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THE UNEASY DECRIMINALIZATION: A PERSPECTIVE ON DUTCH DRUG POLICY

*Henk Jan van Vliet**

I. INTRODUCTION

One of the interesting questions with regard to the debate and position of the Netherlands on illegal drugs (and on other issues with a moral dimension such as abortion and euthanasia) is how the Dutch have become so pragmatic in this traditionally moralistic and Christian country, and the extent to which some foreign individuals, media and governments misconceive and denounce this drug policy as being too liberal/soft/permissive,¹ and sometimes as even worse.²

Moreover, the international criticism is remarkable in light of Dutch law-enforcement efforts and results when considered in light of the success of demand reduction and public health aspects of drug policy in the Netherlands. This success has been achieved largely against the mainstream of international drug politics and despite the interference of the country's most important neighbors and allies. Today it is the international situation that profoundly influences the development of Dutch drug policy: the economical and political integration of Western Europe.³

Section II of this Article deals with the background and main

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1. Steenhuis, Tigges & Essers, *The Penal Climate in the Netherlands*, 23 BRIT. J. CRIM. 1 (1983) [hereinafter Steenhuis] (noting the general perception of the Netherlands' penal system and stating that "[e]very year countless visitors come to learn at first hand something of the mild penal climate in the Netherlands.").

2. See *Legalization of Illicit Drugs: Impact and Feasibility, Part I: Hearing Before the House Select Comm. on Narcotics Abuse and Control*, 100th Cong., 2d Sess. 548 (1988) (prepared statement of Arnold S. Trebach) [hereinafter *Trebach Statement, Legalization Hearings, Part I*] (discussing the "distortions about the British and Dutch systems of drug control stated by many witnesses" at the hearings and noting that "[i]t is important for the American public to be told time and time again that our officials and scholars persistently misrepresent the most basic facts about the operation of the British and Dutch systems. Many scholars have documented those multiple distortions over the years.").

3. See Postscript *infra*.

features of Dutch drug policy until 1985.⁴ Section III is a description, focusing on the situation in Amsterdam, of the decriminalization of the use and retail-trade of hashish and marijuana.⁵ Section IV describes developments since 1985 and discusses the future of Dutch drug policy.⁶ The final Section concludes with some suggestions for policy development in the Western European context.⁷

II. THE BACKGROUND AND DEVELOPMENT OF DUTCH DRUG POLICY: 1945-1985

A. *Towards the Break of 1964-1966*

After World War II and until the early sixties, the Netherlands was a God-fearing, hard-working and sober nation with a century long tradition of sailing and trading.⁸ Industrializing since the late nineteenth century,⁹ the country retained strong rural roots and traditions.¹⁰ Its communities organized in so-called "pillars:"¹¹ the Protestant, Roman-Catholic¹² and the social-democratic masses each had their own political parties, educational systems, cultural organiza-

4. See *infra* notes 8-54 and accompanying text.

5. See *infra* notes 55-89 and accompanying text.

6. See *infra* notes 90-121 and accompanying text.

7. See *infra* notes 122-32 and accompanying text. Although this Article deals with Dutch drug policy, it does not attempt to provide an overview of the unique blend of public health and law enforcement ingredients that actually form the contents of that policy. This worthy task is beyond the limited scope of this Article.

8. See J. GOUDSBLOM, *DUTCH SOCIETY* 77 (1967) (discussing the historical changes over the centuries as the Netherlands emerged as an economic power).

9. See M. BLANKEN, *FORCE OF ORDER AND METHODS* 3-58, 65 (1976) (discussing the changes occasioned by industrialization in Dutch society).

10. But see J. GOUDSBLOM, *supra* note 8, at 25 (expressing the view that strong rural roots and traditions have not been retained). One commentator noted:

The available census figures, however, do not quite measure the entire process of *urbanization*. They fail to reveal the infusion of urban elements into the rural way of life, a process so close to urbanization that it has been called "rurbanization." . . . Ever since the Middle Ages, the Dutch cities have exerted cultural influences upon their agrarian surroundings. The process of diffusion had always been slow, however, allowing time for the new to become assimilated with the traditional. Consequently, around 1850 most rural regions still preserved a marked individuality expressed in speech, dress, and folklore. During the past century such distinctive characteristics have tended to disappear as the effects of modernization have penetrated into even the most isolated areas. The few communities where visible manifestations of traditional culture survived are now increasingly capitalizing upon these relics for the commercial profits of tourism.

Id. (emphasis in original)

11. See *id.* at 32-34 (defining and discussing the pillar, or *zuilen*, system).

12. See *id.* at 50-57 (discussing the religious communities in the Netherlands).

tions, sports clubs, radio stations,¹³ and hospitals. Protestants would buy in protestant stores, work for Protestant employers, see Protestant doctors and generally confine themselves to a circle of Protestant friends.¹⁴ Thus, as late as 1954, the Roman-Catholic episcopate issued a ban prohibiting the faithful from listening to the Social-Democratic radio station and voting for the Social-Democratic Party in elections, even though the Roman-Catholic Party, along with the Social-Democratic Party formed the core of the Dutch governments between 1948 and 1958.¹⁵

This particular system of almost complete isolation between the communities, and patronizing forms of cooperation at the highest level, strongly boosted the post-World War II economic reconstruction of the country, while simultaneously resulting in an immobilization of Dutch cultural and intellectual life. During the early 1960s, a period characterized by growing affluence, the pillar system imploded with almost the same breath-taking speed which now marks the social changes currently sweeping Eastern Europe.¹⁶ Traditional community life and social control were eroded by urbanization and new waves of industrialization. During this "cultural revolution" the patronizing control over people's personal life by religious and political leaders was rapidly replaced by individualization and self-determination.

This social and cultural shake-up, affecting all Western nations in one way or another, impacted upon the Netherlands earlier than most of its neighbors. It contained elements which contributed to new forms of individual and national consciousness and of social responsibility which prevented society from being divided along the simple left/right, young/old and pro/contra.

As early as 1964 the "Provo"-movement started provoking both

13. See A. LIJPHART, *THE POLITICS OF ACCOMMODATION* 47 (1968) (discussing the community divisions in the Dutch press).

14. See, e.g., J. GOUDSBLOM, *supra* note 8, at 122 (discussing the exclusivity of the Dutch religious communities). The author observes:

Given this multiform differentiation of the population, it is understandable that the two dividing principles of religious and socioeconomic identification have not produced a single cleavage splitting the nation into radically opposed camps.

Id.

15. See *id.* at 122-23 (discussing further the 1954 Roman Catholic ban on joining a socialist trade union, attending socialist meetings, reading socialist newspapers, or listening to socialist radio programs "on penalty of exclusion from the holy sacraments—the severest sanction for a true believer.").

16. See *id.* at 121-25 (discussing the changes in *verzuiling*, or Dutch "pillar" system in the face of modernization).

traditional authority and modern consumerism by carnival-like and playful happenings, at the same time effectively exposing many officials as pathetic and inadequate, and publicly experimenting and developing skills for the growing middle class to cope with the new age and its need for self-determination. Authorities felt compelled to negotiate rather than to give orders and society had to learn to negotiate rather than to obey or refuse.

In 1965 the present queen, then princess, Beatrix married a German who was old enough to have served as a soldier in Hitler's forces during the War. This "German factor", the traumatic aversive attitude towards the former Nazi-oppressor, the powerful eastern neighbor and dominant economic partner, is a key factor in understanding the post-World War II Netherlands. In the case of the royal marriage which troubled the country profoundly, the "German Factor" largely prevented the nation from being split-up between royalists and republicans, for even many traditional royalists were opposed to Beatrix marrying "the enemy."

In 1966, on a smaller scale in a comparable fashion, much of the possible divisive effects of the most violent labor conflict since the War were softened by the fact that much of the physical violence of the protestors was aimed at a newspaper (De Telegraaf) that had collaborated with the Germans during the War. The justification for such actions came from the view that "It served them right."

The early Dutch version of the "revolution of the sixties" might provide some explanation for the comparatively profound changes the country experienced in hardly more than a decade. The winds of change, sweeping through North America and Europe between 1967-1969, wrought tremendous impact in many areas of society: political unrest, racial violence and labor uprising, campus revolutions, and hippies and drugs. The Dutch, however, had already renovated their social and cultural infrastructure to the extent that it was able to cope more rationally with the new challenges than most other traditional societies could or did. However, the Dutch had a relatively easier job compared with many other nations: in the early sixties the economic boom was at its peak and there was no serious colonial war or minority problems to undermine the self-image of a peaceful, prosperous and happy nation.

B. *Continuity and Consensus*

During the 1960's and 1970's social and political life and culture in the Netherlands changed considerably. A nation based on the

consensus and compromises of the elites of a small number of religious and political communities became a nation based upon the consensus and compromises of fifteen million self-conscious individuals.

The continuity of a strong social and political consensus over this period and beyond may be partly based on a rather undisputed national identity. The Netherlands is an old and stable democracy,¹⁷ a small but powerful national entity since the sixteenth century. It is among the ten wealthiest nations¹⁸ of the world, highly organized and the home base of many multinational corporations. The Netherlands represents a type of society in which it has been proven possible to provide a very reasonable standard of living for its fifteen million citizens living in the second most densely populated country in the world.¹⁹ Every citizen is surrounded by many others, and it is almost impossible, geographically-speaking, to hide oneself from one's fellow citizens or from society. Many Dutch reflect this facet of national existence by keeping their curtains open at night.

The Dutch commercial tradition has produced, and in turn been shaped by, certain basic attitudes: pragmatism, "give and take," live and let live, religious²⁰ and political tolerance. These attitudinal postures proved to be of greatest importance in reshaping the Dutch outlook on social life and on living so closely together.

C. *The Beginning of Drug Policy Making*

Between the mid-sixties and the mid-seventies, the use and misuse of illegal substances in the Netherlands grew from almost non-existent to constitute a serious health and public order problem in urban areas.²¹ Social reaction to the new drug phenomenon changed

17. See, e.g., A. LIJPHART, *supra* note 13, at 75-77 (discussing the stability and continuity in Dutch democracy from 1848-1965).

18. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE U.S. 823 (1989).

19. See M. BLANKEN, *supra* note 9, at vii-x (discussing the nature of Dutch population and the effect of geography and density on Dutch lifestyle and values).

20. See, e.g., Rood-de-Boer, *The Netherlands: How to Tackle New Social Problems*, 26 J. FAM. L. 141, 145-46 (1987) (discussing the liberalization trends as evidenced in the *Remonstrantse Broederschap*, the Dutch Brotherhood of Remonstrants Protestant church, which sanctioned life partnerships—a quasi-ceremonial marriage between either heterosexual or homosexual couples).

21. See, e.g., W. CUSKEY, A. KLEIN & W. KRASNER, DRUG TRIP ABROAD 3 (1972) [hereinafter W. CUSKEY]. In 1972, the authors noted:

Amsterdam has become a mecca for the turned-on young, for those who seek joy and revelation—some sort of New Kingdom—through drugs. From all over the world they have heard its call and are trooping toward it, to the consternation of the

considerably during that same period. Drugs and drug abuse became subject to public discussion as one of the many issues that modern Dutch society had to deal with.

In the late sixties, public concern grew about the way the criminal justice system was handling the rapid increase of illegal drug use, especially marijuana and hashish, amphetamines and LSD, among mainly middle-class youth, students and other non-deviant groups. Drug use as a probably bad, but personal choice, the detrimental effects of criminalization on the nation's future executives and intellectuals, and the risks of the drugs involved, became key elements in a public debate that lasted for many years and shaped Dutch drug policy with a force equal to that of the legislative response.

An official Commission, the "Baan Working Party," studied the increased use of narcotic and other substances since 1968. Named after its second chairman, Dr. Baan, head of the Mental Health Inspectorate, the Working Party issued its report not earlier than 1972, after serious internal trouble and heavy external pressure. The results, however, were unanimous and therefore impressive. The report²² provided a strong foundation for the Dutch Opium Act reform of 1976 and set the course for drug policy activity to the present day. The Baan Working Party made a profound analysis of the scientific state-of-the-art, including the pharmacological, psychological and social aspects of drug use, as well as the social aspects and epidemiology of drug use in the Netherlands. It also analyzed national and international law, with a special emphasis on cannabis, the only illegal drug with a significant prevalence at that time. As a starting point for policy-making, the Commission introduced what has been called the "risk-criterion": neither all illegal drugs nor all illegal drug consumption are to be considered equally dangerous—their relative risks should have a bearing on legislation and policy making.²³

more conservative Dutch. The people do not especially want them, and Holland has strong laws against drugs. But there are strong laws and disapproval everywhere: what really counts is the way the laws are interpreted and enforced, and, . . . the atmosphere. Amsterdam does not hate the turned-on crowd. It may wish that they would go somewhere else, but it offers them more friendly tolerance and acceptance than perhaps any other city.

Id.

22. NARCOTICS WORKING PARTY, *BACKGROUNDS AND RISKS OF DRUG USE* (1972).

23. See Engelsman, *Responding to the Drug Problems: Dutch Policy and Practice* (1988) (presented at the International Conference on Policy Reform, Oct. 20-23, 1988, Washington D.C.), reprinted in *Trebach Statement, Legalization Hearings, Part I*, *supra* note 2, at 563, 567. Drs. Engelsman, the head of the Alcohol, Drugs and Tobacco Branch of the Minis-

In this context, the Baan Working Party extensively discussed the possible advantages of the legalization of cannabis. The Working Party rejected legalization and made the suggestion to decriminalize cannabis use, i.e., demotion of the criminal penalty for cannabis use from an offense to a misdemeanor. The Working Party reached the conclusion not to extend legal reforms beyond the decriminalization of cannabis use because The Single Convention on Narcotic Drugs²⁴ allowed nations to develop national policies on drugs but prohibited the legalization of *any* of the substances involved.²⁵

In the meantime, the drug situation in the Netherlands changed considerably as heroin became available in 1972 and subsequently spread rapidly over the urban areas. The inner cities of Amsterdam and Rotterdam had developed visible heroin and related crime problems prior to 1975, involving some thousands of dependent users. Many young black immigrants from Surinam,²⁶ unintentionally arriving in the Netherlands at the same time as the first heroin, got desperately involved in drug use and street dealing.²⁷ Many pre-

try of Welfare, Health and Cultural Affairs in the Netherlands noted that:

The Working Party concluded that the basic premises of drug policy should be congruent with the extent of the risks involved in drug use. These risks, or the likelihood of harmful effects, are categorized according to the properties of the substances taken. However, the social background of the users, the circumstances in which the drugs are taken, the subjective expectancies and the reasons why people use drugs are at least as important as the pharmacological properties.

Id. at 567; accord A. TREBACH, *THE GREAT DRUG WAR* 104 (1987) (noting the characterization by two Dutch law enforcement officials of the Dutch drug policy as "a calm, flexible approach to the drug problem, which had to commence with distinguishing between marijuana and harder drugs.").

24. Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1409, T.I.A.S. No. 6298, 520 U.N.T.S. 151.

25. *Id.*

26. Many people from Surinam, former colony and part of the Kingdom of the Netherlands, opted for Dutch citizenship and emigrated to the Netherlands around 1975, the year of Surinam's independence. See H. VAN AMERSFOORT, *IMMIGRATION AND THE FORMATION OF MINORITY GROUPS: THE DUTCH EXPERIENCE 1945-1975*, at 142, table 1 (showing that migration between Surinam and the Netherlands jumped from 67,617 in 1974 to 104,154 in 1975 and thereafter remained constant in 1976 and 1977). In terms of population of Surinamese, Amsterdam is second only to Paramaribo, the capital of Surinam.

For discussions of the history of the relationship between the Netherlands and Surinam, see generally C. BAGLEY, *THE DUTCH PLURAL SOCIETY* 113-48 (1973); H. VAN AMERSFOORT, *supra*, at 136-83.

27. The largest migration of Surinamese to the Netherlands occurred during a period of relatively high unemployment. See van H. VAN AMERSFOORT, *supra* note 26, at 156.

[D]uring this period Amsterdam developed a reputation as one of the world's heroin centres which, although not caused by Surinamese immigration, did coincide with it, and all the more so because the type of adaptation experienced by the young, uneducated Surinamese . . . made them highly susceptible to the pop music and drug

vention, treatment, and law enforcement initiatives were developed in response to the growing drug use: some innovative, some romantic, some working and some not—but generally very creative and intelligent. It was this new heroin problem and its associated business—not cannabis—that put heavy pressure on Parliament and the Government to seriously discuss the Baan Report and consider legal reforms.

During the 1976 revision of the ill-suited Opium Act of 1928,²⁸ the legislators concentrated on the Baan Working Party's "risk-criterion."²⁹ The central aim of the new law, as an integrated part of the Dutch welfare legislation, was to prevent illegal drug use. To this end, it was advocated that "the use and the possession for personal use of cannabis products . . . be taken out of the criminal sphere as soon as possible."³⁰ Although violating The Single Convention, the government would on an international level, investigate the possibility of amending The Single Convention so as to give national states the power to adopt a separate regime for cannabis products.³¹

The Opium Act of 1976 distinguishes between "drugs presenting unacceptable risks" (heroin, cocaine, LSD and amphetamines) and "cannabis products" (hashish and marijuana).³² This terminology has to be considered a political compromise, like the Act as a whole. The outcome of the political debate was a significant increase in the penalties for dealing in "drugs presenting unacceptable risks" and a considerable decrease in the penalties for possession and retail trade in "cannabis products."³³

subcultures.

Id.

28. Opium Act of 28th May, 1928, S. 167.

29. See *supra* notes 23-25 and accompanying text.

30. Memorandum of the Minister of Health and Environment; Tweede Kamer 2 1973/1974, 11.742 No. 3.

31. *Id.*

32. Opium Act of 1 Nov. 1976, S. 425.

33. E. ENGELSMAN & R. MANSCHOT, in "OPIUMWET", TOELICHTING [OPIUM ACT, EXPLANATION] 61 (1985) (loose-leaf edition). (Engelsman is Head of the Alcohol, Drugs and Tobacco Branch of the Ministry of Welfare, Health, and Cultural Affairs. Manschot is Public Prosecutor at the Amsterdam Court of Appeals and worked for several years as coordinator for drug policy at the Ministry of Justice); see also Engelsman, *supra* note 23, at 567:

The maximum penalties for illicit trafficking in drugs with an unacceptable risk were considerably increased to a maximum of 12 years imprisonment and/or Dfl. 1 million fine; (under certain conditions, e.g. when a crime was committed more than once, this maximum may go up to 16 years or higher). Maximum penalties for possession of small quantities (up to 30 grams) of cannabis preparations for personal use were reduced from an offence to a misdemeanour, that is one month detention

The purpose was to split up the supply of cannabis products on the one hand and the supply of "hard" drugs on the other; to separate the drug markets and the user groups and thus to protect the users of cannabis products from getting involved in the hard drug scene and from getting lost in the fringes of society. In other words: the whole operation was set up to create an open and manageable risk situation for experimenting youth and thus to cut off the supply of possible addicts.³⁴

The Ministry of Welfare, Health and Cultural Affairs has been made responsible for coordinating the government's drug policy to which there are two facets: (1) the enforcement of the Opium Act, and (2) the policy on prevention and assistance. The central objective of the governmental policy is to restrict, as much as possible, the risks that drug abuse presents to drug users themselves, their immediate environment, and society as a whole. These risks, or the likelihood of harmful effects, are dependent not only on the psychotropic or other properties of the substance, but primarily on the type of user, the reason for use and the circumstances in which the drugs are taken.³⁵

In accordance with the legal differentiation between cannabis products and hard drugs, drug policy encompassing prevention and assistance developed primarily in reaction to the emerging heroin problem. The cannabis problem—if there ever had been one—seemed to have disappeared from "the face of the earth" even before the amended Opium Act became effective. Herman Cohen, who did research on the Amsterdam drug scene in the late sixties³⁶ and scarcely mentioned hard drug use, only a few years later wrote a

or Dfl. 5,000 fine.

Id.

34. See also Ruter, *The Pragmatic Dutch Approach to Drug Control: Does It Work* (1988) (transcript of lecture sponsored by The Drug Policy Foundation, May 25, 1988, Washington, D.C.) reprinted in *Trebach Statement, Legalization Hearings, Part I*, *supra* note 2, at 517. Professor Ruter noted that:

The Dutch Government decriminalised the possession and trading of small quantities of marihuana because it feared that the unintentional effect of law enforcement might be that marihuana would act as a stepping stone to hard drugs. This decriminalisation policy was intended to separate the markets for marihuana and hard drugs and to remove the sale and consumption of marihuana from the hard drugs scene.

Id. at 525.

35. See generally MINISTRY OF WELFARE, HEALTH AND CULTURAL AFFAIRS, FACT SHEET ON THE NETHERLANDS: DRUG POLICY (1989) [hereinafter FACT SHEET].

36. See generally H. COHEN, DRUGS, DRUGGENBRUIKERS EN DRUG-SCENE [DRUGS, DRUG USERS AND DRUG SCENE] (1975) [hereinafter H. COHEN, DRUG SCENE].

paper entitled *The Hash-Culture in the Year 1980: An Obituary*.³⁷

At about the same time—1979-1980—a second “heroin-wave” reached Western Europe, and seriously increased the number of drug addicts in the Netherlands to an estimated 20,000, including white lower-class youths, Moroccan³⁸ and Surinamese immigrants.³⁹ Professionals in the drug field reached the conclusion that it was not sufficient to rely on the prevention of drug use and treatment programs, but that there should be a range of strategies and services made available to minimize or reduce the harm inflicted upon drug addicts who were unable or unwilling to achieve abstinence.⁴⁰ By setting up “user-friendly” and often outreaching services that were confidential, non-judgmental and not aimed at achieving immediate abstinence—yet providing treatment-on-demand, professionals began to be able to treat drug users who would otherwise have remained beyond the reach of any drug assistance agency. Thus, the professionals were able to monitor and influence the health, social and legal status of the users and reduce some of the damage to society as well. The government adopted this “harm-reduction concept” as a cornerstone of its drug policy: today an estimated sixty to eighty percent of the rather stable group of 15,000 - 20,000 heroin addicts are known to the agencies.⁴¹

In the early eighties, a government-sponsored research project into the typology of drug use and drug users⁴² triggered the develop-

37. H. COHEN, *DE HASJCULTUUR ANNO 1980: EEN OVERLIJDENSBERICHT* in C. GOOS & H. VAN DER WAL, *DRUGGENBRUIKEN* 13-24 (1981) [hereinafter H. COHEN, *DE HASJCULTUUR*].

38. See H. VAN AMERSFOORT, *supra* note 26, at 186-202 (discussing the Moroccan immigration to the Netherlands).

39. See *supra* notes 26-27 and accompanying text.

40. Prior to this period, however:

[T]reatment concentrated too much on ending addiction without necessarily meeting the needs of the heroin addicts or helping them to function within society. Treatment was carried out in outpatient facilities and addiction clinics, the latter being mainly drug free therapeutic communities. These facilities required the patient's willingness to become abstinent.

Engelsman, *supra* note 23, at 571.

41. See FACT SHEET, *supra* note 35, at 1; see also E. BUNING, *DE GG EN GD EN HET DRUGPROBLEEM IN CIJFERS III* (1988) [The Municipal Health Service and the Drug Problem in Figures].

It should be noted that the government harm reduction policy has taken on a new importance given the present AIDS-crisis and the need for AIDS-prevention “since keeping in contact with addicts is a prerequisite for AIDS-prevention.” See Engelsman, *supra* note 23, at 573. For a further discussion of AIDS incidence in the Netherlands, see *infra* notes 52-53 and accompanying text.

42. See generally O. JANSSEN & K. SWIERSTRA, *HEROINEGEBRUIKERS IN NEDERLAND*:

ment of the most sophisticated element of Dutch drug policy: the concept of "normalization" or "cultural integration" of the drug phenomenon.⁴³ There is the general belief that the eradication of drugs and their use is an unrealistic option, as history had shown drug use to be concomitant with human culture.⁴⁴ It is felt far more realistic to seek the reduction of drug use and the management of the inherent individual, social and legal problems. This logically implies opposing the criminal organization of the production and distribution of drugs, and of other manifestations of anti-social behavior that accompany drug use, and it implies the integration—or encapsulation—of drug users into "normal" society. As stated by State Secretary of Health⁴⁵ Joop van der Reyden before the Dutch Parliament in 1985: "Experience shows that many thousands of young people use drugs, which means that society has to be prepared to face this reality."⁴⁶ He further maintained that this required:

[T]he promotion of a process of gradual "normalization" of the phenomenon of drug-taking which includes the cultural integration of drug users in society . . . This does not mean the elimination of the drug phenomenon as a social reality: it means a change of context which clears the way for a different approach: . . . drug addicts should be treated neither as criminals nor as dependent patients but as "normal" people to whom we can make "normal" demands and who should be offered "normal" opportunities.⁴⁷

D. *Some Preliminary Points*

Without giving extensive data, the following points are relevant to Dutch drug policy formulation:

EEN TYPOLLOGIE VAN LEVENSTIJLEN [HEROIN USERS IN THE NETHERLANDS: A TYPOLOGY OF LIFESTYLES] (1982).

43. See generally O. JANSSEN & K. SWIERSTRA, *UITGANGSPUNTEN VOOR EEN INTEGRAAL HEROINEBELEID* [POINTS OF DEPARTURE FOR AN INTEGRAL HEROIN POLICY] (1983); see also Engelsman, *supra* note 23, at 568-75 (explaining normalization and discussing its positive effects).

44. See, e.g., R. SIEGEL, *INTOXICATION* (1989) (discussing the history of drug usage); see also Jaffe, *Drug Addiction and Drug Abuse*, in GOODMAN AND GILMAN'S *THE PHARMACOLOGICAL BASIS OF THERAPEUTICS* 532, 532 (7th ed. 1985) (stating that "As far back as recorded history, every society has used drugs that produce effects on mood, thought and feeling. . . . [B]oth the nonmedical use of drugs and the problem of drug abuse are as old as civilization itself.").

45. See M. BLANKEN, *supra* note 9, at 15 (detailing the structure of the Dutch government and showing the relative position and importance of the State Secretary of Health).

46. E. ENGELSMAN & R. MANSCHOT, *supra* note 33, at 62.

47. *Id.*

Since about 1980 the number of drug addicts has stabilized at an estimated 15,000 to 20,000⁴⁸; the average age of addicts in Amsterdam has increased from twenty-six in 1981 to thirty in 1987, whereas the number of addicts under twenty-two decreased from fourteen percent to five percent over the same period.⁴⁹ The Dutch numbers of drug-related deaths are the lowest of all European countries.⁵⁰ On the other hand, no real successes have been achieved in reducing the number of addicts despite considerable treatment and law enforcement efforts.

The policy of "separation of drug markets" is obviously working as users of marijuana and hashish hardly turn to more dangerous drugs. The demand side of the Dutch drug problem consists of the health, crime and public order problems of (a) the "old" addict group, (b) the so-called "heroin-prostitutes", and (c) the "foreign" (especially German) addicts. The problem of young people getting involved in compulsive drug use and in the drug/crime-connection is very limited.

Although cocaine hydrochloride has long been available in the Netherlands, rock cocaine (crack) has been available only since 1981. Crack is a home-made product taken predominantly by the above-cited groups. However, a commercial market, in the same sense as in America, is nowhere evident in the Netherlands.⁵¹ Cocaine hydrochloride is being used beyond the three cited groups of problematic drug takers, usually in a controlled manner and for recreational purposes. It is estimated that roughly the same holds for substances such as amphetamines and MDMA/Ecstasy.

The levels of HIV-infection and AIDS in the Netherlands are among the lowest in Europe,⁵² in part due to the fact that only approximately 30 percent of Dutch addicts take their drugs

48. See *supra* note 41 and accompanying text.

49. Buning, *supra* note 41, at 6.

50. See, e.g., Engelsman, *supra* note 23, at 570 (reporting that "[o]ut of 14.5 million inhabitants in the Netherlands in 1986 about 18,000 people died from smoking, about 2,000 deaths were directly related to alcohol abuse and only 64 Dutch citizens died from drug use.")

51. Trebach *Statement, Legalization Hearings, Part I, supra* note 2, at 548, 553 (asserting that, with regard to the use of cocaine in Holland, "[c]ocaine use is at low levels—and crack has not even been seen in the country."); Engelsman, *The Dutch Model, NEW PERSPECTIVES Q.*, Summer, 1989, at 44, 45 (noting that "[t]he use of cocaine has stabilized at 0.6 percent, while crack use is still a virtual rarity.").

52. Cf. Engelsman, *supra* note 23, at 573 (reporting that "[o]nly 8 per cent of all 605 Dutch AIDS-patients are drug addicts (October 1, 1988). In Europe this is 23 per cent (June 30, 1988) and in the United States 26 per cent (September 26, 1988).").

intravenously.⁵³

The policies of normalization and integration have especially been successful with regards to marijuana and hashish.⁵⁴

III. CASE STUDY: THE DECRIMINALIZATION OF "SOFT DRUGS"

A. *Twenty Years' Time Difference*

In 1969, the student/drug dealer in the student house in downtown Amsterdam where I lived sold "everything"—a wide variety of good quality hashish and marijuana. But with an uncertain supply, he was sometimes out of stock even though amphetamines, barbiturates, opium, LSD and other drugs were more regularly available. He could, however, be trusted: he only sold you what you asked for. Many of my friends—like most of the uninformed—tried "everything" since drugs were so easily available and they provided a "kick." Some of my friends did not return safely from their LSD trips, some stayed in their opium-induced highs waiting for the her-

53. In Amsterdam, it has been estimated that an average of 38% of all drug addicts take drugs intravenously. See E. BUNING, *DE GG EN GD EN HET DRUGPROBLEM IN CIJFERS II* 12 (1987) (reporting that 37% of Dutch White addicts use drugs intravenously, whereas only 4% of the Dutch Surinamese addicts use drugs intravenously but the percentage dramatically rises for the category of "Foreigners" (especially Germans, Italians and British) where 70% of the addicts use drugs intravenously). In Rotterdam, one study reported that 42.5% of Dutch White addicts used drugs intravenously. See J. Grund, C. Kaplan, N. Adrivaans & P. Blanken, *Hidden Risks in the Drug Taking Rituals of Injecting Drug Users: The Case of "Front-Loading"* (1989) (paper presented at the First International Conference on the Reduction of Drug Related Harm, Liverpool, U.K., Apr. 9-12 (1990). 3.3% of Dutch Surinamese addicts in Rotterdam use drugs intravenously and 6% of the Moroccan addicts use drugs intravenously).

In the suburban areas, the 30% estimate declines. In Tutgooi, a suburban region near Amsterdam, approximately 21% of the drug addicts are intravenous drug users. See D. KORF, *GOOISE GENENGTE [JOYS OF THE GOOI]* 82 (1990). In the countryside of the Netherlands, intravenous drug use is virtually unseen. See D. KORF, *DRUGS OP HET PLATTELAND [DRUGS IN THE COUNTRYSIDE]* 72 (1989) (reporting results of a study of Noesveen, a rural town near the German border with a population of 25,000 and noting that "[t]here is no IV use; when you shoot up you are a 'real junky.'"). Further, "[o]nly two of the interviewed (ex-)users have shot up drugs, but nobody uses heroin intravenously anymore. The same holds for other hard drugs (cocaine, amphetamines)." *Id.* at 114.

Actually, only Amsterdam—the only metropolis in the Netherlands—has a serious HIV/AIDS-problem, presumably caused by the massive presence of IV-using German addicts and prostitutes. See also Engelsman, *supra* note 23, at 573 (stating that "[t]he prevalence of HIV in a non representative sample of high risk intravenous drug users in Amsterdam was approximately 30 per cent (1987). Outside Amsterdam in three smaller cities the infection rate was 3.6 per cent (1986)." (footnote omitted)).

54. See Engelsman, *supra* note 23, at 568 (reporting the results of the cannabis policy); Ruter, *supra* note 34, at 521 & 532, table 4.

oin to come, and others took the "speed-y" way to suicide. But we, my friends and myself, were the lucky ones, an ironic elite. We were middle class university students, and could both obtain and afford a "reliable dealer."

Out in the streets the drug business was riskier, on the lookout for both the police and the drug dealers themselves, for one could never know exactly what was being bought and sold: hashish, lico-
rice, or—if the dealer had no "soft drugs" available and the cus-
tomer still desired to get high, anything might be offered as a drug. I
do not know of any drug dealer at that time who sold only the soft
drugs, marijuana and hashish. LSD and "speed" were always
available.

In 1990, one can openly buy and use hashish and marijuana in
about 300 coffeeshops in Amsterdam,⁵⁵ some of which are major
tourist attractions. These coffee houses, disdaining other illegal drugs
and sometimes even alcohol, usually sell, along with soft drinks, *only*
a wide variety of consistently high quality hashish and marijuana,
and even provide information about the risks of both "soft" and
"hard" drugs—often in several languages. Most of the Dutch cus-
tomers, from unemployed youth and students to professionals and
housewives, do not need this information as they generally know the
necessary information regarding drugs, and show no interest in any
other drugs than cannabis. "More than 95 percent of the retail trade
in soft drugs in downtown Amsterdam takes place in coffeeshops
where it is as absurd to ask for hard drugs as it is at an average
butcher's [shop] to ask for a zebra-steak."⁵⁶

The available research data are not very comparable and do not
give a dispositive indication as to whether the use of cannabis has
increased or decreased over the past twenty years; but the general
trend was a "development from experiments with various drugs
(cannabis, LSD, amphetamine) to a preference for only cannabis."⁵⁷
As long as the coffeeshops comply with the rules of the so-called
"Guidelines" issued by the Ministry of Justice,⁵⁸ the police do not
interfere with the drug use and the drug dealing inside.

55. A. JANSEN, CANNABIS IN AMSTERDAM: EEN GEOGRAFIE VAN HASHISH EN MARIJUANA
[CANNABIS IN AMSTERDAM: A GEOGRAPHY OF HASHISH AND MARIJUANA] 37 (1989).

56. *Id.* at 57.

57. D. KORF, TWINTIG JAAR SOFT-DRUG BEBRUIK IN NEDERLAND: EEN TERUGBLIK
VANUIT PREVALENTIESTUDIES [20 YEARS OF SOFT DRUG USE IN THE NETHERLANDS: A RE-
VIEW OF PREVALENCE RESEARCH] 81-89 (1988).

58. See *infra* notes 61-63 and accompanying text (discussing the "Guidelines").

B. *The Legal Situation*

Like everywhere else, marijuana and hashish are controlled substances in the Netherlands. Since the Opium Act reform of 1976, however, the possession of up to 30 grams (approximately 1 ounce) of the less risky drugs, marijuana and hashish, has been demoted from an offense to a misdemeanour and is subject to the relatively low maximum penalties of one month's imprisonment and/or a fine of 5,000 Dfl.⁵⁹ Although this legal policy would not itself indicate decriminalization, additional elements must be considered. The Opium Act is part of the whole of the criminal law structure of which the "expediency principle" is one of the basic underlying principles. This principle, embodied within many of Europe's legal systems, empowers the Public Prosecutions Department to refrain from instituting criminal proceedings "on grounds derived from the public interest."⁶⁰ To regulate the power of the Prosecutions Department, "Guidelines for the investigation and prosecution of offenses under the Opium Act" were issued by the Minister of Justice in 1976.⁶¹ The Guidelines set out the priorities to be observed in investigation and prosecution, and they advise the prosecution regarding sentences to be demanded. Setting priorities implies making choices, and the possession of less than 30 grams of cannabis products was placed on the lowest priority level, meaning that no active criminal investigation or prosecution would be undertaken. The Opium Act Guidelines also contain a paragraph about a special kind of drug dealer, the "dealer in cannabis products who—trusted by and working under the protection of the staff of a youth center—gets the opportunity to sell cannabis products in that youth center to the exclusion of

59. Opium Act of Nov. 1976, S. 425, art. II; see *supra* note 32 and accompanying text; accord Steenhuis, *supra* note 1, at 11:

[F]ines—and certainly stiff fines—are rarely regarded in the Netherlands as a good alternative. Dutch courts feel that many suspects will simply be unable to find the money to meet the fine; it is also doubtful whether suspects will scrape the necessary money together by proper means; lastly, some suspects will not regard a fine as punishment.

Id. (footnote omitted).

60. Sv. art. 167.

61. *Richtlijnen voor het opsporings—en strafvorderingsbeleid inzake strafbare feiten van den Opiumwet* [Guidelines for the Investigation and Prosecution Policy Regarding Offenses under the Opium Act] reprinted in *Staatscourant*, July 18, 1980, at 65. [hereinafter OPIUM ACT GUIDELINES]. Similar Official Guidelines exist, for example, for investigation and prosecution for the illegal possession of fire arms, for pirate broadcasting and for exceeding the speed limits.

others.”⁶² Such a drug dealer will, according to the Guidelines, only be prosecuted “when he publicly projects himself as a dealer or runs his business provokingly in other ways.”⁶³ Additionally, such dealers can only be prosecuted after consultation of the local authorities in the so-called “Triangle”, the Mayor, the Chief of Policy and the Chief Public Prosecutor.⁶⁴ “Because of the social and administrative aspects of the use of narcotic drugs in youth centers it is recommended that apart from incidents this issue be regularly discussed in the Triangle.”⁶⁵

There is, of course, a certain tension between the illegal status and the actual decriminalization of cannabis products. There is a great deal of international pressure, particularly from the German authorities,⁶⁶ to abandon or diffuse the present policy.⁶⁷ The domestic cannabis policy can be characterized as a patchwork of “gray” situations and of parties and people involved, loosely bound together by the thread of the Guidelines.

C. *The Implementation of Policy*

Although the Ministry of Welfare, Health and Cultural Affairs is the primary ministry responsible for drug policy due to the status of drug abuse as primarily a public health problem, the Ministry of Justice is responsible for law enforcement. Unfortunately, these two

62. *Id.* at 65, Section A6.

63. *Id.* at 65, Section C3.

64. The “Triangle,” is an informal but significant policy-making communications structure existing between the Public Prosecutions Department, the local authorities, and the police, which developed since 1968. This was especially so in urban areas, with the strong support of the Ministry of Justice. A main reason for this development is found in the allocation of authority as both Mayor and the Prosecutions Department have authority over the local police forces, the Mayor for the task of maintenance of public order, and the Chief Prosecutor for the prosecution of criminal offenses. “Necessitatio est mater inventio” and the events and circumstances which hallmarked the 1960s mandated the creation of such a coordinating instrumentality, even though a clearcut legal rationale and foundation were lacking. A legal basis for the “Triangle” is presently being prepared by Dutch legal authorities.

65. OPIUM ACT GUIDELINES, *supra* note 61, at 65, Section C3.

66. In 1983, the German authorities exerted heavy pressure on their Dutch counterparts to end the municipal consent to the sale of soft drugs in a youth center in the city of Enschede, which is near the Dutch-German border. The sale to German nationals in particular was the main stumbling block. The housedealer finally, bowing to pressure, closed his shop. Additionally, in 1986, a soft drug dealer from Arnhem, another city near the Dutch-German border, was kidnapped during his vacation in Spain, extradited to Germany, tried and sentenced to 14 years’ imprisonment for selling soft drugs to Germans. The heavy sentence was generally felt to be a general German reprimand for Dutch cannabis policy.

67. See generally Steenhuis, *supra* note 1, at 4-12 (comparing the penal climates in the Netherlands, West Germany and Sweden).

functions are often in conflict, and the relationship between the two agencies is an everlasting area of tension.

The law enforcement aspects of the national drug policy are implemented by the Public Prosecutions Department, which is a department of the Justice Ministry in each of the nineteen judicial districts of the country. The actual face and shape of cannabis decriminalization, however, is being determined at the *local* political and criminal justice level: in the "Triangle"⁶⁸—the intersection of criminal justice and public administration. The local policy differences and inequality before the law that could follow from this decentralized decriminalization are hardly considered a problem, basically because of the apparent social consensus on decriminalization. One cannot, nor should not, stop teenagers from experimenting with risks and limits (that would be a kind of old-fashioned Dutch patronizing). Society has a task in protecting them, for example, by educating them about drugs, by discouraging drug use, and by creating controlled risk situations such as a separate market for relatively harmless drugs, rather than leaving them out in the cold of "just say no."

This basic social foundation together with the decentralized structure of drug policy implementation provide ample opportunity for flexibility according to the local needs and beliefs. This implies that soft drug policy implementation generally is more refined and tolerant in the cities in the western part of the country. An independent judiciary, not being part of the policy structure, play their own part in the shaping of policies, and they sometimes cause confusion or clarification by expressing individual dissenting views or by making interesting points.

D. *Some Soft Drug History of Amsterdam*

The modern types of soft drug dealers in Amsterdam, personifications of the "separation of markets" policy, developed⁶⁹ primarily⁷⁰ along two lines: [1] local residents and youth workers becoming house-dealers in youth centers on one hand, and [2] former street and house dealers choosing to restrict their business to the relatively

68. See *supra* notes 64-65 and accompanying text (discussing the Triangle).

69. See *supra* notes 32-35 and accompanying text (discussing the segmentation of the Dutch drug market into hard and soft drugs).

70. This paragraph follows Jansen's description of the development of soft drug policies in Amsterdam. Jansen's research is the only such research done in this field after the Opium Act Guidelines were issued. See A. JANSEN, *supra* note 55, at 36-44.

safe retail trade in hashish and marijuana on the other. In Amsterdam, especially, the latter gradually settled down in the alcohol-free coffeeshops from 1978 onward. Coffeeshops that started selling soft drugs in those unregulated days soon established basic house rules: [1] no hard drugs allowed; [2] no violence; [3] no dealing in stolen goods; and [4] solicitation of police action in the case of trespassing. "Sometimes a square-shouldered person was hired to oversee compliance with the rules and in the seventies these people were not superfluous at all: the separation between the retail trade and use of soft drugs on the one hand and of hard drugs on the other hand literally was not accomplished without striking a blow."⁷¹

In the first years of their existence, the police regularly raided the then-rare coffeeshops, both because of the uncertainty whether to tolerate the commercial retail sale on the same terms as the non-commercial sale in youth centers, and because of the size of the stock. The quantities confiscated often exceeded the 3-gram limit.⁷²

In the summer of 1980 the Guidelines to the Opium Act were published by the Minister of Justice, giving the highest priority to action against hard drugs and international drug dealing.⁷³ Soon thereafter, the Mayor of Amsterdam was quoted in an interview as saying that "a relatively low priority" would be given, conditionally, to the investigation of the commercial retail trade in cannabis products.⁷⁴ Among the conditions applied to this limited enforcement was a ban on both public advertising and the sale of any hard drugs. The latter ban was interpreted such that any violation by a coffeeshop would lead to immediate closure.

After this policy shift, even though the number of coffeeshops grew rapidly, increasing from about 20 in 1980⁷⁵ to about 300 today,⁷⁶ the level of police involvement decreased considerably during the same period. However, the relationship between coffeeshops and authorities remained problematic because of both the tension between legal prohibitions and practical tolerance, and the frictions arising from commercializing the retail trade. What, for instance, is a "relatively low" priority in practical policing? What does a ban on advertising mean when the explicit and posted house-rules, warnings

71. A. JANSEN, *supra* note 55, at 36.

72. *Id.*

73. See *supra* notes 61-63 and accompanying text (discussing the "Guidelines").

74. A. JANSEN, *supra* note 55, at 36.

75. H. COHEN, *supra* note 36, at 17.

76. A. JANSEN, *supra* note 55, at 37.

against the dangers of hard drugs and information about drugs in general imply that soft drugs are available on the premises?

Over the years, and despite the mayoral ban, advertising became more explicit, as exemplified by the posting of a marijuana leaf on the store-front and by naming of the coffeeshops—"Outer Limits", "Grasshopper", "Dutch Delight", "Just-a-Puff", and "Stone-age"—names that are simultaneously colorful and rather suggestive. By 1985 the commercial retail trade in soft drugs had become an established business. Some coffeeshops no longer needed the marijuana-leaf sign on their store-fronts, and one had even turned to sky-advertising. The separation on the retail trade level between soft and hard drugs had become almost perfect, and both the police and the shops were happy in the not completely clear but almost trouble-free situation.

Jansen points out that in particular the struggle between the coffeeshops and the city authorities was "a subtle form of public-private partnership,"⁷⁷ about the commercializing of the retail drug trade which highly stimulated the separation between the soft drug and the hard drug markets. The main interests of the coffeeshops are both the continuity and the profitability of the business, both of which can only be achieved when business is "clean," free from hard drugs, and when the coffeeshops can operate under more-or-less "normal" economic conditions. Commercialization especially contributed to achieving two drug policy goals: the separation of markets and the cultural integration of the drug phenomenon.

In 1985, however, the Amsterdam Public Prosecution Department issued a press release announcing action to be taken against "advertising and provoking ways of trade," with the "Guidelines" being slightly reinterpreted and the conditions for the commercial retail trade redefined.⁷⁸ Real action followed two years later when, in March of 1987, the "Hash-Info Museum" was to open to the public, an event which received extensive coverage by the international press. Although the Amsterdam law enforcement authorities were of the opinion that running such a museum could not be regarded as an illegal act, as was indeed later confirmed by the judiciary,⁷⁹ and saw it as just "something new," the Minister of Justice characterized

77. A. JANSEN, *supra* note 55, at 44.

78. Public Prosecution Department Amsterdam, Press Release (July 10, 1985).

79. See DE OPIUM WET; EEN STRAFRECHTELIJK COMMENTAAR [THE OPIUM ACT; A CRIMINAL LAW COMMENTARY] 115 n.98 (H. Krabbe ed. 1989) (reporting the decision of the District Court of Amsterdam).

such action as "an absolute foolishness that has to be rectified immediately."⁸⁰ The museum was indeed closed a few days after the call to action by the Minister of Justice before the assembled international press that had been invited to document the occasion. The Prosecution Department subsequently took effective action against a telephone soft drug delivery-service, again receiving wide international press coverage. In November, 1987, a well-prepared action was undertaken against The Bulldog, a chain of coffeeshops, which once again attracted the scrutiny of the international press. This action, occasioned by the large scale of business and not necessarily its advertising. At the same time every coffeeshop received a letter from the Chief Commissioner of Policy stressing that action would be taken against impermissibly liberal interpretations of the Guidelines. When the letter resulted in raids on smaller coffeeshops, the marijuana leaves disappeared from the sign-boards and openly posted price lists for soft drugs gave way to more subtle hints. Sometimes even the evocative names of the coffeeshops were changed.⁸¹

The results of the tightening of enforcement practices over the past few years are very difficult to measure and may depend on the place where the measurement itself is taken. For residents of Amsterdam, it is clear that there are no more marijuana-leaf signs to be seen, but the actual number of coffeeshops has increased:

There is no sign at all that the business turnover has decreased and if this were the policy goal it has failed—not surprisingly. The "normal" reports in domestic and foreign newspapers regularly speak of places where soft drugs are available. Names of hash-coffeeshops can be found in domestic and foreign tourist guides. Youth tourists themselves of course know the signals even when the evocative name of the coffeeshop is not evocative enough and the Rasta-colours are too discreet.⁸²

The "Hash-Info Museum" reopened some months after the raid, and the case against The Bulldog, also since reopened, has not been found to be strong enough to be submitted to the court.

Some residents of Bonn, London, Paris or Washington, D.C., however, may have the impression that something has changed indeed, and that the Dutch are getting rid of their "soft/liberal/permissive" drug policy because they have seen things happen on TV or

80. NRC-Handelsblad, Mar. 30, 1987.

81. A. JANSEN, *supra* note 55, at 43.

82. *Id.*

have read about it in their newspapers.⁸³ And something has changed—soft drug policies are now tougher in Amsterdam than in some other cities, and law enforcement officials are talking continuously about the need in the next decade of “setting clear limits”, especially with reference to the open borders in Western Europe.

E. *The Position of Soft Drugs in Dutch Society*

Over the past 20 years the Dutch have developed some quite unique drug policy concepts and practices, of which the decriminalization of “soft drugs” use and retail trade leading to separate drug markets surely is one of the most fascinating and successful. Thanks to these concepts, and due to the subsequent legislation and pragmatic law enforcement and policy implementation, the level of cannabis use is relatively low and stable.⁸⁴ Simultaneously, the level of social integration of the soft drug phenomenon is high and the prevalence of individual and social hashish and marijuana problems is low.

As far as *cannabis* is concerned, the number of new users has decreased shortly after the government decided on the decriminalization of cannabis in 1976. Today about 4% of the Dutch young people between the ages of 10 and 18 years admit to have ever used cannabis (lifetime prevalence). But over 55% of them stopped using it before their 19th birthday.⁸⁵

The total number of soft drug users in the Netherlands is estimated at about 300,000,⁸⁶ which is two percent of the total population.

Despite the high visibility of the soft drug trade in Amsterdam, less than twenty five percent of all Amsterdam residents in the age groups of sixteen years and up have ever tried soft drugs and less than ten percent used soft drugs in 1987.⁸⁷

To put it briefly, the use of hashish is normalized and integrated in society. The user of hashish will be aware of this in his immediate

83. See, e.g., Cody, *Dutch Pull Welcome Mat Away from Drug Users*, Wash. Post, Nov. 17, 1988, at A35, col. 1.

84. See *supra* notes 24-25 and accompanying text (discussing the effects of the single convention towards cannabis products and the resultant effects on drug use patterns).

85. Ruter, *supra* note 34, at 521 (emphasis in original) (footnotes omitted).

86. W. DE ZWART, *ALCOHOL, TABAK EN DRUGS IN CIJFERS* [ALCOHOL TOBACCO AND DRUGS IN FIGURES] 50 (1989).

87. Engelsman, *Het Nederlandse drugbeleid in West-europees perspectief*, [*Dutch Drug Policy in Western-European Perspective*] in M. GROENHUIJSEN & A. VAN KALMTHOUT, *MEDERLANDS DRUGBELEID IN WESTEUROPEES PERSPECTIEF* 139 (1989); see also Ruter, *supra* note 34, at 533 (setting forth a table entitled “Drug Prevalence in Amsterdam (1987)” based on a household survey of 4202 respondents aged 16 and older).

environment, his family and non-smoking friends will no longer be startled so easily when he or she smokes a "joint." From the point of view of the criminal justice and welfare system and of the users themselves, the situation has improved considerably over the past ten years. The hash-business has become healthier, more "hygienic" and better organized.⁸⁸

Within a relatively short period of time (soft drugs) have become obvious treats for a minority of the young. The integration of hashish and marijuana in our culture is proceeding. The use of these treats, however, is not completely without risks, and compulsive use does occur. Therefore, cannabis is one of the treats that people should be educated about in order to avoid a possible soft drug problem.⁸⁹

IV. THE INTERNATIONALIZATION OF DUTCH DRUG POLICY

A. *The Turning Point of 1985*

Nineteen-hundred and eighty-five can be regarded as the year in which the public-health oriented Dutch drug policy culminated, and at the same time lost much of its power and gave way to a less sophisticated law enforcement approach. This loss of balance has been the result of a number of domestic and international factors. The emphasis here will be on the transition from a drug policy based upon national concerns to one reflecting and responding the European context.⁹⁰

Nineteen-hundred and eighty-five was a very busy year for civil servants working on the two aspects of the government's drug policy, the enforcement of the Opium Act and the policy on prevention and assistance.⁹¹

For the officials of the coordinating Ministry of Welfare, Health and Cultural Affairs (WVC), 1985 was also the year of the development and launch of the "normalization-concept" in drug policy.⁹² State Secretary of Health Joop van der Reyden, opening the International Congress on Local Authorities and Drug Policy in The

88. H. COHEN, *supra* note 36, at 18.

89. A. JANSEN, *supra* note 55, at 132.

90. See *supra* notes 23-25 (discussing the Dutch willingness to adopt international standards in its drug policies).

91. FACT SHEET, *supra* note 35, at 1.

92. See *supra* note 88 and accompanying text (discussing normalization-concept).

Hague, stressed that all available data and possible considerations pointed to the need for:

[A] gradual process of integration of the drug phenomenon in our societies . . . which means that we should take a more "business-like" view regarding the drug problem This process of social and cultural integration could be called the "normalization" of the drug phenomenon. To that end we must stress the pragmatic aspects of drug policy over the moral aspects.⁹³

Later that year the "normalization-policy" was formalized in the "Drug Policy in Motion" Memorandum.⁹⁴

In the same year officials of the Ministry of Justice put the final touches on a variety of general crime control projects. Over the past years pressure on the criminal justice system had increased based primarily on two causes: [1] an increase in crimes such as theft, burglary, and mugging; and [2] an increase in international drug trafficking. Massive street crime, overstressed police forces, a clogged judiciary and prison overcrowding became hot political items. The Ministry of Justice responded primarily by funneling more money and power to the police forces and the Public Prosecution Department, and by starting a construction program to increase prison capacity.⁹⁵

Although the crime explosion⁹⁶ was at least partly drug-related and most of the measures taken were directly related to drug control,⁹⁷ hardly any attention was paid to the coordination of the law enforcement projects and the public health elements of drug policy. For example: A new amendment to the Opium Act, intended to add a conspiracy provision, was passed by Parliament⁹⁸ without the in-

93. Address of the State Secretary of WVC, Ministry of WVC (Oct. 23, 1985).

94. See INTERDEPARTEMENTALE STUURGROEP ALCOHOL-EN DRUGBELEID, DRUGBELEID IN BEWEGING, NAAR EEN NORMALISERING VAN DE DRUGPROBLEMATIEK [INTERMINISTERIAL STEERING GROUP ON ALCOHOL AND DRUG POLICY, DRUG POLICY IN MOTION: TOWARDS A NORMALIZATION OF DRUG PROBLEMS] (1985).

95. See Gitchoff, *Crime and Correction in Holland: A Commentary*, 33 INT'L J. OFFENDER THERAPY & COMP. CRIM. 151, 151 (1989) (surveying the Dutch correctional system and noting that "Holland . . . is experiencing what it considers 'overcrowded conditions.'").

96. See Buikhuisen, *Imprisonment in Holland: Some Comments*, 33 INT'L J. OFFENDER THERAPY & COMP. CRIM. 151, 156 (1989) (reporting a 700 percent increase in crime in the Netherlands from 1950 to 1985).

97. These measures included the introduction of the "anonymous witness", undercover policing, and the transfer of prosecution of foreigners from one country to another.

98. For a description of the organization and functioning of the Dutch Parliament and its special commissions, see generally E. VAN RAALTE, *THE PARLIAMENT OF THE KINGDOM OF THE NETHERLANDS* 168-70 (1959).

volvement of its own Special Commission on Drug Policy.⁹⁹ Additionally, the government's central Memorandum on criminal policy ("Society and Crime") largely concerned enforcement of the Opium Act, but did not mention the fact that more than half a billion Dutch guilders extra (about 350 million US \$) were to be spent on Opium Act enforcement, effectively shifting the emphasis from public health to law enforcement.¹⁰⁰ Also, the governmental attitude towards drug policy assumed a defeatist tone when it was asserted that "the prospects [of successful law enforcement] regarding the international trafficking in hard drugs are not favorable."¹⁰¹

Change also characterized the international drug situation. In the United States, then-President and Mrs. Reagan had launched their "War on Drugs" and the 1984 National Strategy¹⁰² had a pro-law enforcement impact on international public opinion and upon Dutch policy making. In Europe, the developments towards the Single Market project, which includes the removal of border control in the twelve countries of the European Community (EC) by the end of 1992, resulted in two important events: the entry of the European Parliament as a player in the new arena of European drug policy, and the conclusion of the "Schengen Agreement"¹⁰³ between the governments of Germany, France, Netherlands, Belgium and Luxemburg. Representatives of these five countries met on a boat near Schengen, Luxemburg and agreed to anticipate the Single Market and to open their internal borders by January, 1990 to set the stage—and to define the terms whereby the other seven European countries would later join.¹⁰⁴ The agreement dealt with border control and identification, terrorism, drugs, fire arms and immigration, and the monitoring and exchange of information. The Schengen

99. See MEMORIE VAN TOELICHTING BIJ WETSONTWERP 17.975 [FURTHER AMENDMENT TO THE OPIUM ACT, EXPLANATORY MEMORANDUM, BILL 17.975, NO. 3] 4 (1983) (pointing out that the government did not have the "illusion that this amendment will end the import of and trafficking in narcotic drugs in the Netherlands.").

100. *Samenleving en Criminaliteit [Society and Crime]* (1984/1985).

101. H. VAN VLIET, HENDENDAAGSE DRUGBESTRIJDING [CONTEMPORARY DRUG CONTROL] 176-86 (1986).

102. NATIONAL STRATEGY FOR THE PREVENTION OF DRUG ABUSE AND DRUG TRAFFICKING (1984).

103. ACCOORD TUSSEN HET KONINKRIJK DER NEDERLANDEN, HET KONINKRIJK BELGIE, DE BONDSREPUBLIEK DUITSLAND, DE FRANSE REPUBLIEK EN HET GROOTHERTOGDOM LUXEMBURG BETREFFENDE DE GLEIDELIJKE AFSCHAFFING VAN CONTROLES AAN DE GEMEENSCHAPPELIJKE GRENZEN [AGREEMENT BETWEEN (5 COUNTRIES) REGARDING THE GRADUAL ABOLITION OF CONTROL AT THE COMMON BORDERS] (Schengen, June 14, 1985).

104. The other seven countries are the United Kingdom, the Irish Republic, Italy, Spain, Portugal, Greece and Denmark.

Agreement is of great importance for the future of Dutch and European drug policy, because of its contents and because of the confrontation between two antipoles of European drug policy: the Netherlands and the Federal Republic of Germany.

B. *Sketch of a Conflict: Dutch and German Drug Policy*

Germans generally come to the Netherlands either for the beaches or because of the relaxed social and cultural climate, especially in Amsterdam, a glaring contrast to their home country. This holds true for intellectuals, artists, homosexuals, youth travellers and others. Some stay, but most of them return to their country. Since the end of the sixties, Germans also come to buy and use drugs. As early as 1971 the already-existing German welfare agency in Amsterdam assumed responsibility for aiding German drug users.

Since the advent of heroin in Western Europe in the early seventies and the establishment of Amsterdam as an important drug trade center, German public opinion and the German government have developed an almost deadly terror of anything regarding the Netherlands and drugs. It is beyond the scope of this Article to investigate the reasons for this fear, but this is undoubtedly associated with the casualness of the Dutch compared to the seriousness of the Germans and with the openness and visibility of drug use in the Netherlands compared to the German trait to hide the rough sides of reality behind curtains and blinds in order to keep the visible world as *sauber* as possible.¹⁰⁵ Secondly, these two countries differ in judicial policy and procedure in that while the Dutch judiciary was able to work out a prosecution policy based on the expediency principle,¹⁰⁶ the German judiciary did not have this latitude since German prosecutors are constrained to prosecute every criminal offense brought to official attention.¹⁰⁷ Thus the important Dutch policy instrument, the "Guidelines," would be unthinkable within the German circumstance.¹⁰⁸

In 1979, a German-Dutch seminar of drug experts identified serious cooperation problems between the two countries as well as

105. "Sauber" is an untranslatable combination of "clean" and "pure."

106. See *supra* notes 60-65 and accompanying text (explaining the "expediency principle").

107. See Steenhuis, *supra* note 1, at 8 (pointing out that German prosecutors do not have the authority to refrain from prosecuting lesser crimes that the Dutch authorities are allowed to routinely dismiss as a discretionary administrative act).

108. See *id.*

"double sentencing," the fact that after serving a prison term in a foreign prison, a criminal can again be tried and sentenced in Germany. As has been observed:

Because of the different legal principles a growing number of young German drug users from the Dutch-German border area travel to the Netherlands in order to use their drugs (hashish, heroin) there. Users of illegal drugs (especially hashish) think the criminal prosecution in Germany is inhuman and pathetic.¹⁰⁹

These situations, together with the high number of German "skidrow" junkies seeking refuge in Amsterdam, significantly contribute to the size of the "German Problem" in Dutch cities as many addicts won't leave and, instead, choose to be the ultimate outcasts of Dutch society rather than go back to their home country. About 1,000 German addicts are living in Amsterdam on a permanent basis, of which about fifty percent are HIV-positive, as compared with ten to twenty percent of the Dutch addicts.¹¹⁰ And while the German addicts comprise only fifteen to twenty percent of the addict population, they comprise thirty to fifty percent of the city's overdose deaths during the past years.¹¹¹

Briefly, German criminal and drug policies have a negative impact on the manageability of the hard drug problems and on public health in the Netherlands, especially in Amsterdam and in cities along the Dutch-German border. Dutch experts criticize the Germans for their fanatical repression of individual (hard and soft) drug users. A number of the "soft drug incidents" have further troubled the relationship between the two countries.

Many German authorities and professionals are terrified about "Drugs from Holland"¹¹²—although it is unclear if this fear is rational or irrational¹¹³—while the Dutch fear German addicts, prosti-

109. DROGEN ÜBER DIE GRENZE [DRUGS ACROSS THE BORDER] 102 (1980).

110. Communication with Ernst C. Buning.

111. *Id.*

112. By analogy with the well-known motto "Nuclear Energy? No Thanks!", a physician from Berlin has coined the motto "Drogen aus Holland? Nein Danke!" [Drugs from Holland? No Thanks!]. This man operates an information center distributing newspaper clippings about the devilish influence of the Netherlands, and its drug policy in particular, on German youth. These clippings have been distributed by at least one German governmental agency.

113. Periodically, police, customs and/or judicial sources in Germany launch press campaigns about the increase in drug trafficking from the Netherlands to Germany. *See, e.g., Increased Drug Smuggling to Germany*, NRC-Handelsblad, July 4, 1989; *Drug Trafficking Across West German Border Increases*, NRC-Handelsblad, Jan. 3, 1987. In 1989, the Dutch police-intelligence hit back for the first time. *See, e.g., Drug Smuggling to West Germany*

tutes and user/dealers exacerbating problems in Dutch cities. Over the years "FEAR" has become a dominant word in headlines and articles dealing with these problems.

C. *The Schengen Implementation Process*

The Schengen implementation process takes place in secret negotiations, meaning that the writers of newspapers and other articles are forced to rely on "unofficial" but presumably correct information. There is a heavy emphasis on the law enforcement aspects of the single market in the implementation process, namely how to cope with the supposed many external and internal threats to public security in the participating countries. This emphasis has not lead to favorable conditions for the promotion of the Dutch public health-oriented drug policy. From the very beginning the German officials in particular have put heavy pressure on the Dutch delegation, consisting primarily of Ministry of Justice officials, whereas no Ministry of Health officials were involved, to adapt Dutch drug policy according to German standards, especially in the area of soft drugs. From the outset the government and its drug policy have been forced into a defensive position. The German government maintains that Dutch drug policy and practice present a danger to Europe and the German youth in particular, and points to the trouble with German drug addicts in Dutch towns as evidence of the "fatal attraction" of Dutch drug policy.

Unfortunately, the Dutch government has not sought to develop a counter strategy based on its conviction that Dutch drug policy and practices are serious and relatively successful, and might contain clues to fertilize other countries' policies and practices.¹¹⁴ The Minister of Justice opposed any proposed use of what he called "propaganda". The results which flowed from the Dutch stance are that the German government, through economic power-play and salami-tactics, and backed by an anti-Dutch public opinion, not only has stimulated the law enforcement-trend in Dutch policy since 1985 and contributed to the tightening of soft drug policy in Amsterdam since 1987, but has also driven the government to implement far more radical proposals.

The 1987 actions of the Amsterdam Public Prosecution Depart-

Relatively Unimportant, NRC-Handelsblad, July 5, 1989; *German Alarm About Drugs is Political Move*, Het Parool, July 4, 1989.

114. Cf., Gitchoff, *supra* note 95 (stating optimistically "[h]opefully, Holland may be able to lead us into a new era of corrections; as yet unknown and undiscovered.").

ment against the "Hash-Info Museum", against the "Bulldog" chain and against coffeeshops in general, the high-profile media appearances of the Minister of Justice declaring "a tolerance that has gone too far" and the disappearance of the marijuana leaves from the street environment are incomprehensible outside the Schengen-context, but could be considered a price to be paid for the more important aims of economically united countries and a free traffic of people and commodities. The actual state of affairs, however, is more complex and can be characterized as an attempt to export German legal and law enforcement conceptions to other countries. The Dutch government has accepted proposals which bring foreign drug laws into Dutch jurisdiction by giving priority to the tougher legal systems and policies over the Dutch system when nationals from other Schengen countries are involved.

Inevitably this utilization of tough repression against individual drug users and against the soft drug sector will, for a lot of good reasons, be evaluated as counter-productive by many professionals (including policemen and psychiatrists) and those governmental officials who make drug policy. Areas where the Dutch legal system has given way to other legal systems include:

(1) Drug users from Schengen countries residing in the Netherlands found in the possession of drugs are to be considered as criminals *per se*, whereas their Dutch counterparts, depending on actual behavior, remain either ordinary citizens, patients or criminals.

(2) Selling soft drugs to Dutch nationals will remain quasi-legal, while selling drugs to Germans (and others) must be prosecuted and lead to the closure of the coffeehouse involved.

(3) The Dutch proposal that "Schengen nationals" and others, having committed drug and other crimes, be transferred to their country of origin or residence for prosecution, probably contravenes Article I of the Dutch Constitution dealing with prohibition of discrimination.¹¹⁵ It most certainly creates "two kinds of criminal law for three kinds of legal subjects: domestic and foreign criminal law for respectively Dutch nationals, "Schengen nationals", and "non-Schengen nationals."¹¹⁶

This rigid attachment to national conceptions by the German gov-

115. GRW. NED. art. I.

116. Radio discussion of Dr. Frits Rüter, criminal law expert, and Minister of Justice Frits Korthals Altes (June 24, 1989); *De Willekeur van "Schengen"* [The Arbitrariness of Schengen], NRC-Handelsblad, July 4, 1989 (editorial).

ernment is not very promising for the development of a free traffic of people, one of the main goals of "Europe of the Citizens" that is being currently constructed. Much of the present border control will be changed into domestic forms of (identity) control, e.g., traffic and train control and (perhaps?) nationality checks in coffeeshops, which possibly will cost the taxpayer 400 to 600 million Dutch guilders extra.¹¹⁷ In all Schengen countries, a National Schengen Information System will be built, completed by the an overall Central Schengen Information System, composed primarily of law enforcement personnel who will monitor developments and exchange information about "the arising problems."¹¹⁸

The governments apparently know that problems are ahead, some of which have already arisen. One of these is that the whole Schengen process has been delayed for at least one year after January 1, 1990 because of the complexity and the various national hobbyhorses, and it may be delayed yet an additional year because of a second difficulty: in June 1989, Parliament refused to give the consent sought by the government for making definitive arrangements with the Schengen partners, in particular because of lack of information and the anticipated drastic consequences.¹¹⁹ The delay signifies two things:

(1) Little experience will be built up in the Schengen area before the other EC-countries join the process by the end of 1992, which could have a positive influence on the flexibility of the whole project; and

(2) there is some time left for the debate about the role of Dutch drug policy in the European context, which still has to make a real start.

D. *Beyond Schengen*

An elaborate description of Western European drug policy-under-construction might, after all, be somewhat more colorful than the image sketched above. Schengen is not the only arena. The European Community (twelve countries) and the Council of Europe (twenty-one countries) will not necessarily follow the course set by

117. Unpublished address by Minister of Justice Frits Korthals Altes to a conference of Justice Department officials (Nov. 17, 1988).

118. CONCEPT AANVULLENDE OVEREENKOMST [DRAFT ADDITIONAL AGREEMENT TO THE SCHENGEN AGREEMENT] (1989) (unpublished proposal by the Dutch government).

119. *Kamen Botst Met Kabinet over Schengen Akkoord* [Clash Between Parliament and Cabinet About Schengen Agreement], *Het Parool*, June 28, 1989.

the five Schengen countries. In 1985, the European Parliament created a Commission to study drug problems within the European Community.¹²⁰ A year later, the Chairman, Conservative (British) MEP (Member of the European Parliament) Sir Jack Stewart-Clark and reporters drafted a variegated report that immediately was amended politically by the right-wing majority of the Commission to the extent that the left-wing minority felt forced to write a dissenting opinion. A fundamental difference centered upon the fact that the majority aimed at a "drug-free Europe" while the minority sought the normalization of drug problems and the reduction of drug use. In the final European Parliament resolution, no definitive position was taken, but a European conference was scheduled to evaluate all implications and effects of present national drug policies.¹²¹ In the meantime, developments continued. The European Parliament majority that had blocked a pragmatic approach in 1986, no longer exists in the newly-elected Parliament, and an Italian MEP has been elected on a single-issue anti-prohibitionist platform.

On the national level, parliamentary interest for and debate about drug policy declined after 1983-84 as Parliament shunted off its Special Commission on Drug Policy. The Ministry of Welfare, Health and Cultural Affairs, and the Ministry of Justice, with hundreds of millions of guilders extra to spend on crime control, quite easily could follow a separate course in drug policy. Reflecting the international law enforcement trend, and less self-conscious about the public health approach, the latter Ministry nevertheless showed little confidence in its own approach on several occasions: "We do our best but it won't help."

Apparently there are driving forces and interests other than the two drug policy-making Ministries that sponsor the filtering of the Netherlands into the mainstream of international drug control. For the advancement of the debate on the role of the Netherlands in Europe, these forces and interests should make themselves known and join the debate on the key issue of whether the attraction of the Netherlands and Amsterdam of especially youth tourists—only a minority of them drug users—must be stopped by discrimination against foreigners and increased law enforcement, or by making drug policy a Dutch export and by convincing other governments to adopt policies less hostile to individual users. Drug professionals and

120. See 1986-1987 EUR. PARL. DOC. (No. A2-114) (1986).

121. See *Compromise Amendment*, 1986-1987 EUR. PARL. DOC. (Nos. B2-875/22, 884/6/rev., 8871/6 (1986).

policy makers should also join in the debate and put aside the attitude of being so busy defending or compromising drug policy. It is the most appropriate time to again begin developing drug policy in public.

V. CONCLUDING REMARKS

The increasingly internationalized character of the trafficking and control in especially hard drugs, and the developments towards European integration and policy making do not leave much room for a fundamentally different national approach. If they do not want to surrender to policies that damage public health and individual liberties, the government of the Netherlands and the Dutch drug professionals will have to fight for the internalization of *their* policy, particularly in the European arena, simply because it is among the very few successful policies worldwide. This holds for the hard drug policy, the harm-reduction and the normalization concepts, as well as for the separation-of-markets concept and the quasi-legalization of the use and retail trade in cannabis products.

The Dutch do not have to fight this battle alone as the debate on the development of humane and rational drug policies at the sub-government level in a number of European countries is more lively than currently in the Netherlands.¹²² In the United Kingdom there is strong pressure on the government to adopt harm-reduction policies.¹²³ In Switzerland a movement for harm-reduction policies and

122. *But see* DRUG POLICIES IN WESTERN EUROPE (H. Albrecht & A. Van Kalmthout eds. 1989) (discussing the June 1988 Conference "Dutch Drug Policy in Western European Perspective").

123. One commentator observed:

Although in all countries there is debate over the merits of policies aimed at elimination of illicit drug-use versus harm reduction, the balance varies between countries. Whilst this dichotomy oversimplifies the issues, it can be a useful dimension for examining differences between policies.

Hartnoll, *The International Context*, in DRUGS AND BRITISH SOCIETY 36, 50 (S. MacGregor ed. 1989). Hartnoll compared the Dutch drug policy as one extreme and the "explicit goal of countries such as Norway and Sweden" of "total elimination of all illegal drug-use" as the other. *Id.* at 50-51. He then summarized:

British policy could currently be described as somewhere between these poles, though there is some tension between national policy which, apart from medial prevention campaigns, has tended to move towards greater emphasis on law enforcement, and local policies, which tend to give more weight to public health, early intervention, and treatment, subject of course to financial constraints.

Id. at 51. *See, e.g.*, AIDS AND DRUG MISUSE: PART I (1988) (discussing the Advisory Council on the Misuse of Drug's report); INJECTING EQUIPMENT EXCHANGE SCHEMES: FINAL REPORT (1988) (discussing a report of research into social policy recommendations published by the University of London).

for the adoption of Dutch soft drug policy is gaining strength.¹²⁴ In Italy and Spain new forms of community action to protect children and communities from being destroyed by drugs are being developed.¹²⁵ And in Germany the police trade union is sponsoring the discussion about the legalization of drugs.¹²⁶

Apart from the strategic debate about the internalization of Dutch drug policy, discussion in the Netherlands could concentrate on how to further develop the decriminalized cannabis policy and should begin then with the problem of small-scale production and the traditional bottleneck of the present policy, the supply of cannabis products to the coffeeshop. Several appeals for decriminalizing the cultivation of small numbers of plants for the production of marijuana and hashish have been made¹²⁷ and, although the police do not systematically investigate home and garden production, they now have and sometimes use the opportunity to cause confusion. A clear statement in the "Guidelines Opium Act" on the number of plants or the production areas tolerated¹²⁸ would be a step forward. An additional step could be to encourage coffeeshops to exclusively sell Dutch cannabis products. This protectionism would not only favor the local economy, but it would also contribute to the unlinking of domestic production and international drug trafficking. Presently, ten to twenty percent of the supply of cannabis products available in Dutch coffeeshops is of national origin.¹²⁹ An increase in use of domestic cannabis could make a contribution to the creation of a local industry, which in turn could be administered by police authorities, including quality control and taxation, as well as contributing to the control of international crime.

Describing the attitude of Dutch drug policy makers towards

124. See, e.g., VSD/ASIT/ASAT: PERSPEKTIVEN EINER NEUEN DROGENPOLITIK [PERSPECTIVES OF A NEW DRUG POLICY] (1986); VSD/ASIT/ASAT, DIE REVISION DES BETAUBUNGSMITTELGESETZES [THE REVISION OF THE DRUG ACT] (1986).

125. H. VAN VLIET, NOT THE EGG OF COLUMBUS: IN SEARCH FOR LOCAL DRUG POLICIES IN WEST BERLIN, ROME AND BARCELONA (1986).

126. B. THAMM, DROGENFREIGABE - KAPITULATION ODER AUSWEG? [LEGALIZATION OF DRUGS: SURRENDER OR WAY OUT?] (1989).

127. See, e.g., A. JANSEN, *supra* note 55, at 138; Van Vliet, *Van Agt's Porn Norm Applicable on Hemp*, Het Parool, Mar. 12, 1988; Grund, *Trade in Soft Drugs Should Be Decriminalized*, NRC-Handelsblad, Jan. 28, 1988 (both discussing the decriminalization of and the cultivation of small amounts of cannabis).

128. *Lelystad Police Find Drugs*, Het Parool, Sept. 7, 1989. According to the Lelystad Police (near Amsterdam), the Prosecution Department will not prosecute people who grow marijuana in an area up to 10 square meters (about 113 square feet). This report could not be confirmed.

129. A. JANSEN, *supra* note 55, at 139.

decriminalization as “uneasy” turned out to be much easier than actually shaping a decriminalized policy within the changing context of social and political life. Making a new start in the coordination between the Ministries of Justice and Health, however, would be a necessary and vital precursor for future effective drug policy creation. The process of European integration in its various stages has brought about new challenges as to the development of national policies and the preservation of national identity which have affected both drug policy and drug policy makers. The deterioration of the drug situation, particularly in the Americas, the amounts of money and the prestige involved, make it very difficult, especially for government officials, to resist the tide and preserve the sandcastle.

The Dutch, however, have a longer tradition of building dikes to protect their nation than of policing the sea away. In the next decade they will need those skills to protect, to develop, and to internationalize their drug policy; and to cooperate with others, primarily in Europe, in building a society in which mind altering substances don't destroy individuals, families, communities, cities and countries.

Postscript: December 8, 1989

Since the completion of this article, some important events have taken place that particularly affect the Schengen issue. The “Additional Agreement” to the original Schengen Agreement is due to be signed on December 15, 1989, but the collapse of Communist rule in East Germany, the opening of the Berlin Wall and the prospect of the unification of the two German states, has actually enlarged the Schengen territory with East Germany.

This “fact” has confused the other governments, not only because for them it adds a sixth state to the Agreement, but also because the borders between East Germany, on the one hand, and Poland and Czechoslovakia on the other, have just been opened and are hardly controllable at present. The Schengen Agreement, however, provides for a tight and sophisticated control at the outer borders. The developments in Eastern Europe come at a time when, especially in France, the debate about immigration, the status and rights of immigrants and the relationship between “French” and “foreign” cultures is heating up and getting poisoned with racist elements.

Immigration is a sensitive political issue in the other Schengen countries as well. This makes it difficult for the respective governments to adhere to the Agreement without very explicit safeguards about immigration and these are things no one can provide in the

present unstable situation.

The Parliament of the Netherlands, newly elected in September of 1989, is persisting in its critical attitude towards the Schengen process. In a recent debate of December 6, 1989, Parliament did not only highlight the issues previously discussed, but also expressed suspicion concerning the privacy aspects of the Schengen Information System and about legal protection of the citizens in general. A majority made it quite clear that although the Government has the right to sign the Agreement, Parliament retains the right to refuse ratification.¹³⁰

Post Postscript: May 15, 1990

By mid-December 1989, the West German government temporarily decided not to sign the Additional Schengen Agreement. Apparently the uncertainties with regard to the German unification were too many and too big.¹³¹

A month of relative silence followed. Dutch coffeeshop owners and cannabis smokers organized a protest manifestation at Dam Square in Amsterdam, and the Netherlands' State Secretary of Foreign Affairs chaired the—again—secret negotiations about how to proceed with "Schengen" under the new circumstances.

In April 1990, quite unexpectedly, a new agreement between the five governments appeared to be in the making and recently the Prime Minister of the Netherlands, Mr. Ruud Lubbers, announced that all difficulties were cleared and that the ratification of the Additional Schengen Agreement would proceed "simultaneously with German unification."¹³² However, there still is no clear majority in Parliament for ratification.

That is how things have changed in Europe over just a half a year. From the unification or federalization of twelve Western European nations, setting their own pace and course, into a process that has to proceed simultaneously with the rather uncontrollable events in the now-dominating country in Europe: a unified Germany. The Additional Schengen Agreement will probably be signed next June.

130. See *Signing of Schengen Treaty Unlikely*, NRC-Handelsblad, Dec. 12, 1989; *Schengen Border Treaty Further into the Fire Line*, NRC-Handelsblad, Dec. 9, 1989; *Objections Against Schengen on the Increase*, Het Parool, Dec. 8, 1989.

131. *Border Treaty Suspended After Kohl-Initiative*, NRC-Handelsblad, Dec. 14, 1989.

132. *Ratification of "Schengen" Simultaneously with German Unification*, NRC-Handelsblad, May 12, 1990.