

Criminalization of Drug Trafficking in Vietnam: Developments and Challenges

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Abstract

Since the adoption of an "open door" economic policy in 1986, drug trafficking in Vietnam has increased significantly. In 1997, Vietnam ratified the three UN drug control conventions and launched efforts to bring its national laws into line with them. As a newcomer to these international standards, Vietnam lacked experience in developing laws to combat drug trafficking. Fifteen years on, how well does Vietnamese legislation comply with the international requirements? How could compliance and, more broadly, the relevant legislation be improved?

The first part of this paper draws a picture of drug trafficking in Vietnam since the "open door" economic policy was adopted. The second part analyses the government's legislative action over the past fifteen years to combat drug-related crime. The analysis reveals some inconsistencies with the UN standards and, moreover, some inherent problems in the recent formulation of the Vietnamese drug-related laws that require rectification through legislative clarification.

I. HISTORIC PERSPECTIVE ON DRUG TRAFFICKING

Located in the vicinity of the Golden Triangle (northern regions of Myanmar, Laos, Thailand), and having long, weakly controlled land and sea borders, Vietnam has faced the problem of drug abuse from early times. The opium poppy is thought to have arrived in Vietnam via Laos between the years 1600 and 1660. After it arrived, opium cultivation and smoking spread widely,

causing major problems for public security and order.¹ In 1665, the Vietnamese King Canh Tri III prohibited opium cultivation.² This prohibition is viewed as the first Vietnamese instance of regulatory control of drug use. During the feudal period, severe penalties were imposed upon opium consumers and traffickers, aiming at suppressing its emergence.³ The opium restrictions, however, were removed during the French rule over Vietnam, and opium smoking was not of major concern during the Vietnam war.⁴ After the country achieved its reunification in 1975, the new national Government enhanced its control of opium cultivation and provided treatment for drug abusers. Since then, national efforts to gain effective control over drug use have progressively increased.

In 1997, Vietnam ratified the three United Nations Drug Control Conventions (DCCs), namely the Single Convention on Narcotic Drugs 1961 ("Narcotics Convention"), the Convention on Psychotropic Substances 1972 ("Psychotropics Convention") and the Convention against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances 1988 ("Trafficking Convention"). To bring its laws in line with the DCC standards requiring criminalization of certain drug-related activities, Vietnam introduced changes

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¹ P. H. Nguyen & N. H. Dang, (*Ma Tuy va nhung Van De ve Cong Tac Kiem Soat Ma Tuy*) [*Narcotics and Matters Concerning Narcotics Control*], (Ha Noi: Nha Xuat Ban Cong An Nhan Dan, 1994).

² P. H. Nguyen, (*Cac Toi Pham ve Ma Tuy: Dac Diem Hinhanh Su, Dau Hieu Phap Ly, cac Bien Phap Phat Hien Dieu Tra*) [*Drug-Related Crimes: Criminal Characteristics, Legal Constituents, Measures to Discover and to Investigate*] (Ha Noi: Nha Xuat Ban Cong An Nhan Dan, 1998); V. L. Tran, (*Trach Nhim Hinhanh Su doi voi cac Toi Pham ve Ma Tuy*) [*Criminal Liability for Drug-Related Crimes*] (Ha Noi: Nha Xuat Ban Chinh Tri Quoc Gia, 1998); N. B. Vu, (*Phong Chong Ma Tuy trong Nha Truong*) [*Narcotic Drug Prevention in Education Institutions*] (Ha Noi: NXB Cong an nhan dan, 1997).

³ N. B. Vu, *supra* note 2.

⁴ P. H. Nguyen & N. H. Dang, *supra* note 1.

to its criminal laws. Its current legislation presents a remarkably strong set of drug-related criminal laws. However, some notable problems occur in the formulation of the Vietnamese drug-related offences.

In order to provide a background for the recent developments in drug-related criminal law reform, this paper first draws a picture of the growth in drug trafficking in Vietnam since its government adopted an "open door" trade and economic policy. Second, in its main body, the paper analyzes the compliance achievements and shortcomings of Vietnamese criminalization of drug offences prescribed by the DCC standards. This is accomplished by identifying, interpreting and analysing the primary materials, i.e. provisions of the international conventions and relevant Vietnamese national legislation, assisted by scholarly commentaries, and then by comparing the provisions of the Vietnamese legislation with the requirements in the international conventions. A comparative analysis has not been published before and it reveals some Vietnamese inconsistencies with the DCC standards and, moreover, some inherent problems in the formulation of the Vietnamese drug-related offences that require rectification through further legislative clarification.

II. CONTEMPORARY VIETNAMESE DRUG TRAFFICKING

The year 1986 was a remarkable turning point in the modern history of Vietnam, auguring a new period in national economic and social development. On completing the second five-year socio-economic plan (1980-1985) since reunification, Vietnam was faced with great socio-economic difficulties, despite many achievements.⁵ To lead the country out of its economic stagnation, the Sixth National Party Congress initiated economic reforms to

⁵ M. H. Le, (*Ket qua thuc hien chuong trinh hanh dong phong chong ma tuy giao doan 1998-2000 va phuong huong trien khai Chuong trinh hanh dong phong chong ma tuy giao doan 2001-2005*) [*Results of the action plans on drug prevention and suppression in the three-year period from 1998 to 2000 and orientation on the deployment of the Action Plan in the five-year period from 2001 to 2005*] (2001) (*Ban tin phong chong ma tuy*), 4, at 6.

replace the centrally planned economy with a “socialist-oriented market economy.” The change of economic approach required, inevitably, a new legal framework and new administrative arrangements. This comprehensive renovation, called *Doi Moi* in Vietnamese, was carried out throughout the country and led to major economic and social changes. It generated growth in the private economic sector and improved living standards. Public infrastructure, such as post and telecommunications, transport facilities (roads, bridges, ports, airports) and electricity and water supply, were enhanced. International trade, both exports and imports, developed dramatically.⁶ Through its open door policy, Vietnam’s international economic relations expanded and its cooperation with traditional partners strengthened.

The “open door” policy also created operational advantages for drug traffickers. In the 2006 annual report of the National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution, and in a 2006 publication of the Standing Office for Drug Control titled “Drug Control Activities in Vietnam,” it was observed that an increase in drug trafficking flowed through the “open door.”⁷ In many other national studies, linkages have been made between the “open door” policy and significant increases in

⁶ Bo Thuong Mai, (*Thuong Mai Viet Nam va APEC*) [*The Ministry of Trade of Vietnam and APEC*] (Hanoi: NXB Thong Ke, 2006); Dang Cong San Viet Nam, (*Kiem Diem vien Thuc Hien Nghi Quyet Dai Hoi Dang Lan Thu IX ve Phuong Huong Nghiem Vu Phat Trien Kinh Te Xa Hoi nam 2001-2005 va Phuong Huong Nghiem Vu Phat Trien Kinh Te Xa Hoi 5 nam 2006-2010*) [*Review of the Implementation of the Party Resolution at the Ninth Party National Congress on Directions and Tasks to Develop National Socio-Economy in 2001-2005 and Directions and Tasks to Develop National Socio-Economy in the Five-Year Period 2006-2010*], available at http://www.cpv.org.vn/tiengviet/tulievankien/tulieuvedang/details.asp?topic=168&subtopic=8&leader_topic=699&id=BT160635244 (last visited May 22, 2007).

⁷ Co Quan Thuong Truc Phong Chong Ma Tuy cua Uy Ban Quoc Gia Phong Chong AIDS Phong Chong Ma Tuy va Mai Dam, (*Bao Cao Tinh Hinh va Ket Qua 5 Nam Thi Hanh Luat Phong, Chong Ma Tuy*) [*Report on the Five-Year Implementation of the Law on Narcotics Prevention and Suppression*] (No. 304/2006/BCA(VPU)) (Ha Noi, 2006); Standing Office for Drug Control, *Drug Control Activities in Viet Nam* (People's Police Publishing House, 2003); Uy Ban Quoc Gia Phong Chong AIDS Phong Chong Ma Tuy va Phuong Huong Cong Tac Nam 2007) [*Situation of Drug Control in 2006 and Directions for 2007*] (No. 35 BC/BCA(VPU)) (2007).

drug-related crimes and arrests.⁸ The Vietnamese situation appears consistent with observations in international studies that greater opportunities for criminal operations are provided by higher levels of trade in goods and services, by free movement of people across national borders, and by technological advances in transportation, communications and data exchange.⁹

A. Increased Drug Trafficking

In the decade between 1981-1990, across the whole country there were 1,698 reported cases of drug-related crimes, while in the next decade, between 1991-2000, the number of cases rose to 43,211 cases,¹⁰ a 27-fold increase (see Table 1). In the last five years, 2008-2012, the number of drug-related cases

⁸ H. A. Le, (*Tinh hinh va ket qua trien khai thuc hien Luat Phong, chong ma tuy trong 2 nam 2001-2002*) [Situation and results of the two-year implementation of the Law on Narcotics prevention and suppression in 2001-2002] (2003) Ban tin phong chong ma tuy, 4, at 2; T. T. Le, (*Thuc Hien Chuong Trinh Quoc Gia Phong, Chong Toi Pham trong Thoi Ky Day Manh Cong Nghiep Hoa va Hien Dai Hoa Dat Nuoc*) [Implementation of the National Crime Prevention Strategy in the Period of Enhancing Industrialization and Modernization in the Country] (NXB Chinh Tri Quoc Gia, 2002); P. H. Nguyen & N. H. Dang, *supra* note 1; T. M. N. Nguyen & Q. H. Pham, (*Nhung Van De Co Ban trong Cong Tac Kiem Sat Dieu Tra va Kiem Sat Xet Xu cac Toi Pham ve Ma Tuy o Viet Nam*) [Basic Issues on Supervision over Investigations and Trials for Drug-Related Crimes] (Ha Noi: Nha Xuat Ban Cong An Nhan Dan, 2003); T. T. Nguyen, (*Du Bao Tinh Hinh Toi Pham co To Chuc o Viet Nam tu Nay den Nam 2010*) [Forecast on the Organized Crimes in Vietnam Towards 2010] (2002) Ban Tin Phong Chong Ma Tuy, 8, at 12; X. Y. Nguyen, (*Toi Pham Co To Chuc, Mafia va Toan Cau Hoa Toi Pham*) [Organized Crimes, Mafia and Globalization of Crimes] (Ha Noi: Nha Xuat Ban Cong An Nhan Dan, 2003); X. Y. Nguyen, (*Luat Phong Chong Ma Tuy va Phong Chong Ma Tuy trong Nha Truong*) [Law on Narcotics Prevention and Suppression and Narcotics Prevention in Education Institutions] (Ha Noi: Nha Xuat Ban Cong An Nhan Dan, 2004); G. K. Pham, (*Bai khai mac cua Pho thu tuong Pham Gia Khiem, chu tich Uy ban quoc gia phong, chong aids va phong, chong te nan ma tuy, mai dam tai hoi nghi*) [Opening speech of the Deputy Minister - the head of the National Committee for Prevention and Suppression of AIDS, Narcotics and Prostitution] (2001) Ban tin phong chong ma tuy, 4, at 5.

⁹ M. C. Bassiouni, *International Drug Control System*, INTERNATIONAL CRIMINAL LAW 905-948 (Vol 1., New York: Transnational Publishers, 1999); M. BENTHAM, THE POLITICS OF DRUG CONTROL (New York: Macmillan Press, 1998); DIVISION OF NARCOTIC DRUGS, THE UNITED NATIONS AND DRUG CONTROL (New York: United Nations, 1982).

¹⁰ Q. V. Vu, (*Hoan thien he thong phap luat co lien quan den cong tac phong, chong toi pham ve ma tuy*) [Recommendations for improving drug control law and regulations] (Paper presented at the Hoi thao ve thuc tien dau tranh phong chong ma tuy va van de hoan thien phap luat phong chong ma tuy Ha Noi, Vietnam, 2002).

across the whole country was 40,862, close to the total number of reported cases for the previous ten-year period, 1991-2000.¹¹ According to Vietnamese criminologists, law enforcement bodies identify only 5-10% of the country's drug-related crimes, indicating that the vast bulk of the drug trafficking iceberg remains hidden.¹²

B. Smuggling Routes

Vietnam is considered an important transit country for illicit drugs.¹³ According to the International Narcotics Control Board (1999, 2001, 2003, 2010, 2011), Vietnamese territory provides transit routes and storages place for heroin manufactured in the Golden Triangle en route to Australia, Canada, Europe and North America:

Major trafficking routes for heroin manufacture mainly in the border areas of Myanmar include corridors that lead through Yunnan province of China, and then further east to point along that country's coast and through the Lao People's Democratic Republic to coastal areas in Cambodia and Vietnam. From the coastal areas, the heroin is shipped to illicit markets in Australia, Canada, the United States and countries in Europe.¹⁴

Heroin, cannabis and other synthetic drugs are brought to Vietnam through points along its borders with Laos, Cambodia and China, each of which is described below. The map at Figure 1 visually describes the main cross-border trafficking routes for illicit drugs moving into Vietnam.

¹¹ *Reports of the People's Supreme Court of Vietnam, 2008 to 2012.*

¹² X. Y. Nguyen, *supra* note 8.

¹³ M. Bentham, *supra* note 9; R. CLUTTERBUCK, DRUGS, CRIME AND CORRUPTION (1995); UNODC Vietnam, *Vietnam: Country Profile, 2003* (2003), available at http://www.unodc.org/pdf/vietnam/country_profile_vietnam.pdf (last visited Dec. 18, 2004).

¹⁴ International Narcotics Control Board, *Report of the International Narcotics Control Board for 2001, 2002*, available at http://www.incb.org/incb/annual_report_2001.html (last visited Aug. 18, 2012).

The common border of Vietnam and Laos, which stretches through ten Vietnamese provinces with thousands of small roads and tracks running through low hills, is used as the main overland gateway for illicit drugs smuggled into Vietnam.¹⁵ During the three-year period from 1998 to 2000, 62.1% of the total heroin and 68.5% of the total opium seized by law enforcement authorities were taken in provinces located along this border, including Lai Chau, Son La, Nghe An, Ha Tinh, and Thanh Hoa.¹⁶ Cambodian cannabis is brought into Vietnam through their common border, via provinces such as Tay Ninh, An Giang, Dong Thap and Kien Giang, and then transported onwards to consumer countries.¹⁷ Due to its lack of an elaborate legal framework for drug control and its weak law enforcement capacity, Cambodia is also a transit country through which heroin, ecstasy, methamphetamine and other narcotics from the Golden Triangle are transported into Vietnam.¹⁸ Drug trafficking along the border between China and Vietnam is bidirectional. In a number of cases, synthetic drugs, such as diazepam, seduxen and other types of synthetic drugs are transported from China into Vietnam,¹⁹ as China is a

¹⁵ P. Chalk, *Southeast Asia and the Golden Triangle's heroin trade: Threat and response*, 23 Studies in conflict and terrorism 2 at 89 (2000); X. Y. Nguyen, *supra* note 8; United States Department of Justice, *Drug Intelligence Brief - the Drug Situation in Vietnam*, Nov. 2001, available at <http://www.usdoj.gov/dea/pubs/intel/o2001/o2001p.html> (last visited Nov. 13, 2004); UNODC Vietnam, *Vietnam: Country Profile, 2003*, available at http://www.unodc.org/pdf/vietnam/country_profile_vietnam.pdf (last visited Dec. 18, 2004).

¹⁶ M. H. Le, *supra* note 5, at 6.

¹⁷ Q. V. Vu, (*Tinh hinh chung ve cong tac kiem soat ma tuy va van de phong chong ma tuy o Viet Nam*) [*General situation on drug control and the issue of drug prevention and suppression in Vietnam*] (Paper presented at the Hoi thao ve phong chong ma tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998); Q. V. Vu, (*Hoan thien he thong phap luat co lien quan den cong tac phong chong toi pham ve ma tuy*) [*Recommendations for improving drug control law and regulations*] (Paper presented at the Hoi thao ve thuc tien dau tranh phong chong ma tuy va van de hoan thien phap luat phong chong ma tuy, Ha Noi, Vietnam, 2002).

¹⁸ X. Y. Nguyen, *supra* note 8; United States Department of Justice, *Drug Intelligence Brief - the Drug Situation in Vietnam*, Nov. 2001, available at <http://www.usdoj.gov/dea/pubs/intel/o2001/o2001p.html> (last visited Nov. 13, 2004).

source of clandestinely manufactured MDMA, a form of methyl-amphetamine commonly known as "ecstasy."²⁰ In the other direction, Vietnam is used by drug traffickers as a transit area for opiate shipments to China.²¹ In recent years, these Chinese border routes have become heavily used due to better road links and greater individual freedom to travel in China.²²

In addition to international trafficking routes, domestic smuggling routes converge on major Vietnamese cities. Among the 64 provinces of Vietnam, Hanoi and Ho Chi Minh are the most vulnerable destinations²³. For example, illicit drugs from Ky Son (in Nghe An province) are brought to Hanoi via Thanh Hoa and Ninh Binh provinces; or from Lai Chau province via several northern mountainous areas. Ho Chi Minh City, the economic centre of Vietnam, is a destination for drugs brought from Nghe An province via Ha Tinh and Quang Tri provinces. Quang Ninh province, where there is a large industrial conurbation based on a coalmining field, is the target point for

¹⁹ K. Do, (Vai net ve tinh hinh ma tuy tren the gioi va hop tac quoc te cua viet nam trong phong chong ma tuy) [An outline of the world's drug situation and cooperation of Vietnam in drug control] (Paper presented at the Hoi thao ve phong chong ma tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998).

²⁰ International Narcotics Control Board, *Report of the International Narcotics Control Board for 2010*, (2010) available at http://www.incb.org/incb/annual_report_2010.html (last visited June 8, 2013).

²¹ K. Do, *supra* note 18; H. Tran, (Bo doi bien phong ngan chan "dong chay" ma tuy qua bien gioi) [Border Guards combat "drug flows" across national borders] (2004) Ban tin phong chong ma tuy, 12, at 19; Q. V. Vu, (Hoan thien he thong phap luat co lien quan den cong tac phong, chong toi pham ve ma tuy) [Recommendations for improving drug control law and regulations] (Paper presented at the Hoi thao ve thuc tien dau tranh phong chong ma tuy va van de hoan thien phap luat phong chong ma tuy, Ha Noi, Vietnam, 2002); International Narcotics Control Board, *Report of the International Narcotics Control Board for 2010*, (2010), available at http://www.incb.org/incb/annual_report_2010.html (last visited June 8, 2013).

²²P. Chalk, *supra* note 15, at 89.

²³T. T. Le, (Tinh hinh, ket qua cong tac phong, chong ma tuy nam 2002 va nhung nham vu trong tam phong, chong ma tuy nam 2003) [Situation and results of drug control in 2002 and main tasks of drug control in 2003] (2003) Ban tin phong chong ma tuy, 3, at 13; P. H. Nguyen, *supra* note 2.

dispersal of drugs from Hanoi via Bac Ninh, Bac Giang and Lang Son provinces.²⁴

Transnational Crime

In Hanoi, Hochiminh, Lai Chau, Son La, Nghe An, Thanh Hoa, Yen Bai, and Bac Thai provinces, groups of professional traffickers who specialise in purchasing opium harvests, who are called "barefoots" in slang, bring money and goods to deposit with peasants in exchange for promises by the peasants to produce opium. When harvesting time comes, the traffickers return and selectively employ other local people to purchase opium from the previously-contacted peasants. The traffickers normally refuse to buy opium resin from unknown people in order to avoid falling into police traps.²⁵

Several major drug rings exposed in recent years²⁶ have demonstrated that Vietnamese international trafficking of illicit drugs is now largely in the hands of professional criminal organizations.²⁷ A number of overseas Vietnamese use their relatives residing in Vietnam to establish transnational drug trafficking routes.²⁸ Conversely, increasing numbers of Vietnamese drug traffickers have been arrested in other countries, such as Thailand, Canada, Singapore, and

²⁴ Q. V. Vu, (*Hoan thien he thong phap luat co lien quan den cong tac phong, chong toi pham ve ma tuy*) [*Recommendations for improving drug control law and regulations*] (Paper presented at the Hoi thao ve thuc tien dau tranh phong chong ma tuy va van de hoan thien phap luat phong chong ma tuy, Ha Noi, Vietnam, 2002).

²⁵ P. H. Nguyen, *supra* note 2; X. Y. NGUYEN, *Toi Pham Hoc Hien Dai va Phong Ngua Toi Pham* [MODERN CRIMINOLOGY AND CRIME PREVENTION] (2001); X. Y. NGUYEN, (2003) *supra* note 8.

²⁶ V. K. Phan, (*Ngan chan va bai tru cac te nan xa hoi nhat la te nan ma tuy, mai dam nham xay dung loi song van minh, lanh manh*) [*Prevention and suppression of social evils, especially drug abuse and prostitution for the purpose of establishing civilized and healthy lifestyle*] (2003) Ban tin phong chong ma tuy [Bulletin on Narcotics Suppression and Prevention], 3.

²⁷ T. M. N. Nguyen & Q. H. Pham, *supra* note 8.

²⁸ H. V. Vu, (*Luc Luong Canh Sat voi Cong Tac Phong, Chong Ma Tuy o Viet Nam*) [*Police Force in the Combat against Narcotic Substances in Vietnam*] (Paper presented at the Conference on Narcotics Prevention and Suppression between Vietnam and France, Hanoi, Vietnam, June 1998).

Australia.²⁹ In addition, in the eight-year period from 1993 to 2000, foreign nationals accounted for 5.66% of Vietnamese drug-related criminal convicts sentenced to death or life imprisonment.³⁰ Among them, a majority were Laotian, followed by Thais, Chinese, and Cambodians. A few others from America, Hong Kong, Taiwan, Canada, and Spain also were convicted. The National Committee for Prevention and Suppression of AIDS, Drugs and Prostitution, summing up in 2006 the five-year period of implementing the Vietnamese Law on Narcotics Prevention and Suppression 2000, reported that international criminal organizations have used the "open door" policy to develop contacts with domestic criminal organizations to collaborate in illicit drug smuggling.³¹

III. CRIMINALIZATION OF DRUG-RELATED OFFENCES

The increased availability of illicit drugs has contributed to an alarming growth in the domestic consumption rate,³² adversely affecting Vietnamese society, especially its youth. Against this background, the Government of Vietnam has committed itself to combat drug trafficking. Since ratifying the United Nations Drug Control Conventions in 1997, Vietnam's national legal framework for drug control, particularly for drug-related crimes, has been amended to conform to the DCC standards. The newly applicable offences provide effective legal tools to combat illicit drug trafficking. Nonetheless, gaps and shortcomings remain, and amendments and improvements are needed.

²⁹ X. Y. Nguyen, (2004) *supra* note 8.

³⁰ *Id.*

³¹ Co Quan Thuong Truc Phong Chong Ma Tuy cua Uy Ban Quoc Gia Phong Chong AIDS Phong Chong Ma Tuy va Mai Dam, *supra* note 7; X. Y. Nguyen, (2004) *supra* note 8.

³² T. M. N. Nguyen & Q. H. Pham, *supra* note 8.

A. Vietnamese Criminal Code Provisions on Illegal Drugs

In the first Criminal Code of Vietnam, enacted in 1985,³³ the offence of organizing the illegal use of drugs (Article 203) was the only prescribed offence relating to drugs, i.e. no other conduct related to illicit drugs was specified. Therefore, prosecutions relating to the unlawful transportation, stockpiling, import, export, trade and distribution of controlled drugs could proceed only under customs offences that are not specific to drug control, i.e. "stockpiling or trading in banned goods" (Article 166) or "smuggling or transporting goods and/or currencies across the border" (Article 97).³⁴

In 1989, the CCV 1985 was amended for the first time, with the insertion of a single separate narcotics offence dealing with "Unlawful trading, stockpiling or transporting of narcotic substances" (Article 96a), i.e. drug trafficking. Until that time, drug trafficking had been prosecuted as a political offence that posed a major threat to national security. That approach conflicted with the obligation in the Trafficking Convention (Article 3(10)) not to treat drug-related crimes as political offences.

In 1997, the CCV 1985 was amended again to conform to undertakings in the DCCs with the insertion of a completely new chapter dealing with drug-related crimes. A wide range of specified activities relating to drug trafficking was criminalized and subjected to severe penalties. In contrast to 1989, when only two distinct drug-related offences were prescribed, thirteen separate drug-related offences were specified in 1997. In addition, drug-related offences were no longer considered as political offences.

Nevertheless, a number of shortcomings in meeting obligations under the three DCCs remained. Some were rectified in 1999, when the second Criminal Code of Vietnam (CCV 1999) replaced the CCV 1985. For example, under the CCV 1985 as amended in 1997, penalties applicable for the stockpiling and

³³ *Criminal Code of Vietnam 1985*.

³⁴ C. L. Uong, *Phap luat va chinh sach hinh su trong dau tranh phong chong ma tuy o Viet Nam* [Laws and criminal policy in the combat against narcotics in Vietnam] (Paper presented at the Hoi thao ve phong chong ma tuy cua Viet Nam va Phap, Hanoi, Vietnam, 1998).

transportation of illicit narcotic substances were less severe than penalties imposed upon trade in those substances. Yet, as most cases involved arrests made during the course of drug transportation, criminals were able to deny charges of drug trading.³⁵ For that reason, the provisions on drug-related crimes were revised when the new criminal code was drafted.

The CCV 1999 remains in force as of the time of writing. Its chapter titled "Drug-Related Crimes" deals exclusively with drug-related criminal offences. This chapter, nonetheless, does not address the laundering of proceeds generated from drug-related crimes. The CCV 1999 creates a single money laundering offence that deals with fraudulent proceeds from all crimes. Table 3 summarizes all drug-related offences (including money laundering) and the penalties prescribed for them. It indicates that most drug-related offences are punishable by deprivation of liberty. Additional penalties include fines, confiscation of assets or prohibition from specified employments. It is noteworthy that, in 2009, the CCV 1999 was amended and the offence of personal drug use was removed. Thus, drug abusers are now subject only to compulsory rehabilitation but not deprivation of liberty and criminal responsibility. This amendment was made in consideration of humanitarian treatment of drug abusers.

B. Critical Analysis of Vietnamese Criminal Code Compliance with the DCCs

The DCCs do not themselves define substantive criminal offences but seek to impose a degree of uniformity upon national criminalization of illicit drug-related activities. Offences enumerated under the DCCs are merely varying "terms" or "verbs."³⁶ Detailed definition of their elements is left to United

³⁵ Thi Thoa Le, "Ban ve dinhtoi danhdoi voi mot sotoi pham ve ma tuy theo quy dinh cua bo luat hinh su nam 1999" [Some discussions on determining types of drug-related crimes under the Criminal Code 1999] (2004).

³⁶ Boister, Neil, *Penal Aspects of the UN Drug Conventions*, (London: Kluwer Law International, 2001); S. D. Chatterjee, *Legal Aspects of International Drug Control*, (Leiden: Martinus Nijhoff Publishers, 1981).

Nations DCC Parties to elaborate, as drug-related offences must be defined, prosecuted and punished in conformity with the domestic laws of the Parties.

The 1962 Narcotics Convention prescribes a list of specific offences that the contracting Parties are obliged to criminalize within the bounds of their constitutional limitations. To avoid any gaps that may exist in the list, this Convention additionally provides a sweeping clause requiring Parties individually to treat as a criminal offence *any other action* that may, in their opinions, be 'contrary' to the Convention provisions.³⁷ The 1973 Psychotropics Convention, unlike the Narcotics Convention, does not enumerate specific offences but provides only a general formula requiring each Party to treat '*any action*' contrary to national laws that were adopted pursuant to Convention obligations as a criminal offence.³⁸ Thus, it leaves the Parties with wide discretion to define drug-related offences. Compared to the specific list of offences under the earlier Narcotics Convention, this general formula produced "little international standardization" in the criminalization of drug-related offences.³⁹ Therefore, the 1988 Trafficking Convention, the most recent of the DCCs, returns to an enumerated list of offences that the Parties are required to criminalize. In an innovative step, this Convention criminalizes diverse new forms of drug-related conduct to tackle illicit trafficking from different angles, especially drug-related money laundering. In addition, it establishes a number of mandatory offences that the Parties must criminalize irrespective of national constitutional limitations. As the offences listed under this Convention seem to cover all forms of drug-related offences, a supplementary catch-all clause requiring the Parties to criminalize *any* unlawful drug-related action was not included.

Vietnamese drug-related offences criminalized under the current CCV 1999 correspond well to the penal provisions of the DCCs. Table 4 sets out the

³⁷ *United Nations Single Convention on Narcotic Drugs* 520 UNTS 151 (opened for signature Mar. 30, 1961, entered into force 13 Dec. 1964) Art 36(1)(a).

³⁸ *United Nations Convention on Psychotropic Substances* 1019 UNTS 175 (opened for signature Feb. 21, 1971, entered into force Aug. 16, 1976) Article 22(1)(a)).

³⁹ N. Boister, *supra* note 36.

responses in Vietnamese criminal law to the DCC supply-related, consumption-related, inchoate and accessory offences. As can be seen from this Table, the CCV 1999 repeatedly combines several forms of conduct required under the DCCs to be described as criminal conduct to create a combined single Vietnamese offence. An example is the Vietnamese offence of "unlawful manufacture of narcotic substances," which covers a wide range of DCC-prescribed conduct, including production, manufacture, extraction and preparation of narcotic drugs and psychotropic substances. Another example is the Vietnamese combined offence of "unlawful stockpiling, transporting, trading or appropriating of narcotic substances," which covers the DCC-listed conduct of offering, offering for sale, distribution, purchase, sale, delivery by any means whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of narcotic drugs and psychotropic substances. In this manner, the CCV 1999 adopts a uniform and simple approach to criminalization.

The only gap in Vietnamese criminalization, compared to the benchmark of DCC-prescribed offences, is the omission of unlawful manufacturing of precursors (set out in the Trafficking Convention, Article 3). Thus, to bring the Vietnamese criminalization of drug-related offences completely in line with the DCCs, the CCV 1999 needs to be amended by the insertion of a new offence of "Unlawful manufacturing of precursors to be used for the illicit manufacture of narcotic substance" or the revision of the current offence of "Unlawful stockpiling, transporting, trading or appropriating of precursors to be used for the illicit manufacture of narcotic substances" to include manufacturing of precursors also.

The Trafficking Convention requires criminalization of only a few activities in relation to personal consumption, namely drug cultivation, possession and purchase.⁴⁰ Some of the Vietnamese offences go beyond the convention requirements when criminalizing consumption but they concern

⁴⁰ *United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances* 1582 UNTS 95 (opened for signature Dec. 20, 1988, entered into force Nov. 11, 1990), Art 3(2).

inducing consumption by others rather than personal drug use by the accused. The consumption-related crimes set out in the CCV 1999 are: (i) organising the illegal use by others of narcotic substances, (ii) hosting the illegal use of narcotic substances, and (iii) forcing or inducing another to illegally use narcotic substances. Thus, Vietnamese law goes beyond DCC compliance by criminalizing a considerably wider range of consumption-related offences than the DCCs require. As such, it could provide a “beyond compliance” reference model for the official UN Commentary on DCC implementation considerations.⁴¹

In general, the offences set out in CCV 1999 provide a remarkably strong legal basis for Vietnam to meet its criminalization obligations under the DCCs, falling short only in relation the omission of unlawful manufacturing of precursors.

C. Challenges for Judicial Enforcement

The new drug-related offences suffer from certain ambiguities that hinder their prosecution and enforcement in practice. These pose challenges particularly for judicial efforts to interpret and apply them consistently. It should be noted that judicial precedents are not a feature of the legal system. Vietnamese legislation, as a whole, is characterised by the main features of European civil law. Nevertheless, the People’s Supreme Court sitting in Council can issue resolutions that have binding effect for lower courts. Therefore, the People’s Supreme Court sitting in Council has extensive powers to issue address the challenges for judicial enforcement set out below.

First, the offence of “organizing the illegal use of narcotic substances” criminalizes instructing, managing or administrating another person’s illegal drug use, including intentionally providing premises for illegal drug use, but it lacks a precise description of the various active and mental elements of the

⁴¹ United Nations, *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988: Done at Vienna on Dec. 20, 1988* (New York: United Nations, 1998).

crime.⁴² Due to the consequent ambiguity, an arguable defence to the crime of "organizing" by a seller who also provides premises is that he or she did not actively and intentionally suggest and provide a place for the subsequent use of the narcotic substances. That is, a passive response to a customer's demand to use drugs at the place of sale remains only the crime of selling narcotic substances, rather than of also organising their illegal use.⁴³ Nevertheless, in practice, a seller who also passively permits drug abusers to use drugs at his or her premises is typically found guilty of the crime of "organizing the illegal use of narcotic substances."⁴⁴ To ensure that this is always the case, a People's Supreme Court Council resolution could be adopted to this effect.

Second, the CCV 1999 does not criminalize the production of counterfeit narcotic substances for the purpose of committing a fraud. This omission leads to doubts whether such counterfeit is a crime of fraud or of unlawful drug production. To create a consistent interpretation of the law in this case, further explanation and guidance by the People's Supreme Court is necessary.

Third, for several drug-related offences, i.e. "Unlawful manufacture of narcotic substances,"⁴⁵ "Unlawful stockpiling, transporting, trading or appropriating narcotic substances,"⁴⁶ and "Unlawful stockpiling, transporting, trading or appropriating precursors used in the illicit manufacture of narcotic

⁴² M. D. Nguyen, (Mot So Kien Nghi khi Huong Dan Ap Dung Mot So Dieu cua Bo Luat Hinh Su doi voi cac Toi Pham ve Ma Tuy) [Some Recommendations for Guiding the Application of Provisions of Several Articles on Drug-Related Crimes under the Criminal Code 1999] Toa An Nhan Dan, 5 (2000).

⁴³ D. D. Van, (Can giao quyet kip thoi mot so vuong mac khi ap dung phap luat trong viec giao quyet cac vu an ma tuy) [It is necessary to solve timely entanglements in the application of laws and regulations concerning drug-related crimes] Tap chi kiem sat, 4 (1998).

⁴⁴ D. D. Le, (Ve Hanh Vi Pham Toi To Chuc Su Dung Trai Phep Chat Ma Tuy) [Organizing the Illegal Use of Narcotic Substances] Luat Hoc, 2, at 3 (1999); T. M. Nguyen, (Toi Su Dung Trai Phep Chat Ma Tuy trong Bo Luat Hinh Su Viet Nam nam 1999) [The Crime of Illegal Use of Narcotic Substances under the Criminal Code of Vietnam 1999] Ban Tin Phong Chong Ma Tuy, 5 (2006).

⁴⁵ Criminal Code of Vietnam 1999, art. 193.

⁴⁶ *Id*, art. 194.

substances,”⁴⁷ the quantities of drugs involved are described in the CCV 1999 as an objective factor in sentencing. However, the legislation merely lays down a single scale of penalties from 20 years imprisonment up to the death sentence (see Table 3). It omits to specify the actual amounts of drugs corresponding to the twenty-year imprisonment, life imprisonment or death sentences.⁴⁸ Additionally, the CCV 1999 requires that, for the purpose of formulating a penalty in a case where a variety of different narcotic drugs have been trafficked, the quantities of different drugs shall be recalculated as if of one selected type. However, the law did not provide conversion rates between drug types, resulting in discrepancies in conversion approaches between different local courts.⁴⁹ The Council of the People’s Supreme Court has issued a resolution to cover these omissions, providing guidance on proportional penalties for local courts, as summarised in Table 5, and has determined that rates for conversion should be based on the respective minimum penalties laid down under for each narcotic drug in the CCV 1999.

Finally, as can be seen from Table 5, proportional relationships between penalties and drug quantities have been established only for offences concerning those narcotic substances most commonly trafficked in Vietnam, such as heroin, cocaine and opium. However, uncertainty remains as to rates of conversion for other substances also defined as narcotics in Vietnamese law, such as psychotropic drugs (Bui, 2004). Further, the proportional relationships between penalties and quantities cover only precursors in solid form, neglecting precursors in liquid form. A government circular issued in 2007 on the prosecution of drug-related crimes unfortunately does not provide legal guidance on these rates of conversion (Ministry of Public Security et al, 2007).

⁴⁷ *Id.* art. 195.

⁴⁸ V. L. Tran, (Ve Dinh Luong cac Chat Ma Tuy trong Luat Sua Doi, Bo Sung Mot So Dieu cua Bo Luat Hinh Su) [The Issue of Determining Quantity of Narcotic Substances Involved in Drug-Related Crimes under the Amended Criminal Code] Toa An Nhan Dan, 11, at 15 (1998).

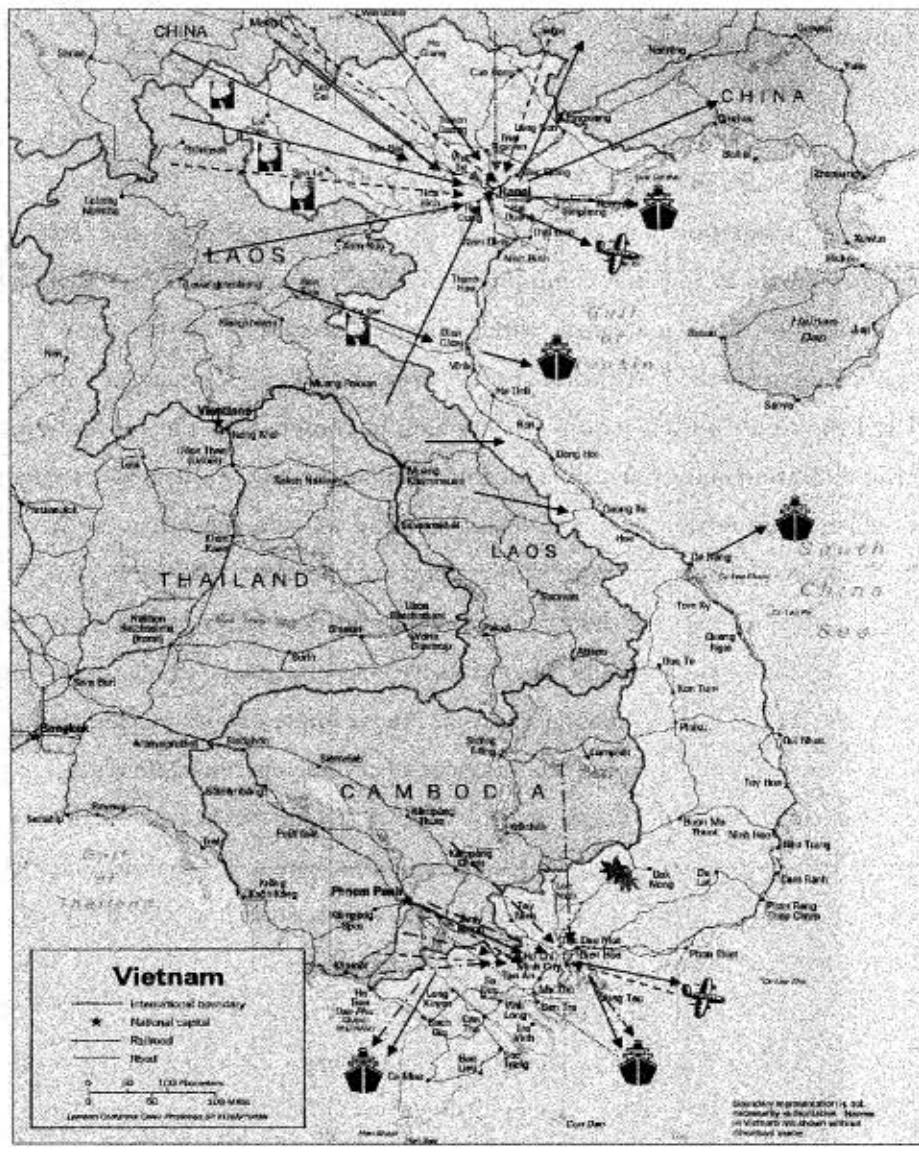
⁴⁹ D. T. Tran, (Ban ve tinh tiet "co tu hai chat ma tuy tro len") [Discussion on cases that "more than one type of narcotic substances are involved in drug-related offences"] Nha nuoc va phap luat, 12 at 54 (2003); V. L. Tran, *supra* note 47, at 15.

To ensure fair and consistent sentencing, further guidelines on proportional relationships between penalties and drug quantities for these narcotic substances are needed.

IV. CONCLUSION

The integration of Vietnam into the global economy and related improvements in regional communications and transportation over the past two decades have coincided with a sharp increase in drug abuse and trafficking in Vietnam. To combat illicit drug trafficking, Vietnam ratified the UN Drug Control Conventions in 1997 and, to comply with the conventional criminalization obligations, amended its criminal code to specify a wider range of illicit drug-related offences. These comply for the most part with the conventional obligations and, with regard to offences concerning personal drug abuse, go beyond them. Nevertheless, further minor refinements are necessary, as the unlawful manufacture of precursors remains to be criminalized. To remove ambiguities that hinder implementation, clarification is also necessary concerning the offences of producing counterfeit narcotics and of organising the illegal use of narcotics, and further elaboration is necessary concerning the proportional relations between penalties and the quantities of narcotic drugs trafficked. In conclusion, it is apparent that Vietnam's simple post-reunification laws concerning drug crimes have been transformed into a modern legal framework that criminalizes a wide range of aspects of drug trafficking. This development has occurred with dramatic rapidity in the past decade and is maturing through continuing refinements.

Figure 1 Opium and cannabis cultivation and main cross-border trafficking routes



Source: United Nations Offices on Drugs and Crime. (2003). *Vietnam: Country profile, 2003*. Retrieved 18 December, 2004, from

Table 1 Comparison of Drug-Related Cases before and after the 1986 "open door" ("Doi Moi") policy

Before 1986		Ten years later		% Increase
Years	Cases per annum	Years	Cases per annum	
1981	201	1991	190	95%
1982	215	1992	256	119%
1983	265	1993	904	341%
1984	125	1994	2778	2222%
1985	127	1995	2584	2035%
1986	82	1996	3813	4650%

Table 2 Drug-Related Cases and Criminals in the last five years, 2008 - 2012

Years	Cases		Arrests	
	Number	% Increase since 2008	Number	% Increase since 2008
2008	10171	100.00	13324	100.00
2009	10751	105.70	13957	104.75
2010	11198	104.16	14120	101.17
2011	12556	112.13	15515	109.88
2012	15016	119.59	18729	120.27

Table 3 Drug-related crimes and punishments under the 1999 Criminal Code
(Amended in 2009)

Crimes	Principal Penalties (gaol)				Additional Penalties (fine, confiscation and working prohibition)
	First penal scale (basic)	Second penal scale (serious)	Third penal scale (very serious)	Fourth penal scale (particularly serious)	
1. Cultivating opium poppy or other kinds of plant bearing narcotic substances (Article 192)	6 month s - 3 years	3 years - 7 years	Nil	Nil	Nil
2. Unlawful manufacturing of narcotic substances (Article 193)	2 years - 7 years	7 years - 15 years	15 years - 20 years	20 years, life imprisonment or death sentence	i) Fine: 5 mil VND - 500 mil VND ii) Confiscation of part or whole of properties iii) Prohibition on holding certain posts or practicing certain occupations or doing certain jobs for a period from 1 to 5 years

3. Unlawful stockpiling, transporting, trading or appropriating of narcotic substances (Article 194)	2 years - 7 years	7 years - 15 years	15 years - 20 years	20 years, life imprisonment or death sentence	i) Fine: 5 mil VND - 500 mil VND ii) Confiscation of part or whole of properties iii) Prohibition on holding certain posts or practicing certain occupations or doing certain jobs for a period from 1 to 5 years
4. Unlawful stockpiling, transporting, trading or appropriating of precursors used for illicit manufacture of narcotic substances (Article 195)	1 years - 6 years	6 years - 13 years	13 years - 20 years	20 years or life imprisonment	i) Fine: 5 mil VND - 50 mil VND ii) Confiscation of part or whole of properties iii) Prohibition on holding certain posts or practicing certain occupations or doing certain jobs for a period from 1 to 5 years
5. Unlawful manufacturing	1 years - 5	5 years - 10 years	Nil	Nil	i) Fine: 5 mil VND - 50 mil

ng stockpiling, transporting, trading or appropriating of equipment or tools used for the illicit manufacture of narcotic substances or illegal used of narcotic substances (Article 196)	years				VND ii) Confiscation of part or whole of properties iii) Prohibition on holding certain posts or practicing certain occupations or doing certain jobs for a period from 1 to 5 years
6.Organising illegal use of narcotic substances (Article 197)	2 years - 7 years	7 years - 15 years	15 years - 20 years	20 years, life imprisonment (death sentence was removed in 2009)	i) Fine: 50 mil VND - 500 mil VND ii) Confiscation of part or whole of properties iii) Probation or residence prohibition for a period from 1 to 5 years
7.Harbouring illegal use of narcotic substances (Article 198)	2 years - 7 years	7 years - 15 years	Nil	Nil	i) Fine: 50 mil VND - 200 mil VND ii) Confiscation of part or whole of properties
8.Illegal use of	This offence was removed in 2009				

narcotic substances (Article 199)					
9. Forcing or inducing others into illegal use of narcotic substances (Article 200)	2 years - 7 years	7 years - 15 years	20 years or life imprisonment	Nil	Fine: 5 mil VND - 100 mil VND
10. Breaching of the regulations on management and use of addictive drugs or other narcotic substances (Article 201)	Fine: 5 mil - 100 mil VND or 1 year - 5 years	5 years - 12 years	12 years - 20 years	20 years or life imprisonment	i) Fine: 5 mil VND - 50 mil VND ii) Prohibition on holding certain posts or practicing certain occupations or doing certain jobs for a period from 1 to 5 years
11. Legalising money or property generated from a crime (Article 251)	1 year - 5 years	3 years - 10 years	8 years - 15 years	Nil	i) Fine: up to 3-times of money or properties involved ii) Confiscation of properties iii) Prohibition on holding certain posts or practicing certain occupations or doing certain jobs for a period

					from 1 to 5 years
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* mil: million, VND: Vietnam Dong (Vietnamese currency). Source: The 1999

Criminal Code.

Table 4 Summary of Drug-Related Offences under the UN Drug Control Conventions and Responses by the Criminal Code of Vietnam 1999

1961 Narcotics Convention	1971 Psycho-tropics Convention	1988 Trafficking Convention	Criminal Code of Vietnam 1999	Vietnamese Compliance
Supply-Related Offences				
Cultivation of opium poppy, cannabis plant and coca bush (Article 36(1)(a))	No specific offence is provided	Cultivation of opium poppy, cannabis plant and coca bush for the purpose of production of narcotic drugs (Article 3(1)(a)(ii))	Cultivating opium poppy or other kinds of plant bearing narcotic substances* (Article 192)	Satisfactory
Production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation		Production, manufacture, extraction and preparation, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation	- Unlawful manufacturing of narcotic substances (Article 193) - Unlawful stockpiling, transporting, trading or appropriating of narcotic substances (Article 194)	Satisfactory (The CCV additionally criminalizes the appropriating of narcotic substances)

and exportation of narcotic drugs (Article 36(1)(a))	and exportation of narcotic drugs or psychotropic substances (Article 3(1)(a)(i))		
	Possession or purchase of narcotic drugs or psychotropic substances for the purpose of trafficking ((Article 3(1)(a)(iii)))	Unlawful stockpiling, transportin g, trading or appropriati ng of narcotic substances (Article 194)	Satisfactory
	Manufacture of precursors and essential chemicals, knowing that they are to be used in or for the illicit cultivation, production or manufacture of controlled substances (Article 3(1)(a)(iv))	Not proscribed	Gap
	Transport, distribution or possession of precursors and essential chemicals, knowing that they are to be used in or for	Unlawful stockpiling, transportin g, trading or appropriati ng of precursors* used for the	Satisfactory (The CCV additionally criminalizes the appropriating of precursors)

		the illicit cultivation, production or manufacture of controlled substances (Article 3(1)(a)(iv) and Article 3(c)(ii))	illicit manufacture of narcotic substances (Article 195)	
		Manufacture, transport, distribution or possession of equipment, materials, knowing that they are to be used in or for the illicit cultivation, production or manufacture of controlled substances (Article 3(1)(a)(iv) and Article 3(c)(ii))	Unlawful manufacturing, stockpiling, transporting, trading or appropriating of equipments or tools to be used for the illicit manufacture of narcotic substances or illegal use of narcotic substances (Article 196)	Satisfactory (the CCV additionally criminalizes the appropriating of equipment or tools)
		Organisation, management or financing of any supply-related offence (Article 3(a)(v))	Accessory offences (Article 20)	Satisfactory

		Money-laundering offences (Article 3(b))	Legalising money or property generated from a crime (Article 251)	Satisfactory
		Acquisition, possession or use of property, knowing, at the time or receipt, that such property was derived from an supply-related offence or from an act of participation in such an offence (Article 3(c)(i))	Harbouring or consuming of illicit property that others obtained from the commission of a crime (Article 250)	Satisfactory

Consumption-Related Offences

Not expressly required	Not expressly required	Possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption (Article 3(2))	- Cultivating opium poppy or other kinds of plant bearing narcotic substances (Article 192); - Unlawful stockpiling, transporting, trading	Satisfactory
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			or appropriating of narcotic substances (Article 194);	
			Illegal use of narcotic substances (Article 199) (In 2009, this offence was abolished)	Extra (Not required by the Conventions)
			Organising the illegal use of narcotic substances (Article 197)	Extra (Not required by the Conventions)
			Hosting the illegal use of narcotic substances (Article 197)	Extra (Not required by the Conventions)
			Forcing or inducing another to illegally use narcotic substances (Article 200)	Extra (Not required by the Conventions)
Inchoate and Accessory Offences				
International participation in, conspiracy to commit	International participation in, conspiracy to	Participation in, association or conspiracy to	- Accessory offences (Article 20)	Satisfactory

<p>and attempts to commit, any drug-related offences, and preparatory acts and financial operations in connexion with drug-related offences (Article 36(2)(a)(ii))</p>	<p>commit and attempts to commit, any drug-related offences, and preparatory acts and financial operations in connexion with drug-related offences (Article 22(2)(a)(ii))</p>	<p>commit, attempt to commit and aiding, abetting, facilitating and counseling the commission of any drug-related offence (Article 3(1)(c)(iv))</p>	<ul style="list-style-type: none"> - Attempt (Article 18) - Preparing the commission of a crime (Article 17) 	
		<p>Publicly inciting or inducing others, by any means, to commit any drug-related offence or to use narcotic drugs or psychotropic substances illicitly (Article 3(1)(c)(iii))</p>	<p>Accessory offences (Article 20)</p>	<p>Some differences in the ambit of the Convention and the Vietnamese offences.</p>

Table 5 Penalties applicable to drug-related offences in relation to the quantities of drugs

Narcotic substances	20 years	Life imprisonment	Death sentence
Opium resin, cannabis resin, cocaine glue	5 kg - < 10 kg	10 kg - < 20 kg	≥ 20 kg
Heroin or cocaine	100 mg - < 300 mg	300 mg - < 600 kg	≥ 600 mg
Cannabis leaf, flowers and seeds	75 kg - < 200 kg	200 kg - < 600 kg	≥ 600 kg
Opium poppy dried seeds	600 kg - < 1500 kg	1500 kg - < 4500 kg	≥ 4500 kg ≥ 1200 kg
Opium poppy fresh seeds	150 kg - < 400 kg	400 kg - < 1200 kg	
Other narcotic substances in solid form	300 gm - < 900 gm 750 ml - < 2000 ml	900 gm - < 2500 gm 2000 ml - < 5000 ml	≥ 2500 gm ≥ 5000 ml
Other narcotic substances in liquid form			

Precursors	≥ 1200 gm	Not imposed
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Source: Resolution 01/2001/NQ-HDTP of the Council of the People's Supreme Court on guiding the application of articles 139, 193, 194, 278, 279 and 289 of the 1999 Criminal Code.

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