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Fighting Drug Trafficking With a Substance-Oriented Approach

A Matter of Substance

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The Netherlands Antilles, Aruba, and Surinam are conveniently located for Colombian traffickers shipping cocaine to Europe; there are many direct flights to one of Europe's busiest airports, Schiphol in Amsterdam. Between 2001 and 2004 cocaine seizures in the Netherlands and the Netherlands Antilles increased dramatically. Confronted with large numbers of people attempting to smuggle drugs by using commercial flights, authorities implemented a "100% control" policy of screening all passengers for drugs on all flights at selected source and destination airports.

Rather than attempting to scare off potential smugglers with the threat of incarceration, the Dutch approach was based on increasing the rate of interdiction to the point that smuggling becomes unprofitable. In other words, the focus was on the drugs, the so-called "substance-oriented approach", rather than the couriers, and was based on incapacitation of the smuggling route, rather than traditional deterrence by incarceration; and with result.

INTRODUCTION

Towards the end of 2001 it became apparent that the number of couriers or drug mules² arrested at Amsterdam Schiphol airport was increasing beyond the means of the criminal justice system. Over the year 2001, 1303 couriers were arrested but the total number of couriers was estimated to be much higher: as much as 500 couriers per week.^{3,4}



KEY POINTS

- **Human friendly approach.** Negative consequences of interdiction need to be avoided as much as possible; the substance-oriented approach represents one of the more human friendly approaches within the current international drug control system. It is a constructive response aimed at health, rehabilitation and prevention of trafficking. At the same time a huge burden on the prison system and the judicial apparatus can be lifted allowing for more focus on the criminal organisation behind the drug trafficking.
- **Role as a determining factor.** Body packers, swallows and couriers carrying drugs in their luggage are often not informed of the quantity they are smuggling, nor do they have a say in it. Therefore the role of the courier in the operation should be weighed heavier than the quantity when considering a sentence.

Drug couriers

It is difficult to give a general profile of the drug couriers travelling to Schiphol Airport. According to UNODC and Latin America and the Caribbean Region of the World Bank, *'this form of couriership appeals most to people who are reckless, desperate, or ignorant.'*⁷

From court reports it becomes clear that some think couriership is an easy way to earn a holiday and some pocket money, others are forced into couriership under threat, and there are also many couriers who are smuggling drugs as a survival strategy. These couriers are poorly educated, jobless and generally marginalised.

In case of those coming to Schiphol there was a link between unemployment rates, economic difficulties, and the high numbers of migrants moving from Curaçao to the Netherlands;⁸ many of these migrants were having problems adapting. In 2006 one third of all arrested couriers in the Netherlands were women, and

many were single mothers looking after their family on a meagre salary.⁹

In an interview in the NRC Handelsblad in January 2009 the President of the court of Haarlem said the following about the couriers arriving at Schiphol: *"The situation on Schiphol Airport still differs from the rest of the country: the traffickers caught at the airport are often paupers. That was and is still typical of Schiphol Airport"*.¹⁰

Often the couriers are not aware of the quantity of drugs they are carrying. In case the couriers act by order of a criminal organisation they do not have a say in the quantity of drugs they are smuggling and the organisers will be packing the luggage. With internal smuggling the quantity is dependent on physical build. On average the couriers carry about 90 balls. The highest number of bolita's intercepted on one person arriving at Schiphol is 218.¹¹

To avoid a total overflow of the system the Public Prosecutor of Haarlem (under which jurisdiction Schiphol resides) asked Customs border control to limit the number of couriers arrested to meet the capacity of the judicial system.⁵

Detention capacity, however, fell far short of actual need. Even though only 5% percent of couriers were apprehended, a small number of them still had to be sent away without a summons because of lack of capacity. The Parliament did not accept this situation and in response, the Dutch Government introduced the "Plan of Action for Fighting Drug Trafficking at Schiphol" in January 2002⁶ ("The Plan"). The Plan consisted of; inter alia, a range of measures aimed at the reduction of the huge flow of couriers. It intensified the already existing two pronged approach:

1. Prevention of drug trafficking to the Netherlands: measures at the source. Many couriers travelled from the Dutch Antilles, Aruba and Surinam and the Dutch Government worked to improve the colla-

boration with the local authorities and to strengthen law enforcement on the islands.

2. Confiscation of found drugs and penal interventions towards the couriers and the criminal organisations behind the trafficking. The reinforcement of the total control and criminal law chain: expanding border and customs control with 50 FTE, expanding the Judiciary with 9 Public Prosecutors and 11 Judges and 36 FTE staff, and the expansion of the detention capacity with 1,300 additional places (including temporary provisions).

IMPLEMENTATION OF THE SCHIPHOL PLAN OF ACTION

To implement the Plan substantial financial resources were invested the first year: upon inception it was estimated the additional measures would cost 50 million Euro in the first year. Ultimately, however, over 80 million Euro per year was spent in the first two years alone (2003 and 2004), 40 million was spent in 2005 and 21 million in 2006.¹²

Between 2002 and 2006 the Minister of Justice sent seven progress reports on the Plan to inform Parliament. In the second report the Minister announced that even though over 600 couriers had been arrested in the first three months of 2002 the flow of couriers was not decreasing; the government decided to further intensify the Plan.

The Public Prosecutor Service therefore compiled a list of 21 symptoms identifying possible couriers: the so called “*swallowers criteria*”. Travellers matching at least five of these criteria¹⁸ were suspected to be couriers and would have to defecate three times without releasing drugs (‘*produce*’ clean) three times whilst under supervision in custody or they could volunteer to undergo a body scan to prove their innocence more quickly.

The capacity of the Haarlem and Amsterdam courts were increased (including extra session rooms and judges at the Haarlem court) and at Schiphol a temporary court was established. Aside from the 410 extra places al-

ready created, additional prison cells were also constructed at Schiphol airport. Since the internal smuggling of cocaine comes with considerable health risks these jails were equipped with special medical facilities.

In the 3rd Progress Report the Minister of Justice announced he was aiming to have a total of 1000 extra jail places by the end of 2003.¹⁹ Still, the extra created capacity in the judicial system was not sufficient. To relieve the overstretched system two emergency laws were adopted: one allowing the police judge to preside over small trafficking cases and another that temporarily allowed two inmates in one cell.²⁰

However, these conventional measures did not deter those couriers willing to risk their lives to earn money.²¹ Moreover, professional trafficking networks often apply what is called a “shotgun approach”, booking a large number of couriers on the same flight with the hopes that a sufficient number will get through.²² Traffickers recognize that law

Medical care for suspected couriers

Jails set up for suspected couriers have special medical facilities; and the prisoners are kept under constant medical surveillance to detect signs of intoxication as early as possible.¹³ The facilities have special drug toilets to recover the drugs; a suspect has to produce clean faeces three times before suspicion against them will be lifted. Since it has been found that early detection of intoxication saves lives¹⁴ arrested couriers are kept under medical assistance until they have discharged all drugs. In cases of intoxication, couriers are taken to the prison hospital for an emergency surgery.

There are no figures from the Netherlands and the Netherlands Antilles on the fatality rate among couriers but a lethal dose of cocaine is 1-2 grams, so one ruptured bolita (+/- 8 grams) can be fatal – and ruptures and other complications are quite common.¹⁵

From a medical perspective the couriers that are apprehended at customs can be considered to have an advantage over those that enter the Netherlands undetected because they are

placed under medical supervision. On the other hand it has to be realised that the treatment of the (suspected) couriers is a heavy burden on the individual’s dignity and can be quite traumatic. To defecate under surveillance is for many a big intrusion on a person’s privacy.

In Dutch hospitals a special medical protocol has been adopted to treat the “body-packer syndrome” of internal couriers brought in other than by referral from the criminal justice system. Often such couriers are afraid to admit they are carrying drugs and do not inform the medical staff – but this fear is needless. An X-ray of the abdomen is used to assess whether a patient is an internal courier.¹⁶ Medication consists of mild laxatives in absence of symptoms of poisoning; in case of intoxication or intestinal occlusion or perforation a surgical intervention is needed.¹⁷ The drugs recovered from the patients at the hospital will be given to the police as lost property without revealing the identity of the patient if the patient is not in custody.

Sentencing guidelines

The Dutch sentencing guidelines for drug trafficking are set out in the Opium Act. Sanctions depend on the kind of offence: a distinction is made in quantity and type of smuggling. In practice, first offenders receive a lighter sentence than recidivists or offenders involved in a trafficking organization. For instance a mule carrying between 500-1000 gram would be given 3-9 month in prison; a courier trying to earn some easy money but without financial problems and not couriering under threat would be given 6-12 months in prison for the same quantity; a courier who is part of a criminal organisation and carrying the same amount could be sentenced to 8-12 months in jail.

Before the Plan national sentencing guidelines were followed throughout the country. In 2003 in view of the large number of couriers arrested at Schiphol the court of Haarlem developed, in line with the Plan, its own set of sentencing guidelines. Under these guidelines the length of a prison sentence was generally

below the sentencing for couriering at other entry points to the Netherlands.²³ For example in cases concerning 3000 to 4000 gram the national guidelines would demand 30-36 months in jail whereas the court of Haarlem guidelines demanded 20-25 months for a courier (not a mule). The nature and the size of the trafficking problems at Schiphol allowed for this exceptional situation according to the Minister of Justice.²⁴

The Public Prosecution Office announced in May 2007 they would follow the guidelines in the Opium Act again. To the dismay of the Public Prosecution Office the court of Haarlem continued to implement special sentencing guidelines, because the judges found the couriers arriving at Schiphol were often already marginalised. In June 12, 2009, after a large number of appeals won by the public prosecution the judges of first instance decided national guidelines would be followed again;²⁵ consequently sentences went up to the national level.

enforcement authorities can only arrest a limited number of couriers on any given day, as each requires extensive paperwork and subsequent court time. Once a few are detected, attention turns away from the rest of the passengers. By sending dozens of couriers on one flight, traffickers are virtually guaranteed that some of their drugs will get through.

To these professional networks the percentage of drugs that was confiscated was part of a calculated risk. According to some estimates at least 80% of the drugs were successfully delivered.²⁶ In December 2003 the Minister of Justice informed the Parliament the maximum capacity of the judicial system was 200 new couriers a month.²⁷ It became more and more apparent that an alternative approach was necessary.

SUBSTANCE-ORIENTED APPROACH

In February 2002 three judges from the Dutch Antilles published an Op-ed in the Dutch Lawyers Magazine.²⁸ In their opinion

it was time to move away from the conventional idea that as many couriers as possible should be detained, instead attention should be focused on the drugs. They argued that all drugs flown to the Netherlands should be confiscated and the couriers sent away, with only instances of very high quantities of drugs or recidivism attracting a prison sentence; albeit swallows would have to be detained a couple of days till they are drug-free. With such an approach, more drugs would be taken from the market and the judicial system would be able to focus on the criminal organisations behind the trafficking. At the same time the “big fish” are confronted with losses because of the seizures. The judges also suggested complementing these measures with the confiscation of passports, declaring people as *personae non gratae* or establishing blacklists for airlines.

This Op-ed resonated in the Dutch parliament and was referred to in the political debates in the Netherlands. Although the aim of the government was still to prosecute the

couriers, measures aimed at the prevention of trafficking were intensified and carried out in cooperation with the government of the Dutch Antilles. To prevent recidivism the passports of Antillean and Aruban convicted couriers were impounded,²⁹ and pre-flight screening of passengers (from April 2002 onwards) was intensified. At Schiphol airport, screening was also increased.

In the first months these pre-flight checks resulted in thousands of “no shows” and several hundred passengers with a “negative travel advice” based on their recent conviction for trafficking”.³⁰ The Dutch airline KLM adhered to this travel advice and would not allow these passengers on their planes. Other passengers under suspicion of trafficking were also refused onto the flight but they were given the option of proving their innocence with a body scan.³¹ Considering all the no-shows, clearly these pre-flight checks were very effective, and the Dutch Government stated that further intensification of the checks to curb the trafficking should be the aim. A negative consequence of the pre-flight checks on Curaçao was that the Customs officers at Hato airport felt threatened by drug criminals. Some incidents of verbal and physical abuse were reported in the media.³²

In the 4th Progress Report to Parliament (September 2002), the Minister of Justice acknowledged that the limits of the logistical and financial resources of the judicial system had been met.³³ He therefore proposed a substance-oriented approach, the focus of which should be on the confiscation of drugs and drugs money which should, in certain cases, no longer be connected to (immediate) prosecution or detention. Considering that the majority of the couriers were flying from the Antilles and Surinam the Minister announced he would further strengthen cooperation with these countries.

Cooperation with the Dutch charter carrier Air Holland and the Curaçao-based Dutch Caribbean Airlines proved more difficult and the carriers were put under heavy pressure by the Dutch government to cooperate or otherwise risk being sued for facilitating drug trafficking.

The proposal of a substance-oriented approach was adopted by Parliament and the Public Prosecution Office developed new guidelines: couriers carrying less than 3 kg³⁴ of cocaine and for whom it was a first offence were, under certain conditions, formally indicted but not prosecuted; the drugs were confiscated. With the indictment the couriers could explain to their criminal bosses the loss of the contraband.³⁵ They were registered on a blacklist for air carriers to prevent them entering the Netherlands for a maximum period of three years (executed by airlines). Their details were also included in the Schengen Information System (SIS), which meant they could be identified as a drug courier upon entering other Schengen states.

In the Netherlands Antilles passports of drug Antillean couriers were impounded temporarily³⁶ as a condition for non-prosecution. Foreign couriers were marked *personae non gratae* in their passports. With the new guidelines the judicial apparatus would no longer be a limiting factor in the execution of the controls. Recidivists and couriers involved in other criminal offences were arrested and would still be prosecuted.

The legal basis of the substance-oriented approach is the expediency principle. This principle, a discretionary option in Dutch penal law, allows the Public Prosecution to refrain from prosecution.³⁷ At the heart of this principle lies the notion that prosecution will only be carried out if it is in the public interest to do so.

Upon acceptance of the *1988 United Nations Convention against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances* the Netherlands made the reservation that “The Government of the Kingdom of the Netherlands accepts the provisions of article 3 (offences and sanctions), paragraphs 6, 7, and 8, only in so far as the obligations and provisions are in accordance with Dutch criminal legislation and Dutch policy on criminal matters.” With this reservation the Public Prosecutor has reserved the right to the expediency principle even though the Convention obliges the signatories to establish couriering as a criminal offence.

100 % Checks

In December 2003 the Dutch government decided to check all passengers, crews, luggage and planes coming from the Dutch Antilles, Aruba, Surinam and Venezuela. To carry out these checks Customs used the following method: a sniffer dog checked the passengers upon departure from the plane; all passengers were submitted to a short interview using twenty-one (21) “*swallowers criteria*” during which Customs decided whether a passenger was a possible courier.

All hand luggage and hold luggage was also scanned and checked with sniffer dogs. If Customs suspected someone was carrying drugs under their clothes they could demand passengers to undress. If drugs were found, Customs would take a photo of the courier with the drugs on the body, and then the drugs were weighed and tested. In 2007 a Millimetre Wave scan was installed to search customers without having to undress and physically touch the passenger.

In nearly 100 cases Customs also carried out physical searches in body cavities between January 2004 and April 2006. In June 2006 the National Ombudsman report³⁸ advised against this treatment: the means was too intrusive for the situation and causing a considerable emotional burden to the suspects. The Minister of Finance (in charge of Customs) followed this

advice. In May 2007 Customs) followed this advice. In May 2007 the High Court ruled that the Customs are not authorised to do physical searches in the body cavities. The searches were considered in breach with the article 10 (right to privacy) and article 11 (integrity of the human body) of the Dutch constitution, as well as article 8 (privacy) of the European Convention on Human Rights.

When Customs suspected a passenger to be an internal courier the Royal Netherlands Marechaussee (police) would carry out further investigation. The passenger could avoid this by voluntarily undergoing a body scan of the abdomen. This scan was taken by a nurse and evaluated by a radiologist if necessary. Without such a body scan the passenger would be held in custody until three “*clean*” stools have been passed (this generally takes three days). In case some one has been unjustly suspected he/she would receive a letter of apology from the Royal Marechaussee.

Today the 100% checks are still carried out on all flights coming from the Dutch Antilles, Aruba and Surinam. Flights from other “source countries” such as Colombia, Dominican Republic Brazil and Venezuela are under increased scrutiny.

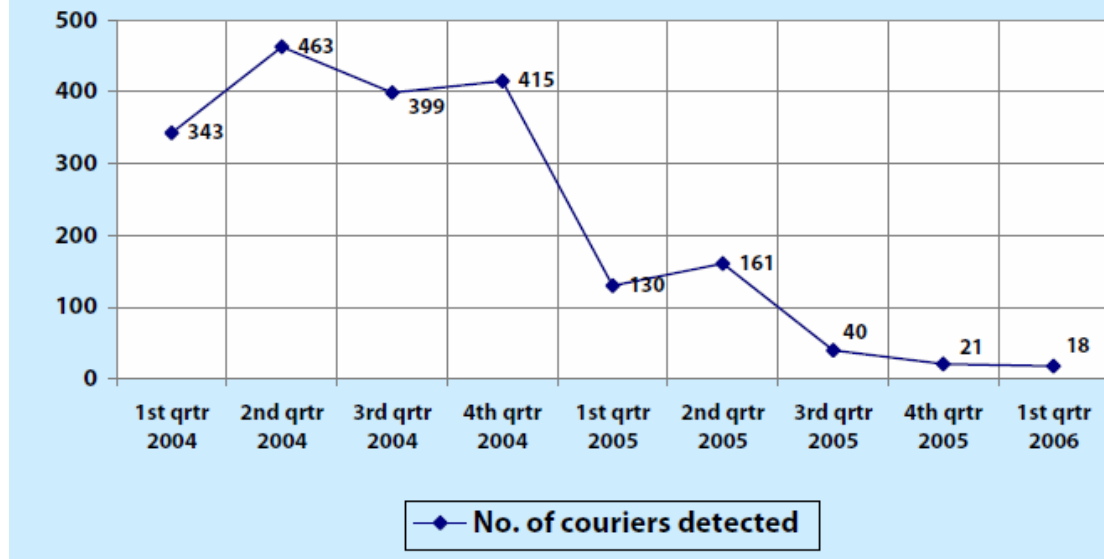
From 11 December 2003 onwards all passengers from Curaçao were checked upon arrival at Schiphol Airport. Later that year flights from Saint Maarten, Bonaire, Aruba and Venezuela were included in these 100% checks, and, in February 2004 customs started to check all passengers coming from Surinam. Since the middle of 2004 a blacklist for convicted couriers has been shared with the relevant Airlines in Surinam.

In the first year of the 100% checks the Surinam authorities complained on several occasions about the attitude of the Dutch customs upon arrival in the Netherlands. In response the custom officers were given intercultural training and a brochure with information about the 100% checks was

distributed at the Dutch embassy in Paramaribo.

In July 2005 the drop in number of couriers made the Public Prosecutor decide to start prosecuting couriers carrying 1.5 kg of cocaine and more. And, in January 2006 the number of traffickers per flight had reduced sufficiently for the judicial system to cope with these numbers again. In view of this the expediency principle no longer provided a ground to refrain from prosecution. In the mean time the international pressure on the Dutch Government to comply with the obligations set in the 1988 Convention had been considerable. This made the Dutch government to decide to start prosecuting all couriers again.

Figure 1. Couriers detected arriving at Schiphol from Curaçao



By quarter from January 2004–February 2006 (this excludes the couriers detected at Hato airport and the no-shows).⁴¹

EFFICACY

According to a confidential report on criminality on Bonaire and Curaçao by the Faber Organisatievernieuwing and the Vrije Universiteit Amsterdam, the dramatic decrease of couriers from the Antilles is mainly due to the pre-flight checks at Hato Airport on Curaçao.³⁹ In 2003 a body scan was also installed at Hato airport just as at Schiphol to allow suspected couriers to prove their innocence and carry on with their journey whilst first time couriers – caught with less than 2.5 kg of cocaine – were registered on a black list, stripped of their drugs and sent away.⁴⁰

Even before the 100% checks the presence of the scans resulted in a very large numbers of no shows: In this period, the number of no shows was almost 5,000 above average in the Netherlands and more than 8,000 on Curaçao.⁴² Also, between April 2002 and June 2003, 1,649 passengers were banned from flying in the Netherlands and 7,457 passengers were banned on Curaçao.

From December 11, 2003, 100% checks were carried out on every plane leaving Hato Airport (Curaçao) to Schiphol. Upon arrival passengers, luggage, freight, aircraft, cleaners, caterers and crews were systematically searched, i.e. with the help of scans and dogs.

Later on, flights from the Dutch Antilles,⁴³ Aruba, Surinam and Venezuela were also systematically checked. Between 1 January 2004 and 1 April 2006 just under 4,000 planes were checked and 6,147 couriers were identified of whom over 70% carried drugs internally.⁴⁴ In total 7,548 kg of cocaine was intercepted at the 100% checks in this period. Including also cocaine smuggled in cargo, the total amount of cocaine intercepted at Schiphol airport was about 14,000 kg.⁴⁵

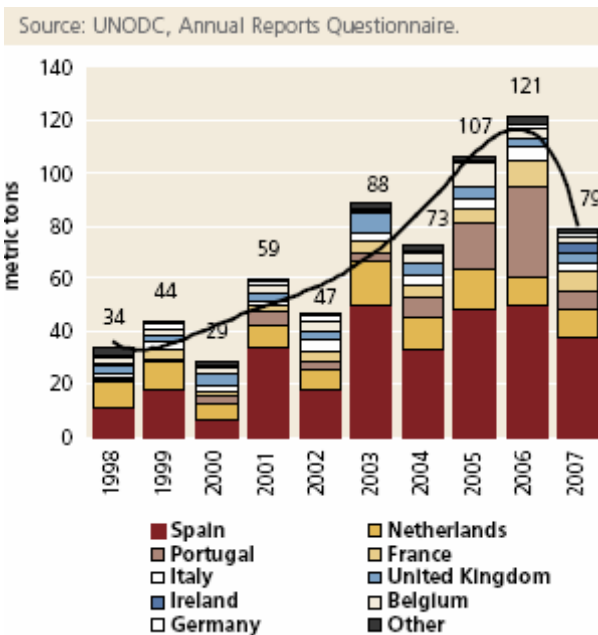
The trafficking lines were literally incapacitated and as a result the number of couriers detected dropped spectacularly, as Figure 1 illustrates.

The substance oriented approach showed very clear results at Schiphol airport and as a consequence the Netherlands were no longer the number two entry point of cocaine to Europe. Indeed, Spain is the number one entry point, (as shown in Figure 2) and The Netherlands now competes with Portugal and France for positions two, three and four. However, it is important to keep in mind that with the decrease of couriers at Schiphol new routes were established elsewhere in the world. For example the sharp rise in seizures in Portugal in 2006 may be explained by an increase of maritime trafficking from South

America via West Africa and then onto Europe by fishing boats with African crews.⁴⁶

As long as the illegal market is lucrative, traffickers will always find ways to get the cocaine to the market. And with these new routes new communities are saddled with drug problems.

Figure 2 : Cocaine seizures in Europe 1998–2007



Source: World Drug Report 2009

Impact on the cocaine market

The impact that the substance-oriented approach has had on the Dutch cocaine market is not clear albeit availability, price and purity can be seen as indicators. The purity of cocaine on the Dutch market in the Netherlands dropped between 2003 and 2006 with the percentage of samples containing the cutting agent phenacetin⁴⁷ rising from 16% in 2003 to 45% in 2006.⁴⁸ The cocaine trafficked through Schiphol was mainly destined for the European market⁴⁹ and the decrease in purity could be an effect of a shortage on the market. On the other hand the price⁵⁰ of cocaine has been remarkably stable over the past years: between 2003 and 2006 high price was 50 euro per gram, low prices increased from 25 to 45 euro per gram.

Commercial air flights are only one of the routes through which cocaine transits the

Netherlands Antilles and reaches Europe, and not necessarily the most significant one. The 100% Control approach has seized 7.5 metric tons of cocaine in two years, but multi-ton shipments can be made in a single maritime cargo-ship. It is likely that the majority of cocaine trafficking is maritime. According to a presentation by the Team Prisma at a seminar in January 2002 55% of the cocaine seized in the Netherlands is found on ships and in sea ports.⁵¹

Cost effectiveness

The large increase of prison capacity and the thousands of couriers detained between 2003 and 2005 made the first two years of the Plan rather expensive: costing about 85 million euros a year, with a further 40 million spent in 2005. These costs dropped steeply, however, with the substance-oriented approach and the new sentencing guidelines to only 21 million euro in 2006.⁵² In 2002 in the fourth progress report the Minister of Justice estimated the costs of research, prosecution, trial and prison sentence at 150 euro per day per prisoner.

UNINTENDED SIDE EFFECTS

Civil rights

In 2006, upon signals of passengers, lawyers and interest groups the Dutch National Ombudsman looked at the implementation of the 100% checks and the treatment of the suspects. Main concerns were the time spent on the checks, body cavity searches, the attitude of the Customs and Royal Marechaussee towards the passengers, and the treatment at the detention centre. Between September 2006 and December 2006, 22 complaints were registered, in 2007, there were 49 complaints and, from January-August 2008, there were two complaints; the majority of the complaints concerns flights from Surinam.

Generally the passengers were distressed by the checks and complained of feeling discriminated against and humiliated; this was especially so as regards couriers suspected of carrying the drugs internally. Between January 1, 2004, and April 1, 2006, 6,550 passengers were suspected of smuggling internally

albeit 2,176 of them, nearly one-third, turned out to be innocent.

The Ombudsman had strong objections to the way these innocent people were treated. He also advised to stop body cavity searches and to better coordinate the handling of complaints about the 100% checks. Consequently, earlier practices, which involved body cavity searches, were abandoned. To shorten the time spent on the checks a body scan and a millimeter wave⁵³ scan have been placed at Schiphol Airport in 2007.

More internal couriers

An increase of internal couriers was especially noticeable during the first months of the 100% checks. This was arguably because it became almost impossible to smuggle drugs on a person's body or within luggage, and perhaps also because low quantities of drugs were not being prosecuted. In 2002 39% of the couriers were carrying drugs internally⁵⁴ In the Ombudsman Report covering the period January 2004–April 2006, 71% of all 6,147 detected couriers was smuggling internally. In that same period 2,176 of the suspected couriers proved innocent.

In 2007 a body scan would be placed at Schiphol Airport in addition to the one on Hato, to allow suspected couriers to demonstrate that they were innocent without indignity. This measure was intended to speed up procedures, perfect the profiling and limit the negative consequences for wrongly suspected passengers. It was hoped the scan would also function as measure to prevent internal smuggling. But in an interview in July 2010 the Royal Marechaussee estimated that about 65% of the couriers arriving at Schiphol are smuggling internally.⁵⁵

Geographical displacement

According to the 2002 (confidential) Gemini Report of the Criminal Intelligence Services of The Hague and Randstad North and Central and the Royal Marechaussee, couriers trafficked 14,500 kg of cocaine via Schiphol Airport.⁵⁶ In 2000 almost 70% of all the cocaine intercepted in the Netherlands was discovered at Schiphol airport.⁵⁷

Part of the effectiveness of the Dutch approach might be explained by the “balloon effect” (when squeezing one part of a latex balloon, the balloon will bulge out elsewhere). This effect is often used to describe the displacement of coca cultivation due to eradication efforts. Cultivation moves to other areas, previously unaffected. With interdiction the same effect seems to take place.

Eliminating the Netherlands Antilles and the Netherlands as a cocaine transit route will not stop the flow of cocaine but change the routes to where less obstacles are expected, and displacement effects are inevitable. There is evidence that courier trafficking moved to other Caribbean islands and different European airports.⁵⁸

As a consequence, new trafficking routes have probably opened up from South America to Europe i.e. via West African nations with weak control frameworks. In 2005, flights from Accra (Ghana) accounted for more seized cocaine at London's Heathrow airport than flights from any other city. There are now regular reports of multi-kilo seizures of the drugs either in Ghana itself or at airports receiving flights from Ghana.⁵⁹

Also Schiphol Airport was targeted from different source countries. In December 2006, e.g., Dutch authorities arrested 32 couriers on a single flight from Casablanca (Morocco) to Amsterdam. In July 2007, 16 couriers were arrested on the weekly flight between Gambia and the Netherlands.⁶⁰ The EMCDDA report on the Netherlands signals that more West Africans have become involved in the cocaine trade.⁶¹

RECOMMENDATIONS

• Alternative measures

The alternative measures implemented in the Schiphol plan of action proved to be a good alternative to the deterrent effect of incarceration. Indeed, for internal couriers medically supervised delivery, followed by release with a travel ban to avoid recidivism is a constructive response aimed at health, rehabilitation and prevention of trafficking. At the same time a huge burden on the prison sys-

tem and the judicial apparatus can be lifted allowing for more focus on the criminal organisation behind the drug trafficking.

- **Role as a determining factor for sentencing**

The Dutch sentencing guidelines are based on a combination of the role (i.e. mule, or organiser) and the quantity found on the courier. However, body packers and couriers carrying drugs in their luggage are often not informed of the quantity they are smuggling. Physical build determines the quantity mules are able to carry internally; therefore it is arbitrary to punish only on the basis of quantity. It would therefore make sense to weigh the role of the courier, his/her position and responsibility in the operation, heavier than quantity when considering a sentence.

- **Drug couriering prevention**

It has been proven that a substance-oriented approach is effective as a preventive measure against drug trafficking by couriers from the Dutch Antilles, Aruba, Surinam and Venezuela. It is regretful the Dutch government abandoned this approach as soon as the numbers of couriers dropped to a level within the capacity of the judicial system and that they chose to resume the deterrent approach of incarceration, the effectiveness of which can be questioned. According to UNODC and the World Bank “*this reluctance to promote substance-oriented interdiction is unfortunate, because the 100% control experiment represents an innovation worthy of further promotion and testing.*”⁶²

IN CONCLUSION

After conventional methods proved unfit to address the enormous flow of drug couriers to Schiphol Airport the Dutch government chose a new approach focusing on the substance and aimed at incapacitating the trafficking route. At the same time the judicial system was spared from the huge number of drug courier cases. With the help of pre-flight checks the routes were incapacitated with an immediate effect: the number of couriers going to Schiphol airport decreased dramati-

cally within months. The cooperation with airlines on blacklists for couriers proved to be helpful in countering local recidivism.

Unfortunately the success of the Schiphol Plan of Action also proved that taking out one trafficking route does not decrease the amount of cocaine smuggled into a country, let alone to Europe as a destination area. The 100% controls did not succeed to have a significant impact on the availability, purity or price of cocaine in the Netherlands or Europe as a whole. The Plan probably contributed to shifting trafficking routes to more vulnerable countries with weak institutions such as those in West Africa. We must ask, what can be done to prevent this shift of routes to other, more vulnerable countries with little to no resources to counter the negative consequences of increased corruption and violence that go together with drug trafficking?⁶³

As is the case with any other supply reduction effort, also this Plan has not been able to influence the availability of drugs. Sustainable market changes require a decrease in demand. Meanwhile negative consequences of interdiction need to be avoided as much as possible and the substance-oriented approach represents one of the more human friendly approaches within the current international drug control system.

NOTES

1. Ernestien Jensema, MA, is a researcher and project staff with the TNI Drugs & Democracy Programme. This paper has drawn upon government papers, case-reports, e-mail correspondence with the involved authorities and articles in the media to formulate an overview of the substance-oriented approach.
2. There are three kinds of couriers at Schiphol Airport: swallowers (“bolletjes slikkers”) and people internally hiding up to 100 small balls of cocaine (+/- 8 grammes per “bolita”) wrapped in latex; “body packers” hiding the drugs on their body; and couriers hiding drugs in their luggage (often more than 10 kg). The average weight of drugs per trafficker is about 1,2 kg. Nationale Ombudsman (2006)
3. Kerkhof (2003).
4. As with all illegal markets the scale and quantity remains an estimate.
5. Tweede Kamer (2002b).

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6. Tweede Kamer (2002a).
 7. UNODC and the World Bank (2007).
 8. Kerkhof (2003).
 9. Clement, F. (2008), *Mamma's en Bolita's, Een verkennend onderzoek naar criminaliteit van vrouwen op Curaçao*, Masters thesis penal law.
 10. *OM: te lage straffen voor drugsmokkel*, NRC Handelsblad, 8 January, 2009
 11. *Cokesmokkel: ze weten het nu wel op Schiphol*, Het Parool, 10 July 2010
 12. Tweede Kamer (2003b).
 13. Raad voor Strafrechtstoepassing en Jeugdbescherming, *Detentiecentrum Schiphol-Oost: Rapportage naar aanleiding van het toezichtbezoek op 15 april 2004*; <http://parlis.nl/pdf/bijlagen/BLG6892.pdf>
 14. Fassaert, L.D.M., Visser, M.C. (2003), 'Body-packer'-syndrome: an import disease with forensic-medical aspects, NTVG, 147 (22)
 15. World J Surg (2008), *Value of a Systematic Operative Protocol for Cocaine Body Packers*, Societe Internationale de Chirurgie, 32: pp. 1432-1437
 16. It has to be kept in mind that 17-19% of the X-ray photos show a false negative (Amsterdam Medical Centre "body packer" syndroom protocol); information provided by the couriers themselves is still highly valuable.
 17. Van Geloven A.A., K.P. van Lienden, D.J. Gouma (2002). *Bodypacking – an increasing problem in The Netherlands: conservative or surgical treatment?* Eur J Surg. 2002; 168(7):404-9.
 18. The full list of criteria is not public, only some criteria have been referred to in articles and court cases: red eyes, bad breath, white tongue, as well as vague travel plans or cash payment of the ticket.
 19. Tweede Kamer (2002c).
 20. This emergency law was lifted in March 2005.
 21. The fee paid to the couriers depends upon the quantity and background of the trafficker. It can be anywhere between 1500-10.000 USD. In 2002 on Curaçao small couriers were paid about 500 euro per 100 grammes according to the article *Liever een bolletje slikken dan in de aarde wroeten*, Trouw, 23 February 2002.
 22. UNODC and the World Bank (2007), p. 97.
 23. Orientatiepunten Straftoemeting en LOVS afspraken. Updated 10 April 2009
 24. Tweede Kamer (2003b).
 25. Press release court of Haarlem, 12 June 2009
 26. Calculations based on Kerkhof (2003).
 27. Tweede Kamer (2003b).
 28. J.Th. Wit, R.F.B. van Zutphen and P. Wagenmakers (2002), *Over drugs, de Antillenroute en de waan van de dag*, NJB afl. 7, 15 February 2002
 29. In November 2007 the Supreme Court of the Antilles decided that the ban on travel cannot be imposed because the Antillean legislation did not permit it. As a consequence the couriers were sent to prison again depending on the amount of drugs the couriers had on them they received prison terms of six to eighteen months.
 30. Between April 2002 and June 2003, 1,649 passengers were banned from flying in the Netherlands and 7457 passengers were banned on Curaçao. In this period the number of no shows was almost 5,000 above average in the Netherlands and more than 8,000 on Curaçao. Tweede Kamer (2003a)
 31. The body scans used were a type called c-bow compact: the Siremobil compact. This type of scan produces less radiation than the X-ray scans used in hospitals. *Aanhangsel van de Handelingen*, 678, Tweede Kamer vergaderjaar 2002-2003
 32. *Dit is dweilen met de kraan open*, NRC Handelsblad, 29 April 2002; *Plakkers, slikkers en vrijvoeters*, NRC Handelsblad, 4 May 2002
 33. Tweede Kamer (2002d).
 34. Tweede Kamer (2004).
 35. UNODC and the World Bank (2007), p. 98
 36. For a period between six months and three years.
 37. In the Netherlands, the expediency principle has been expressed in the Code of Criminal Procedure since 1926. Section 167 subs. 2 of the Dutch Code of Criminal Procedure reads: "the public prosecutor shall decide to prosecute when prosecution seems to be necessary on the basis of the result of the investigations. Proceedings can be dropped on grounds of public interest".
 38. Nationale Ombudsman (2006).
 39. *Nederlandse invloed op daling drugsmokkel is gering*, NRC, 18 February 2008
 40. *Drugskoerier niet tegen te houden*, NRC, 25 August, 2003
 41. UNODC and the World Bank (2007); original source: Dutch Ministry of Justice
 42. Tweede Kamer (2003a).
 43. Including flights from Peru and Ecuador that made a stop-over at Bonaire Airport.
 44. National Ombudsman (2006), this was exceptionally high normally around a third of the couriers is carrying the drugs internally.
 45. Nationale Ombudsman (2006).
 46. Project COLA, *European Union Cocaine Situation Report*, Europol Drugs Unit, 2007
 47. Phenacetin was registered as a painkiller until 1984. It was widely used often in the form of an APC or aspirin-phenacetin-caffeine. Owing to its carcinogenic and kidney-damaging properties it was removed from circulation. The concentrations of phe-

nacitin as a mixing agent are lower than the doses which were feared to be damaging; however the effects when heated for smoking crack are not known. Trimbos-instituut (2008).

48. Trimbos-instituut (2008).

49. Netherlands Focal Point Trimbos Institute (2007), *The Netherlands Drug Situation 2006*, Report to the EMCDDA

50. Van Laar, M., van Ooyen-Houben, M. (2009), *Evaluatie van het Nederlands Drugsbeleid*, Trimbos Instituut / WODC

51. *De opsporing in Nederland: huidige prioriteiten en ontwikkelingen*, presentation at the CIROC seminar Cocaine vandaag, January 23, 2002

52. Tweede Kamer (2003b).

53. The waves of this scan reflect on the skin and show drugs packed on the body.

54. Tweede Kamer (2003a).

55. *Cokesmokkel: ze weten het nu wel op Schiphol*, Het Parool, 10 July 2010

56. *Maatregelen tegen bolletjesslikkers werken niet*, Press release NOVA, 21 May 2003

57. Netherlands Focal Point Trimbos Instituut (2001), *National report on the Drug Situation in The Netherlands 2001*, EMCDDA

58. UNODC and the World Bank (2007), p. 102-03

59. Reuter (2009).

60. Drug Trafficking as a Security Threat in West Africa, UNODC, November 2008; <http://www.unodc.org/documents/data-and-analysis/Studies/Drug-Trafficking-WestAfrica-English.pdf>

61. Netherlands Focal Point Trimbos Institute (2008), *The Netherlands Drug Situation 2008*, Report to the EMCDDA

62. UNODC and the World Bank (2007), p. 103. However it has to be kept in mind that substance-oriented interdiction is not the same as 100% control, which has negative side-effects.

63. Reuter (2009).

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