QĐ-BYT về việc Sửa Đổi, Bổ Sung Một số Điều của Quy chế Quản lý Thuốc Huong Tam Than ban hành kèm theo Quyết Định 3047/2001/QĐ-BYT 2001 (Bộ Y tế) [trans: Decision 1443/2002/QĐ-BYT on Amendments and Supplements to Some Articles of the Control Regime Applicable to Psychotropic Drugs attached to Decision 3047/2001/QĐ-BYT 2002 (Ministry of Health)]

Quyết Định số 1847/2003/QĐ-BYT về việc Ban Hành Quy chế Ke Đơn Thuốc và Ban Thuốc Theo Đơn 2003 (Bộ Y tế) [trans: Decision 1847/2003/QĐ-BYT Promulgating the Control Regime for Medical Prescription 2003 (Ministry of Health)]

Quyết Định số 2033/1999/QĐ-BYT ban hành Quy chế Quản lý Thuốc Gay Nghiện, Danh mục Thuốc Gay Nghiện và Thuốc Gay Nghiện ở Dạng Hôn Hợp 1999, Sửa Đổi Bổ Sung theo Quyết Định 1442/2002/QĐ-BYT 2002 (Bộ Y tế) [trans: Decision 2033/1999/QĐ-BYT to Promulgate Schedules of Addictive

Drugs, Preparations of Addictive Drugs, and Promulgating the Control Regime Applicable to Them 1999, amended by Decision 1442/2002/QĐ-BYT 2002 (Ministry of Health)]

Quyết Định số 2557/2002/QĐ-BYT về việc ban hành Quy Chế Thông Tin, Quảng Cao Thuốc Dung Cho Người, My Phẩm Anh Hương Trục Tiếp đến Sức Khỏe Con Người 2002 (Bộ Y Tế) [trans: Decision 2557/2002/QĐ-BYT promulgating the Control Regime on Providing Information and Advertising Drugs and Cosmetics that Affect Human Health 2002 (Ministry of Health)]

Quyết Định số 3047/2001/QĐ-BYT ban hành Quy Chế Quản Lý Thuốc Hương Tam Than, Danh Mục Thuốc Hương Tam Than, Tiền Chất Dung làm Thuốc và Danh Mục Thuốc Hương Tam Than ở Dang Hồn Hấp 2001, được Sửa Đổi Bổ Sung theo Quyết Định 1443/2002/QĐ-BYT 2002 và Quyết Định 71/2004/QĐ-BYT 2004 (Bộ Y Tế) [trans: Decision 3047/2001/QĐ-BYT to Promulgate Schedules of Psychotropic Drugs, Precursors Used in the Manufacture of Psychotropic Drugs and Preparations of Psychotropic Drugs, and Promulgating the Control Regime Applicable to Them 2001, amended by Decision 1443/2002/QĐ-BYT 2002 and Decision 71/2004/QĐ-BYT 2004 (Ministry of Health)]

Thông Báo số 32/TB-VPCP Ý Kiến Kết Luận của Phó Thủ Tướng Phạm Gia Khiêm tại Cuộc Họp Ủy Ban Quốc gia Phòng, Chống AIDS và Phòng, Chống Mại Dâm 2004 (Văn Phòng Chính Phủ) [trans: Circulation 32/TB-VPCP on Conclusions of the Deputy Prime Minister Phạm Gia Khiêm at the Meeting of the National Committee for the Prevention and Suppression of AIDS, Drugs and Prostitution 2004 (Government Office)]

Thông Báo số 76/TB-VPCP Ý Kiến Kết Luận của Phó Thủ Tướng Phạm Gia Khiêm tại Hội Nghị Toàn Quốc Sơ Kết 3 năm Thực Hiện Công Tác Phòng, Chống AIDS và Phòng Chống Mại Dâm 2004 (Văn Phòng Chính Phủ) [trans: Circulation 76/TB-VPCP on Conclusions of the Deputy Prime Minister Phạm Gia Khiêm at the National Conference on Summing up the Three-Year Implementation of the Work of Prevention and Suppression of AIDS, Narcotics and Prostitution 2004 (Government Office)]

Thông Báo số 91/TB-VPCP Ý Kiến Kết Luận của Phó Thủ Tướng Phạm Gia Khiêm tại Cuộc Họp Thường Kỳ của Ủy Ban Quốc gia Phòng, Chống AIDS và Phòng, Chống Mại Dâm 2005 (Văn Phòng Chính Phủ) [trans:

Circulation 91/TB-VPCP on Conclusion of the Deputy Prime Minister Pham Gia Khiem at the National Conference on Summing up the Three-Year Implementation of the Work of Prevention and Suppression of AIDS, Narcotics and Prostitution 2005 (Government Office)]

Thong Tu Lien Nganh 07/TTLN Huong Dan Ap Dung Dieu 96a va Dieu 203, 1992 (Bo Noi Vu, Toa An Nhan Dan Toi Cao, Vien Kiem Sat Nhan Dan Toi Cao) [trans: Joint Circular 07/TTLN Guiding the Application of Article 96a and Article 203 of the Criminal Code 1985, 1992 (Ministry of Interior, Supreme People's Court and Supreme People's Procuracy)]

Thong Tu Lien Tich so 01/2005/TTLT-VKSTC-TATC-BCA-BQP Huong Dan Thi Hanh Mot So Quy Dinh cua Phap Luat trong Cong Tac Thong Ke Hinh Su, Thong Ke Toi Pham 2005 (Vien Kiem Sat Nhan Dan Toi Cao, Toa An Nhan Dan Toi Cao, Bo Cong An va Bo Quoc Phong) [trans: Joint Circular 01/2005/TTLT-VKSTC-TATC-BCA-BQP Guiding the Implementation of a Number of Regulations on Criminal Statistics and Statistics on Criminal Offenses 2005 (People's Supreme Procuracy, People's Supreme Court, Ministry of Public Security and Ministry of National Defence)]

Thong Tu Lien Tich so 01/2006/TTLT-BCA-BBCVT ve Huong Dan Thuc Hien Mo va Kiem Tra Thu, Buu Pham, Buu Kien, Goi Hang Hoa Gui Qua Mang Buu Chinh Cong Cong va Mang Chuyen Phat Nhanh Nham Phat Hien Toi Pham ve Ma Tuy 2006 (Bo Cong An va Bo Buu Chinh Vien Thong) [trans: Decision 01/2006/TTLT-BCA-BBCVT Guiding the Opening and Examination of Mails, Postal Parcels, Postal Packages and Other Commodity Packages in Postal Services and Other Express Delivery Services for the Purpose of Discovering Drug-Related Crimes 2006 (Ministry of Public Security and Ministry of Posts and Telamatics)]

Thong Tu Lien Tich so 01/TTLT/TANDTC/VKSNDTC/BNV Huong Dan Ap Dung Bo Luat Hinh Su 1985, Sua Doi Bo Sung nam 1997, 1998 (Toa An Nhan Dan Toi Cao, Vien Kiem Sat Nhan Dan Toi Cao, Bo Noi Vu) [trans: Joint Circular 01/TTLT/TANDTC/VKSNDTC/BNV Guiding the Application of the Criminal Code 1985, amended in 1997, 1998 (People's Supreme Court, People's Supreme Procuracy and Ministry of Interior)]

Thong Tu Lien Tich so 02/TTLT/TANDTC/VKSNDTC/BNV Huong Dan Ap Dung Mot so Quy Dinh tai Chuong VIIA 'Cac Toi Pham ve Ma Tuy' cua Bo Luat

Hinh Su 1985, 1998 (Toa An Nhan Dan Toi Cao, Vien Kiem Sat Nhan Dan Toi Cao, Bo Noi Vu) [trans: Joint Circular 02/TTLT/TANDTC/VKSNDTC/BNV Guiding the Application of Chapter VIIA titled 'Drug-Related Crimes' of the Criminal Code 1985, 1998 (People's Supreme Court, People's Supreme Procuracy and Ministry of Interior)]

Thong Tu Lien Tich so 07/2004/TTLT-BCA-VKSNDTC Huong Dan Thuc Hien Mot so Quy Dinh ve Thi Hanh Hinh Phat doi voi Pham Nhan Chap Hanh Hinh Phat tai Nha Tam Giu 2004 (Bo Cong An va Vien Kiem Sat Nhan Dan Toi Cao) [trans: Joint Circular 07/2004/TTLT-BCA-VKSNDTC Guiding the Application of a Number of Provisions on Serving Custodial Sentences at Custodial Places 2004 (Ministry of Public Security and People's Supreme Procuracy)]

Thong Tu Lien Tich so 09/TTLT/TANDTC/VKSNDTC/BNV Huong Dan Ap Dung Dieu 96a va Dieu 203, 1996 (Toa An Nhan Dan Toi Cao, Vien Kiem Sat Nhan Dan Toi Cao, Bo Noi Vu) [trans: Joint Circular 09/TTLT/TANDTC/VKSNDTC/BNV Guiding the Application of Article 96a and Article 203 of the Criminal Code 1985, 1996 (People's Supreme Court, People's Supreme Procuracy and Ministry of Interior)]

Thong Tu so 01/2004/TT-BYT Huong Dan ve Hanh Nghe Y Duoc Tu Nhan 2004 (Bo Y Te) [trans: Circular 01/2004/TT-BYT Guiding Private Medical and Pharmaceutical Practice 2004 (Ministry of Health)]

Thong Tu so 04/2000/TT-BCN Huong Dan Cach Ghi Nhan Hang Hoa la San Pham cac Nganh San Xuat Cong Nghiep 2000 (Bo Cong Nghiep) [trans: Circular 04/2000/TT-BCN providing Guidance on the Labeling of Industrial Products 2000 (Ministry of Industries)]

Thong Tu so 14/2001/TT-BYT Huong Dan Ghi Nhan Thuoc va My Pham Anh Huong Truc Tiep toi Suc Khoe Con Nguoi 2001 (Bo Y Te) [trans: Circular 14/2001/TT-BYT providing Guidance on the Labelling of Drugs and Cosmetics that Affect Human Health 2001 (Ministry of Health)]

Treaties

Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature 20 December 1988 (entered into force 11 November 1990)

Convention on Psychotropic Substances, opened for signature 21 February 1971
(entered into force 16 August 1976)

Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Nuoc Cong Hoa Dan Chu Nhan Dan Lao ngay 20 thang 2 nam 2000 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil and Criminal Matters between Vietnam and Laos*, 20 February 2000]

Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Nuoc Cong Hoa Nhan Dan Trung Hoa ngay 19 thang 11 nam 1998 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil and Criminal Matters between Vietnam and China*, 19 November 1998]

Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Nuoc Cong Hoa Xa Hoi Chu Nghia Tiep Khac ngay 12 thang 10 nam 1982 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil and Criminal Matters between Vietnam and the Czech Republic*, 12 November 1982]

Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Hungary ngay 18 thang 1 nam 1985 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil, Family and Criminal Matters between Vietnam and Hungary*, 18 January 1985]

Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Lien Bang Nga ngay 25 thang 8 nam 1988 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil, Family and Criminal Matters between Vietnam and Russia*, 25 August 1988]

Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Mong Co ngay 17 thang 4 nam 2000 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil, Family and Criminal Matters between Vietnam and Mongolia*, 17 April 2000]

Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Nuoc Cong Hoa Ba Lan ngay 22 thang 3 nam 1993 [trans: *Bilateral Treaty on Mutual Judicial*

Assistance in Civil, Family and Criminal Matters between Vietnam and Poland, 22 March 1993]

Hiep Dinh Tuong Tro Tu Phap ve Cac Van De Dan Su, Gia Dinh, Lao Dong va Hinh Su giua Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam va Cuba ngay 30 thang 11 nam 1984 [trans: *Bilateral Treaty on Mutual Judicial Assistance in Civil, Family, Labor and Criminal Matters between Vietnam and Cuba*, 30 November 1984]

Protocol Amending the Single Convention on Narcotic Drugs, 1961, opened for signature 31 December 1972 (entered into force 8 August 1975)

Single Convention on Narcotic Drugs, opened for signature 30 March 1961 (entered into force 13 December 1964)

Other Sources

Alternative Socio-Economic Development Program to Replace Opium Poppy Cultivation - Ky Son Pilot Scheme, United Nations Office on Drugs and Crime

<http://www.unodc.org/unodc/en/alternative_development_database_17.html> at 12 September 2004

Drug Abuse in Hanoi: Insights and Implications for Intervention, March 2002 (2003) United Nations Office on Drugs and Crime
<http://www.unodc.org/vietnam/en/hanoi_2002-03-31_1.html> at 22 August 2004

Drugs and Development (1996) United Nations Office on Drugs and Crime
<http://www.unodc.org/pdf/technical_series_1994-06-01_1.pdf> at 20 August 2005

Economic and Social Consequences of Drug Abuse and Illicit Trafficking (1997) United Nations Office on Drugs and Crime
<http://www.unodc.org/pdf/technical_series_1998-01-01_1.pdf> at 20 August 2005

Ethnic Minorities, Drug Use & Harm in the Highlands of Northern Viet Nam - A Contextual Analysis of the Situation in Six Communes from Son La, Lai Chau, and Lao Cai, July 2003 (2003) United Nations Office on Drugs and Crime
<http://www.unodc.org:80/pdf/vietnam/vietnam_ethnic_minorities_report.pdf> at 18 August 2004

Projects in the Viet Nam Country Office (2003) United Nations Office on Drugs and Crime <<http://www.unodc.org/vietnam/en/projects.html>> at 03 January 2005

The Social Impacts of Drug Abuse (1996) United Nations Office on Drugs and Crime <http://www.unodc.org/pdf/technical_series_1995-03-01_1.pdf> at 20 August 2005

Strategic Program Framework for Vietnam, 2003 (2003) United Nations Office on Drugs and Crime <http://www.unodc.org/vietnam/en/country_profile.html> at 12 October 2004

United Nations International Drug Control Program in Viet Nam (2003) United Nations Office on Drugs and Crime <http://www.unodc.org:80/pdf/vietnam/vietnam_undcp-in-vietnam.pdf> at 18 August 2004

Asean, *Bangkok Political Declaration in Pursuit of a Drug-Free ASEAN 2015* (2000) <<http://www.aseansec.org/5714.htm>> at 13 August 2005

Asean, *Joint Declaration for Drug-Free ASEAN* (1998) <<http://www.aseansec.org/5721.htm>> at 13 August 2005

Assessment of Experiences with Alternative Development in Viet Nam

Bui, Thu Men, 'Cong Tac Quan Ly, Kiem Soat Thuoc Gay Nghien, Thuoc Huong Tam Than va Tien Chat trong Linh Vuc Y Te' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Bui, Thu Men, 'Control of Addictive, Psychotropic Drugs and Precursors in Medical Care' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Bureau for International Narcotics and Law Enforcement Affairs - Us Department of State, *Chemical Controls*, Consulate General of the United State Hong Kong and Macau <<http://www.usconsulate.org.hk/uscn/narcotic/1999/02c.htm>> at 21 September 2005

Burnet Institute Center for Harm Reduction, *Vietnam: Comparison 1997 Versus 2001* <<http://www.chr.asn.au/freestyler/gui/files//Vietnam1.pdf>> at 20 November 2004

Dell'alba, Gianfranco, Dupuis, Olivier and Robert, Jean-Luc, *For a Revision of the United Nations Conventions on Drugs*, International Anti-Prohibitionist

League

<http://www.antiprohibitionist.org/documents/documents01/study%20on%20the%20Conventions_en.doc> at 21 September 2005

Do, Khiem, 'Vai Net ve Tinh Hinh Ma Tuy tren The Gioi va Hop Tac Quoc Te cua Viet Nam trong Phong Chong Ma Tuy' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) [trans: Do, Khiem, 'An Outline of the World's Drug Situation and Vietnam's Cooperation in Drug Control' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]

Do, Nang Khanh, 'Thuc Trang Cong Tac Cai Nghien Ma Tuy va nhung Van De Phap Ly Dat Ra' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Do, Nang Khanh, 'The Reality of Drug Abuse Rehabilitation and Related Legal Issues' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Do, Van Hoa, *Xac Dinh Mo Hinh Co Cau Cay Trong Thich Hop Tren Dat Doc Vung Cao Mien Nui Phia Bac Gop Phan Bo Sung Cac Giai Phap cho Chuong Trinh Thay The Cay Thuoc Phien* (D Phil thesis, Vien Khoa Hoc Ky Thuat Nong Nghiep Vietnam, 1996) [trans: Do, Van Hoa, *Finding a Suitable Cultivation Structure for the Northern Mountainous and Upland Areas as a Contribution to the Opium Poppy Alternatives Program* (D Phil Thesis, Technical Agriculture Institution, 1996)]

Douglas, I Keh, *Drug Money in a Changing World: Economic Reform and Criminal Finance* (1996) United Nations Office on Drugs and Crime <http://www.unodc.org/pdf/technical_series_1996-01-01_2.pdf> at 20 August 2005

General Police Department, 'Report on the Situation of Social Safety and Order and the Police Work in 1999' (2328/C11-C12, Ministry of Public Security, 1999)

General Police Department, 'Report on the Situation of Social Safety and Order and the Police Work in 2001' (3231/C11-C12, Ministry of Public Security, 2001)

General Police Department, 'Report on the Situation of Social Safety and Order and the Police Work in 2002' (3628/C11-C12, Ministry of Public Security, 2002)

- General Police Department, 'Report on the Situation of Social Safety and Order and the Police Work in 2003' (3367/C11-C12, Ministry of Public Security, 2003)
- Government, 'Report on the Five-Year Implementation of the Resolution 09/CP and the National Crime Prevention Program (1998 - 2004)' (Government, 2004)
- Haub, Carl and Huong, Phuong Thi Thu, *An Overview of Population and Development in Vietnam* (2005) Reference Bureau
<<http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=8230>> at 01 June 2005
- Hoang, Phuong Hoa, 'Thuc Trang Cong Tac Xoa Bo Cay Thuoc Phien, Thay The Cay Trong - Nhung Thuan Loi, Kho Khan va Kien Nghi Hoan Thien Phap Luat' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Ha Noi, Vietnam, 2002) [trans: Hoang, Phuong Hoa, 'The Reality of Opium Eradication and Development of Alternatives: Advantages, Disadvantages and Recommendations for Further Improvement' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Ha Noi, Vietnam, 2002)]
- International Narcotics Control Board, *Illicit Drugs and Economic Development* (2002) <http://www.incb.org/pdf/e/ar/2002/incb_report_2002_1.pdf> at 12 August 2005
- Kim, Long Bien, 'Vai Tro cua Nganh Hai Quan trong Dau Tranh Phong Chong Ma Tuy va Nhung Van De Dat Ra.' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Kim, Long Bien, 'The Role of Customs in Drug Control and Related Matters' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]
- Le, Minh Tuan, 'Cong Tac Kiem Sat voi viec Dau Tranh Chong cac Toi Pham ve Ma Tuy va Mot So Van De Phap Ly Dat Ra' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Le, Minh Tuan, 'Supervision on the Fight against Drug-Related Crimes and Some Legal

Issues' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Le, Thanh Binh, 'Thuc Tien Xet Xu cac Toi Pham ve Ma Tuy o Ha Noi - Nhung Vuong Mac trong Thuc Tien Xet Xu va cac Kien Nghi' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Le, Thanh Binh, 'The Current State of Trials for Drug-Related Crimes in Hanoi: Difficulties in Practice and Recommendations for Revision' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Nguyen, Duc Nga, 'Hai Quan Viet Nam voi Cong Tac Dau Tranh Chong Buon Lau Ma Tuy' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) [trans: Nguyen, Duc Nga, 'Vietnamese Customs in the Combat against Illicit Drug Trafficking' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]

Nguyen, Huu Lam, 'Tinh Trang Nghien Ma Tuy va cac Bien Phap Cai Nghien Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) [trans: Nguyen, Huu Lam, 'Situation of Drug Abuse and Measures for Drug Abuse Treatment in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]

Nguyen, Minh Duc, *Hoan Thien Khung Phap Luat Hinh Su doi voi Toi Pham ve Ma Tuy o Viet Nam* (D Phil thesis, Hoc Vien Canh Sat Nhan Dan, 2003) [trans: Nguyen, Minh Duc, Improving Criminal Legal Framework Dealing with Drug-Related Crimes (D Phil Thesis, Politics Institution, 2003)]

Nguyen, Sinh Xo, 'Vai Tro cua Bo Doi Bien Phong trong Dau Tranh Phong Chong Toi Ma Tuy o Khu Vuc Bien Gioi' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Nguyen, Sinh Xo, 'The Role of Border Guards in relation to Drug Control in the Areas along Vietnam's Borders' (Paper presented at the Conference on Law Enforcement

in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Nguyen, Thu Quy, 'Thuc Trang Toi Pham Ma Tuy tren Dia Ban Ha Noi va nhung Kien Nghi, Giai Phap' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Nguyen, Thu Quy, 'Situation of Drug-Related Crimes in Hanoi, Recommendations and Solutions' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Nguyen, Thanh Thuy, 'Mot So Van De Phap Ly va Thuc Tien Dat Ra trong Qua Trinh Thi Hanh cac Ban An ve Ma Tuy' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Nguyen, Thanh Thuy, 'Some Legal Issues and Difficulties in Practice relating to Trials for Drug-Related Crimes' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Nguyen, Van Du, 'Mot So Van De ve Phong Chong Ma Tuy trong Vung Thuoc Nhiem Vu cua Bo Doi Bien Phong' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy giua Viet Nam va Phap, Hanoi, Vietnam, June 1998) [trans: Van Du Nguyen, 'Some Issues on Narcotics Prevention and Suppression in the Areas under the Control of Border Guards' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]

Nguyen, Viet Sach, 'Mot So Van De ve Cong Tac Dieu Tra Toi Pham Ma Tuy' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Nguyen, Viet Sach, 'Some Issues on Investigation of Drug-Related Crimes' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Nguyen, Xuan Yem, 'Van De Phoi Hop giua cac Co Quan Tham Gia Phong Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma

Tuy của Việt Nam và Pháp, Hanoi, Vietnam, 1998) [trans: Nguyen, Xuan Yem, 'The Issue of Coordination among State Authorities Charged with Drug Control in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]

Pham, Thi Kim Hoan, 'Công Tác Quản Lý Tiền Chất ở Việt Nam: Thực Trạng, Giải Pháp và Kiến Nghị Hoàn Thiện Pháp Luật' (Paper presented at the Hội Thảo về Thực Tiến Đấu Tranh Phòng Chống Ma Túy và Van De Hoàn Thiện Pháp Luật Phòng Chống Ma Túy, Hanoi, Vietnam, 2002) [trans: Pham, Thi Kim Hoan, 'Precursors Control in Vietnam: Real Situation, Solutions and Recommendations for Amelioration' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Pouls, Jean, 'Cơ Quan Hải Quan trong cuộc Đấu Tranh Chống Ma Túy' (Paper presented at the Hội Thảo về Phòng Chống Ma Túy của Việt Nam và Pháp, Hanoi, Vietnam, 1998) [trans: Jean Pouls, 'Customs Authorities in the Combat against Drugs' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]

Quach, Sy Hung, 'Vai Trò của Chính Quyền Cơ Sở trong Công Tác Phòng Chống Ma Túy' (Paper presented at the Hội Thảo về Thực Tiến Đấu Tranh Phòng Chống Ma Túy và Van De Hoàn Thiện Pháp Luật Phòng Chống Ma Túy, Hanoi, Vietnam, 2002) [trans: Quach, Sy Hung, 'The Role of Local Authorities in Drug Control' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

Quốc Hội Nước Cộng Hòa Xã Hội Chủ Nghĩa Việt Nam, *Du Thảo Luật Tuồng Tro Tu Pháp và Dân Do (Lay Y Kien Nhan Dan)* <http://duthaoonline.quochoi.vn/portlet-params@uP_portlet_action%253Dtrue%2526uP_root%253D51%2526cap%253D3%2526request_type%253DChonBaiViet%2526idBaiviet%253D7219@portlet-params.tag.idempotent.render.userLayoutRootNode.target.51.uP#51> at 25 March 2007 [trans: National Assembly of Vietnam, *Draft Law on Legal Assistance and Extradition (open to Public Suggestions)*]

Quoc Hoi Nuoc Cong Hoa Xa Hoi Chu Nghia Viet Nam, *Thong Tin ve Cac Ky Hop Quoc Hoi* (2007) <<http://www.na.gov.vn/vietnam/index.html>> at 3 April 2007 [trans: National Assembly of Vietnam, *Information on Meetings of the National Assembly*]

Regional Center for East Asia and the Pacific, *Alternative Development Sharing Good Practices Facing Common Problems - Alternative Development Cooperation in East Asia*, United Nations Office on Drugs and Crime <<http://www.unodc.org/unodc/search.html?search-category=ROOT&scope=project+document&browse-category=&ui=sr&chunk-size=20&page=2>> at 07 January 2005

SEAPOL, *SEAPOL Workshop on 'Regime-Building in South-East Asia' - Phuket, Thailand, May 1-3, 1989 and SEAPOL Workshop on 'The Entry into force of the Law of the Sea Convention: Issues and Prospects' - Chiangmai, Thailand, May 27-29, 1991* (1989 and 1991)

Sollier, Joel, 'Cac Cong Cu Hop Tac Tu Phap Quoc Te trong Linh Vuc Phong Chong Buon Ban Bat Hop Phap cac Chat Ma Tuy' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998)

State General Statistics Office, 'Report on Analysis of Surveys Concerning the Basic Income in the Main Places of the Opium Poppy Cultivation Region' (1994)

Tran, Xuan Sac, 'Tinh Trang Nghien Ma Tuy va Van De Cai Nghien Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) [trans: Tran, Xuan Sac, 'Situation of Drug Abuse and Matters Concerning Drug Abuse Rehabilitation in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]

Truong, Minh Manh, *Phan Loai Toi Pham theo Luat Hinh Su Viet Nam* (D Phil thesis, Vien Nha Nuoc va Phap Luat, 2003) [trans: Truong, Minh Manh, *Classification of Crimes in the Vietnamese Criminal Law* (D Phil Thesis, State and Law Institution, 2003)]

Tu, Van Nhu, 'Cong Tac Xet Xu cac Vu An ve Ma Tuy va nhung Kien Nghi Hoan Thien Phap Luat' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Tu, Van Nhu, 'Trials for Drug-Related Crimes: Recommendations for Law Improvements' (Paper presented at the

Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

United Nations International Drug Control Program, *Statistics and Analysis on Supply and Trafficking in Narcotic Drugs and Psychotropic Substances 1996* (1996) United Nations Offices on Drugs and Crime <http://www.unodc.org/pdf/technical_series_1998-03-01_1.pdf> at 07 January 2005

United Nations International Drug Control Programme, *Commentary on UNDCP Model Drug Abuse Bill 2000*, United Nations Office on Drugs and Crimes <http://www.unodc.org/pdf/lap_drug-abuse-bill_commentary.pdf> at 05 September 2005

United Nations International Drug Control Programme, *Model Drug Abuse Bill 2000*, United Nations Office on Drugs and Crime <http://www.unodc.org/pdf/lap_drug-abuse-bill_2000.pdf> at 05 September 2005

United Nations Office on Drugs and Crime, *Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Legal Assistance in Criminal Matters* <http://www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf> at 25 March 2007

United Nations Office on Drugs and Crime Vietnam, *Drug Abuse in Lai Chau Province: Rapid Situation Assessment, December 2001* (2001) United Nations Office on Drugs and Crime <http://www.unodc.org/vietnam/en/lai-chau_2001-12-31_1.html> at 20 September 2004

United Nations Office on Drugs and Crimes Vietnam, *Vietnam: Country Profile, 2003* (2003) United Nations Office on Drugs and Crime <http://www.unodc.org/pdf/vietnam/country_profile_vietnam.pdf> at 18 December 2004

United States Department of Justice, *Drug Intelligence Brief - the Drug Situation in Vietnam, November 2001* United States Department of Justice <<http://www.usdoj.gov/dea/pubs/intel/02001/02001p.html>> at 13 November 2004

- United States Department of State Bureau for International Narcotics and Law Enforcement Affairs, *Excerpt from: International Narcotics Control Strategy Report, March 2004, Vietnam* United Department of State International Information Programs
<<http://usinfo.state.gov/regional/ea/vietnam/narc2004/html>> at 17 August 2004
- UNODC Vietnam, *Drug Abuse in Hanoi: Insights and Application for Intervention, March 2002* (2002) United Nations Office on Drugs and Crime
<http://www.unodc.org/vietnam/en/hanoi_2002-03-31_1.html> at 12 December 2004
- Uong, Chung Luu, 'Phap Luat va Chinh Sach Hinh Su trong Dau Tranh Phong Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) [trans: Uong, Chung Luu, 'Law and Criminal Policy in the Combat against Narcotics in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]
- Us Department of State Bureau of International Narcotics Matters, *International Narcotics Control Strategy Report, April 1994: Chemical Controls*
<<http://dosfan.lib.uic.edu/ERC/law/INC/1994/10.html>> at 21 September 2005
- Vu, Hung Vuong, 'Luc Luong Canh Sat voi Cong Tac Phong, Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Vietnam va Phap, Hanoi, Vietnam, 1998) [trans: Vu, Hung Vuong, 'Police Force in the Combat against Narcotic Substances in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]
- Vu, Quang Vinh, 'Hoan Thien He Thong Phap Luat co Lien Quan den Cong Tac Phong, Chong Toi Pham ve Ma Tuy' (Paper presented at the Hoi Thao ve Thuc Tien Dau Tranh Phong Chong Ma Tuy va Van De Hoan Thien Phap Luat Phong Chong Ma Tuy, Hanoi, Vietnam, 2002) [trans: Quang Vinh Vu, 'Improving the Legal Framework for Narcotics Suppression and Prevention' (Paper presented at the Conference on Law Enforcement in Drug Control and Some Issues on Improving Vietnam's Legal Framework for Drug Control, Hanoi, Vietnam, 2002)]

- Vu, Quang Vinh, *Hoat Dong Phong Ngua cac Toi Pham ve Ma Tuy cua Luc Luong Canh Sat Nhan Dan* (D Phil thesis, Hoc Vien Canh Sat Nhan Dan, 2003) [trans: Vu, Quang Vinh, People's Police and Drug-Related Crime Prevention (D Phil Thesis, Police Institution, 2003)]
- Vu, Quang Vinh, 'Tinh Hinh Chung ve Cong Tac Kiem Soat Ma Tuy va Van De Phong Chong Ma Tuy o Viet Nam' (Paper presented at the Hoi Thao ve Phong Chong Ma Tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998) [trans: Vu, Quang Vinh, 'General Situation on Narcotics Control and the Issue of Narcotics Prevention and Suppression in Vietnam' (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998)]
- WHO and UNDCP Global Initiative on Primary Prevention of Substance Abuse, *Substance Use in South-East Asia: Knowledge, Attitudes, Practices and Opportunities for Intervention - Summary of Baseline Assessments in Thailand, the Philippines and Viet Nam* <<http://whqlibdoc.who.int/publications/2003/9241590793.pdf>> at 27 September 2005
- World Health Organization, *WHO Expert Committee on Drug Dependence - Technical Report Series: Thirty-third Report* <http://whqlibdoc.who.int/trs/WHO_TRS_915.pdf> at 27 September 2005
- World Health Organization, *Guidelines for the WHO Review of Dependence-producing Psychoactive Substances for International Control* (2000) <http://whqlibdoc.who.int/hq/2000/WHO_EDM_QSM_2000.5.pdf> at 15 September 2005