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## Italian and American Cooperative Efforts to Reduce Heroin Trafficking: A Role Model for the United States and Drug-Supplying Foreign Nations

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# Italian and American Cooperative Efforts to Reduce Heroin Trafficking: A Role Model for the United States and Drug-Supplying Foreign Nations

## I. Introduction

During President Ronald Reagan's Administration, Americans continuously heard the slogan from the White House "Just Say No [to drugs]."<sup>1</sup> While the "Just Say No" campaign was aimed at raising awareness of the need to combat, through demand reduction, the high level of American narcotics *consumption*, the United States must also embark upon a concrete program to lower the large *supply* of narcotics into America.<sup>2</sup> According to statistics, by 1987, approximately 95% of the narcotics consumed in the United States came from outside American borders.<sup>3</sup> The large amount of illegal narcotics entering the United States from foreign sources shows the enormity of the demand for such drugs in this country. The influx of illegal drugs, however, is not merely a demand-side problem; it is

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1. *National and International Security Threat of Narcotics Trafficking: Hearings on S.961-1 Before the Senate Caucus on Int'l Narcotics Control*, 100th Cong., 1st Sess. 19 (1987) [hereinafter *Int'l Security Threat*] (statement of Benjamin Ward, Police Commissioner for the City of New York). See also United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 19, 1988, reprinted in *Message from The President of the United States Transmitting S.385-4*, 101st Cong., 1st Sess. iii-iv (1989) [hereinafter *Convention*] (letter of transmittal from President George Bush to the United States Senate). In President Bush's letter advising the Senate to ratify the Convention, the President illustrates his recognition of the need to control the supply of drugs to correct the drug addiction problem in the United States.

2. *Int'l Security Threat*, *supra* note 1, at 19. Even though some experts place an emphasis on demand reduction through prevention and education as the eventual solution to the drug problem, other commentators also recognize the need to stop the "flood of illegal drugs" entering the United States. *International Drug Enforcement Act: Hearings on H.781-15 (H.R. 5310—The International Drug Traffic Enforcement Act of 1986) Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 99th Cong., 2nd Sess. 53 (1986) (statement of the Honorable Wyche Fowler, Jr., Representative from Georgia advocating a supply-side solution to the drug problem). For views on the demand-side solution, see *Review of the International Narcotics Control Strategy Report—Midyear Update: Hearings on H.381-11 Before the Comm. on Foreign Affairs*, 100th Cong., 1st Sess. 38 (1987) and *The Worldwide Drug Situation and Int'l Narcotics Control Programs: Hearings on H.381-53 Before the Comm. on Foreign Affairs*, 100th Cong., 1st Sess. 49 (1987) [hereinafter *Worldwide Drug Situation*] (statement of the Honorable David L. Westrate, Assistant Administrator for Operations, Drug Enforcement Administration).

3. *Status Report on GAO's Worldwide Review of Narcotics Control Programs: Hearings on H.381-1 Before the Comm. on Foreign Affairs*, 100th Cong., 1st Sess. 3 (1987) (statement of Joseph E. Kelley, Associate Director, National Security and Int'l Affairs Division, U.S. General Accounting Office).

also a supply-side problem. The commendable efforts to reduce the demand for drugs in the United States should not lead us to ignore the fact that in order to deal effectively with the drug problem, the supply of imported narcotics also must be lowered and eventually eliminated. The American and Italian governments' joint efforts to reduce heroin exportation to and consumption in the United States is an illustrative case of how substance abuse has been attacked from the supply side.

Because the amount of heroin imported into the United States had begun to rise significantly in the 1980s from originally moderately low levels in the mid-to-late-1970s, the heroin flow into this country is an excellent example of an American narcotics control problem which needed to be solved.<sup>4</sup> During the first half of the 1980s, a major source of such heroin imported into the United States was, undisputedly, the Sicilian Mafia which "control[led] not only the importation but also the distribution networks for heroin."<sup>5</sup> A description of the Sicilian Mafia's attempts to transport heroin to the United States and of the American and Italian governments' efforts to stop such illegal drug trafficking, illustrates a program which proved to be successful in combatting international narcotics trafficking in this isolated instance of inter-governmental cooperation. Though this success has been largely overshadowed in the news media by Columbia's continued shipments of cocaine to the United States, the American/Italian response to the Sicilian Mafia heroin problem remains a viable solution. Furthermore, the success of the American and Italian program, as well as the continuing influx of drugs into the United States from other foreign countries, suggest that the United States should use this program as a role model to slow down, if not halt, the importation of drugs.

The purpose of this Comment is to examine the role of the Sicilian Mafia in transporting heroin to the United States as well as to evaluate the combined efforts of the American and Italian governments in their attempt to end the heroin problem.<sup>6</sup> Section II will

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4. *The Sicilian Connection: Southwest Asian Heroin En Route to the United States: Hearings on S.382-23 Before the Comm. on Foreign Relations and the Comm. on the Judiciary*, 96th Cong., 2d Sess. 1 (1980). (Senator Joseph Biden, based on his April 1980 study mission to Turkey, Greece, and Italy, states that by 1980 Southwest Asia supplied large amounts of heroin to the United States and that such levels had not been prevalent in this country since the French sent massive amounts of heroin to the United States in the early 1970s.) See also *Int'l Security Threat*, *supra* note 1, at 66 (Federal Bureau of Investigation (FBI) National Drug Strategy Report reveals that, during the 1980s, Mexico has increased its shipments of heroin to the United States).

5. *Int'l Security Threat*, *supra* note 1, at 66 (statement from the FBI National Drug Strategy Report).

6. This Comment's concentration on the Sicilian Mafia's efforts to export heroin to the United States does not mean to imply that all of the Mafia's heroin is sent to the United States. The Mafia's heroin which remains and is consumed in Italy is not within the scope of this Comment. For information on heroin use and addiction in Italy, which is the leading drug

explore the background of the Mafia heroin shipments to the United States, including the Mafia's method of transporting heroin into America and the impact of trafficking such large amounts of heroin. Section III will examine the cooperative programs such as delegations and the bilateral treaty between Italy and the United States, and will evaluate the effectiveness of such efforts. Finally, Section IV will discuss the needs for and the benefits of utilizing the Italian-American program as a role model in combatting the international drug trafficking problems between other countries and the United States.

## II. Background of the Sicilian Mafia's Exportation of Heroin to the United States

In the early decades of the twentieth century, the Sicilian Mafia established its own international network for the distribution of tobacco.<sup>7</sup> This network consisted of laboratories to process the tobacco, and contacts that the Mafia set up in the various countries to sell the tobacco, to collect the proceeds, and to send the money back to the Mafia.<sup>8</sup> Tobacco selling was very appealing to the Sicilian Mafia because such business was extremely profitable at the time. When the Mafia realized that it could make more money by selling heroin than by smuggling tobacco, it began to use the tobacco network scheme for the production and sale of heroin.<sup>9</sup>

Within this international heroin network, the Sicilian Mafia bought the morphine base product from the Asian countries of Iran, Afghanistan, and Turkey and shipped the product to secret refining laboratories in Italy.<sup>10</sup> After the Organization refined the morphine base into heroin, the Mafia sent the heroin to the Group's contacts in the United States.<sup>11</sup> In the 1960s, the Sicilian Mafia sent several of its members to the United States for the sole purpose of "coordinat-

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abuse problem in that country, see generally *International Narcotics Control Study Mission to Italy: Hearings on H.962-7 Before the Select Comm. on Narcotics Abuse and Control*, 98th Cong., 1st Sess. 187 (1984) [hereinafter *Int'l Narcotics Control*].

7. *Int'l Security Threat*, *supra* note 1, at 32 (statement from the Honorable Giovanni Falcone, Magistrate of Palermo, Italy).

8. *Id.* at 32, 34. The chart illustrating the Sicilian Mafia's distribution network for the sale of heroin in the United States in the late 1970s and early 1980s has the same general, principal structure as the earlier distribution network for the sale of tobacco. *Id.*

9. *Organized Crime Activities and Law Enforcement Response—25 Years After Valachi: Hearings on S.401-14 Before the Permanent Subcomm. on Investigations of the Senate Comm. on Governmental Affairs*, 100th Cong., 2d Sess. 54 (1988) [hereinafter *Organized Crime Activities*] (statement of Tommaso Buscetta, former member of the Porto Nuova Sicilian Mafia Family, Palermo, Sicily). The Sicilian Mafia is also referred to as the Organization and the Group in this Comment.

10. *Int'l Security Threat*, *supra* note 1, at 35 (statement of Mr. Frech, investigator in the Sicilian Mafia's trafficking of heroin into the United States).

11. *Id.*

ing the importation of heroin."<sup>12</sup> Upon receiving the refined heroin, these contacts sold it in the United States, collected the payment in bills of small denominations, and laundered the money through American investment firms.<sup>13</sup> The money travelled to Switzerland and then back to Italy, where the Sicilian Mafia took the money and used some of these funds to pay back the countries who originally supplied the morphine base product.<sup>14</sup>

The success of this international heroin network scheme can be shown in an early 1980s investigation referred to only as the Pizza Connection Case by congressional hearing witnesses.<sup>15</sup> During the early 1980s, the Mafia collected approximately \$60 million in proceeds from heroin sales in the United States, one-third of which was laundered through two major American investment firms.<sup>16</sup> Between March and April 1982, one of the firms became suspicious when people began walking in with suitcases filled with cash that totalled \$4.9 million in fives, tens, and twenties of "dirty, dog-eared money"<sup>17</sup> taken in from heroin sales.<sup>18</sup> Consequently, in April 1982, besides reporting the incident to the Federal Bureau of Investigation (FBI), the firm also "politely and firmly"<sup>19</sup> asked Della Torre, one of the Sicilian Mafia's contacts in the United States who was laundering the drug money through the first firm, to take his business to another firm.<sup>20</sup> Upon transferring the account to a second major investment house, the Sicilian Mafia passed approximately \$15.6 million in cash through this second firm to the Mafia's Swiss bank account.<sup>21</sup>

In September 1982, the FBI and the United States Customs Service "discovered that Della Torre was depositing that \$15.6 million into these accounts at [the second firm]"<sup>22</sup> during their investigation resulting from the first firm's tip. Despite being served a subpoena from the United States Attorney's Office requesting information on these accounts and a non-disclosure letter ordering the second firm not to notify the client that the government was actively investigating the matter, the second firm "immediately notified the client in Switzerland."<sup>23</sup> After \$60 million worth of heroin entered the United States from Italy between 1980 and 1984 in the

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12. *Id.*

13. *Id.* at 35-36.

14. *Id.*

15. *Id.* at 33.

16. *Id.* at 35.

17. *Id.* at 36.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at 36-37.

Pizza Connection Case, thirty-five defendants were eventually convicted.<sup>24</sup> Although only some defendants were actually convicted in the Pizza Connection Case, this particular operation reveals that the Sicilian Mafia's international heroin network was highly sophisticated. Only a well-managed scheme could have enabled the Mafia to transport such a large amount of heroin into the United States over a long period of time.

Two factors in particular—the help of La Cosa Nostra (LCN), the American Mafia, and the Sicilian Mafia's use of intimidation—allowed the Sicilian Mafia to set up a complex international scheme to transport heroin into the United States. A Sicilian Mafia member stated:

it would be impossible . . . for the Sicilian Mafia to run drug traffic involving hundreds of kilos of cocaine or heroin in the United States without the local Mafia knowing about it because in order to sell it here [in the United States] they would have to have authorization and consent from the local Mafia. This is the way all of the Mafia activities are operated between one country and another. You have to have the authorization and blessing of the local Mafia.<sup>25</sup>

If any member of the Sicilian Mafia attempted to traffic heroin in the United States without the consent of the local Mafia, the Sicilians would be subject to punishment, including death.<sup>26</sup> Thus, the local Mafia's consent and authorization of the Sicilian Mafia's trafficking heroin to the United States contributed to the Sicilian Mafia's ability to pursue its illegal activity in this country.

Furthermore, the Mafia used death and intimidation to prevent opponents from giving information to law enforcement officials that would be damaging to the Organization. According to a confirmed Sicilian Mafia member, there were "over 400 Mafia killings in Palermo, [Italy]"<sup>27</sup> between 1981 and 1983. These killings served two purposes. First, such killings disposed of anyone who had sufficient knowledge of the Organization's activities and who showed a desire or an inclination to give such information to law enforcement authorities. Second, the killings served as a reminder to anyone who contemplated revealing the Mafia's activities to the authorities that such admissions would lead to his own murder. Thus, the deadly and intimidating actions of the Mafia as well as the LCN's consent to the Sicilian Mafia's heroin trafficking efforts allowed the Sicilian

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24. *Id.* at 35. See also *Organized Crime Activities*, *supra* note 9, at 49.

25. *Organized Crime Activities*, *supra* note 9, at 58 (statement of Tommaso Buscetta, Sicilian Mafia member).

26. *Id.* at 59.

27. *Id.* at 54 (statement of Tommaso Buscetta, Sicilian Mafia member).

Mafia the opportunity to use its elaborate international network to transport heroin to the United States.

Precisely when this heroin trafficking began is uncertain. Many of the older members of the Sicilian Mafia Family believe that the Organization did not change its primary business from tobacco smuggling to heroin trafficking "until about 1977 or 1978."<sup>28</sup> However, some evidence suggests that the Sicilian Mafia has been smuggling illegal drugs into the United States since the 1920s when the Organization began smuggling tobacco.<sup>29</sup> Additional evidence indicates that the Mafia was able to obtain large amounts of heroin from French sources to ship to the United States between 1950 and 1972.<sup>30</sup> The evidence, based on congressional studies of historical data indicating earlier origins of heroin smuggling into the United States, is more persuasive than testimony from older Mafia members who try to place the blame on the younger members. Despite the dispute as to the precise date of commencement, the two opposing views can be reconciled to some extent. While heroin from France dropped off in the early 1970s, the Sicilian Mafia could have begun in the late 1970s to traffic heroin again to the United States. However, the more recent shipments contained heroin whose base products originated in Southwest Asia,<sup>31</sup> not France.

Thus, by utilizing laboratories and foreign contacts established from earlier tobacco smuggling activities and by setting up new and additional contacts in the international narcotics trafficking scheme, the Sicilian Mafia was able to begin shipping heroin, whose raw product originated in Southwest Asia, to the United States in the 1970s. The Sicilian Mafia's total commitment to drug trafficking resulted in high volumes of heroin imported into the United States. By 1979 or 1980, "well over 50 percent of the heroin coming into the [United States] came through the Sicilian connection, and some of the American organized crime families."<sup>32</sup> By the early 1980s, it was evident that something had to be done to correct this problem.

### III. Evaluation of Cooperation Between the American and Italian Governments

Despite these on-going drug trafficking activities between Italy

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28. *Id.* at 59. Angelo Lonardo, former Underboss of the Cleveland Cosa Nostra (La Cosa Nostra is the American Mafia Family) corroborated Buscetta's approximate date of the beginning of the Sicilian Mafia's heroin trafficking when Lonardo said that LCN started dealing with narcotics in the "late sixties or seventies" when greedy younger Family members went "into narcotics without the knowledge of the Families." *Id.* at 84, 91, and 92.

29. *Int'l Narcotics Control*, *supra* note 6, at 195 (statement from the House Select Committee's report based on the Committee's visit to Italy).

30. *Id.*

31. *See supra* note 10 and accompanying text.

32. *Int'l Security Threat*, *supra* note 1, at 28.

and the United States, a problem which is not as highly publicized in the news media as the drug trafficking problems with Columbia and other South American countries, the governments of both Italy and the United States have been making efforts to stop the illegal activity. Specifically, officials from both governments have met to discuss the ways in which their countries can work together to effectively combat the heroin trafficking problem. The International Narcotics Control Study Mission to Italy in 1984 illustrates the high degree of commitment by both countries to a joint effort aimed at ending the Mafia's heroin trafficking scheme.<sup>33</sup> Furthermore, the two governments have also signed a bilateral treaty that includes stringent provisions to prosecute drug traffickers.<sup>34</sup> Finally, the United States Drug Enforcement Administration (DEA) has continuously helped the Italian law enforcement authorities find members of the culpable organization, the Sicilian Mafia, who are engaged in the transportation of heroin to the United States.<sup>35</sup> Thus, a variety of specific events illustrate extensive collaboration exhibited between the two countries.

#### A. *An Historical Perspective of Italian-American Cooperation*

The Italian and American governments have historically enjoyed a strong common commitment to working together to solve the heroin trafficking problem faced by both nations. No recorded date of the first incidence of cooperation between the two countries, though, exists. For example, the first time American and Italian officials discussed the possibility of sending American investigators to Italy to help the Italian law enforcement authorities find drug traffickers and gather sufficient evidence to prosecute such violators of the law is not known. However, Italian-American cooperation most likely began to increase significantly during the late 1970s or the very beginning of the 1980's when both the Italian and American governments were discovering that the Sicilian Mafia was transporting unprecedented amounts of heroin into the United States.<sup>36</sup>

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33. See *infra* notes 37-45 and accompanying text.

34. See *infra* notes 46-84 and accompanying text.

35. See *infra* notes 85-103 and accompanying text.

36. *Int'l Security Threat*, *supra* note 1, at 30-31. Giovanni Falcone, Magistrate of Palermo, Italy, revealed to the Senate Caucus on International Narcotics Control that while "American authorities in the United States . . . [were taking] a close look at Mafia members whose roots and whose activities could be traced back to the Mafia in Sicily, . . . Italian authorities in Sicily were conducting a series of negotiations having to do with Mafia activities." *Id.* at 30.

Thus, at the same time American authorities were investigating the people in the United States connected with the Sicilian Mafia, the Italian authorities were uncovering "the movement of narcotics, certain laboratories for the refinery of narcotics . . . in Sicily." *Id.* at 31. The Italian and American governments then determined that the complexity of the Sicilian Mafia operation demanded that they work together. *Id.*



Two specific events involving the Italian and American governments illustrate the high level of commitment existing between both nations. First, in 1984, four members of the House Select Committee on Narcotics Abuse and Control and four other Members of Congress visited Italian officials in Italy for two days to discuss the extent of the two countries' heroin trafficking problem at that time, and the ways in which both nations might work together to combat the problem.<sup>37</sup> Specifically, officials from both countries discussed the need for American assistance in the "use of undercover police officers in obtaining evidence of drug trafficking; witness protection services; and the use of controlled deliveries of illegal narcotics to purchasers."<sup>38</sup> Thus, in the mid-1980's, both governments continued to work together to develop effective methods of cooperation that would help the two nations combat the heroin trafficking problem.

Second, during the Select Committee's visit to Italy in 1984, Italian and American officials discussed the establishment of a "joint cabinet-level committee on narcotics and organized crime."<sup>39</sup> Within this committee, the United States Attorney General "will head the [American] delegation,"<sup>40</sup> and the Italian Minister of the Interior will be in charge of the Italian group.<sup>41</sup> The Italian Minister of the Interior and Vice Prime Minister expressed their desire to create an effective program that would allow the committee members an opportunity to study the effectiveness of the joint effort and the need for any changes.<sup>42</sup> Both nations, therefore, had the goal of creating a decision-making committee rather than simply a discussion group.<sup>43</sup> Unfortunately, recent congressional hearing reports are devoid of information concerning any successes this joint cabinet-level committee has achieved.

Although Italian-American cooperative efforts were prevalent from the late 1970s or early 1980s, the extent of collaboration appears to have leveled off by the mid-1980s. No new bilateral treaties or agreements have been signed between the two countries. Furthermore, any new congressional legislation regarding American efforts to combat drug trafficking problems with foreign countries does not include Italy. For example, even though the International Cooperation Act of 1989 calls for American assistance to many Latin American and Caribbean countries and even to some European countries,

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37. *Int'l Narcotics Control*, *supra* note 6, at 111, 120.

38. *Id.* at 193 (statement of Italian Justice Minister Mino Martinazzoli).

39. *Id.* at 121.

40. *Id.* at 187.

41. *Id.*

42. *See supra* note 38 and accompanying text. *See also Int'l Narcotics Control*, *supra* note 6, at 192.

43. *Id.* (statement of the Italian Minister of the Interior Luigi Scalfaro).

the Act does not mention Italy as a recipient of American assistance.<sup>44</sup> Thus, no new cooperative programs have been exercised between the two countries, perhaps because the early to mid-1980s programs and agreements, having proved successful in combatting the heroin trafficking problem from Italy to the United States, do not necessitate any additional programs.<sup>45</sup>

### *B. Analysis of the Mutual Legal Assistance Treaty with Italy*

On November 9, 1982, the United States signed the Mutual Legal Assistance Treaty (Treaty) with Italy.<sup>46</sup> Less than two years later, in mid-1984, the two nations' legislative bodies ratified the Treaty.<sup>47</sup> By 1985, the Treaty was in force.<sup>48</sup> This Treaty, which is not only desirable as a method for combatting international heroin traffickers but is also a legal document, contains two major innovations.<sup>49</sup>

#### *1. Constitutionality of the Compulsion-of-Witnesses Provision.—*Article 15 of the Treaty provides that:

upon request, a requested country is obligated to obtain an order compelling a person to appear and testify in a proceeding in the requesting country if: the requested country has no reasonable basis for denying the request; the person's testimony could be compelled in connection with an investigation or proceeding being conducted by that country in similar circumstances; and the Central Authority of the requesting country certifies that the person's testimony is relevant and material.<sup>50</sup>

A requesting country is the state submitting the request for compul-

44. *Foreign Aid Programs: Hearings on H.383-6 (H.R. 2655—International Cooperation Act of 1989) Before the Comm. on Foreign Affairs, 101st Cong., 1st Sess. ii-v (1989)* [hereinafter *Int'l Cooperation Act*].

45. See *infra* notes 104-20 and accompanying text.

46. See *Treaty with the Italian Republic on Mutual Assistance in Criminal Matters: Message from the President of the United States Transmitting Treaty Document 98-25 to the U.S. Senate, 98th Cong., 2d Sess. ii (1984)*. See also UNPUBLISHED AND UNNUMBERED TREATIES INDEX 1988, at 84 (1989) [hereinafter UNPUBLISHED TREATIES]. See also Nadelmann, *Negotiations in Criminal Law Assistance Treaties*, 33 AM. J. COMP. L. 467, 494 (1985) [hereinafter Nadelmann].

47. Nadelmann, *supra* note 46, at 494.

48. The Treaty has been in force since 1985, except for article 18, para. 2 which has not yet been adopted. UNPUBLISHED TREATIES, *supra* note 46, at 84.

49. Article 15 of the Treaty allows for the compulsion of witnesses for testimonial purposes and article 18, the forfeiture clause, enables each country to freeze assets which are planned to be given to the other country for the investigations and prosecutions of illegal drug trafficking cases. *Legislation Aimed at Combatting International Drug Trafficking and Money Laundering (S.962-4): Staff Report for the Senate Caucus on International Narcotics Control*, 100th Cong., 1st Sess. 20 (1987).

50. *Legislation Aimed at Combatting International Drug Trafficking and Money Laundering (S.962-4): Executive Report on Mutual Legal Assistance with Italy Before the Senate Caucus on International Narcotics Control*, 100th Cong., 1st Sess. 186, 194 (1987) [hereinafter *Executive Report*].

sion of appearances of witnesses. A requested country is the nation which receives the request and who must then "issue subpoenas, search warrants, and other orders necessary to the execution of a request."<sup>51</sup> If the three preconditions of article 15 are met, the requested state would be required to compel its citizen-witness to testify in the requesting state even if the witness does not consent.<sup>52</sup> If, however, "a witness . . . fails to appear pursuant to such an order, . . . [he or she] is subject to the same sanctions under the laws of the requested country as would be applicable if that witness failed to appear in a criminal proceeding in that country."<sup>53</sup> Such a witness is not subject to any legal sanctions of the requesting country.<sup>54</sup>

An inherent problem exists in the Treaty's sanction provisions. Under the current Treaty, a witness who fails to testify in a requesting country's drug enforcement proceeding can be punished according to the laws of his own nation but cannot be sanctioned by the requesting country. Consequently, a situation could conceivably arise in which American and Italian witnesses who fail to testify in the other country's proceedings actually receive disproportionate sentences. For example, an American witness who refuses to testify in an Italian proceeding may, under American laws, incur a stiffer penalty than an Italian witness who fails to testify in an American court, would incur under Italian law. To account for this potential disparity in sanctions due to dissimilar laws and legal systems in each of the two countries, the Treaty should have provided a stipulated set of uniform sanctions applicable to any citizen who refuses to testify in the other country's proceedings. In this way, witnesses who refuse to testify would receive the same punishment, regardless of their nationality.

Moreover, the current Treaty stipulates that not only is a foreign witness who refuses to testify immune from sanctions of a requesting country, such a witness actually has specific rights against the requesting country.<sup>55</sup> Article 17 of the Treaty specifically mandates that:

a person appearing before an authority in the requesting country pursuant to a request may not be sued civilly in, or be detained by, the requesting country for any act or conviction which preceded departure from the requested country (except insofar as such person was in custody in the requested country and was transferred pursuant to Article 16).<sup>56</sup>

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51. *Id.* at 189.

52. Nadelmann, *supra* note 46, at 194.

53. *Executive Report*, *supra* note 50, at 194.

54. *Id.*

55. *Id.* at 195.

56. *Id.*

Because a foreign witness who refuses to testify in a requesting country's drug enforcement proceeding is not subject to sanctions in that nation and also has the right not to be sued civilly in or be detained by that nation, a refusing witness unjustly appears to have more rights against the requesting country than that state has against the witness. If a requested country has laws which are not very stringent, a citizen-witness may decide that that penalty is worth not testifying in the requesting country, especially because the witness cannot be sued in or be detained by the requesting state. Therefore, along with providing a uniform set of sanctions for Italy and the United States to use against their citizens who fail to testify in the other country's proceedings, the Treaty should also have given the foreign witness some incentive to testify in the other country. With the addition of such provisions, two immediate defects in the Treaty can be corrected.

(a) *United States Constitution*.—Despite the inherent problems with the compulsion-of-witnesses provision in the Treaty, this provision is constitutional in the United States. The drafters of the Italian-American Treaty based article 15 on their desire to provide “a country investigating and/or prosecuting a serious criminal offense with the ability to obtain the compulsory appearance and testimony, before its grand juries and courts, of witnesses located in foreign countries.”<sup>57</sup> In *New York v. O'Neill*, the United States Supreme Court upheld Florida's Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings,<sup>58</sup> and ruled that the concept of compulsory appearance at the interstate level is constitutional.<sup>59</sup>

The *O'Neill* reasoning for upholding the constitutionality of witness compulsion on the interstate level is applicable to a similar mandatory requirement on the international level.<sup>60</sup> First, because the Treaty, like the interstate compulsory witness requirement, requires only a temporary restriction on freedom of movement which is outweighed by the authorization of reciprocal ability of witness compulsion, the Treaty is constitutional under the United States Constitution. The Supreme Court ruled in *O'Neill* that the obligation to go to another state to give testimony operates as a restriction on the exercise of the claimed constitutional right “to ingress and egress [which] is a privilege of national citizenship protected by the Four-

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57. *Id.*

58. Cited in *New York v. O'Neill*, 359 U.S. 1 (1959).

59. The Court ruled that an Illinois citizen attending a convention in Florida could be transported to New York to testify in a grand jury proceeding in New York. *New York v. O'Neill*, 359 U.S. 1, 3, 11, 12 (1959).

60. *Executive Report*, *supra* note 50, at 195.

teenth Amendment.”<sup>61</sup> However, the Court reasoned that the type of freedom to travel involved in *O’Neill* was not even “freedom of travel in its essential sense”<sup>62</sup> because it represents only “a temporary interference with voluntary travel . . . [especially] so in an era of jet transportation when vast distances can be traversed in a matter of hours.”<sup>63</sup> Thus, in upholding the constitutionality of the compulsion of witnesses on an interstate basis in *O’Neill*, the Supreme Court ruled that a witness’ obligation to testify in any American state is a temporary, but valid, restriction on the witness’ freedom to choose which state he enters and exits.

In the Italian-American Treaty, the inconvenience that American citizens might suffer by being compelled to travel to Italy to testify in Italian proceedings is “not significantly different”<sup>64</sup> from the restriction on American citizen’s freedom to choose which state to travel to and when to enter and leave that state.<sup>65</sup> Just as the obligation to testify is a valid restriction on freedom of movement on the interstate level, such an obligation is also a bona fide restriction on freedom of movement on the international level. However, the inconvenience of travel restrictions for American citizen-witnesses is more than offset by the “reciprocal ability of the United States to obtain the compelled appearance and testimony of a noncitizen or nonresident witness in connection with criminal investigations and proceedings in the United States—an ability which will further enhance the fairness of United States criminal trials.”<sup>66</sup> Therefore, on an international basis, the compulsion of American citizens to testify in Italian criminal proceedings is a temporary, but valid, interference with movement and is offset by the compulsion of Italian citizens to testify in the United States.

The second basis for constitutionality of article 15’s stipulation of compulsory appearance of witnesses is the Treaty’s provision of more due process rights to witnesses than the United States’ interstate compulsory witness role. This foundation allows the Treaty to remain a document which is constitutional according to the United States Constitution. In upholding the constitutionality of compulsory witness appearance on an interstate basis, the Supreme Court in *O’Neill* ruled that although a witness may be compelled to testify in a state of which he is not a resident, that witness will be given “procedural due process in the hearing itself . . . , and this is firmly

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61. *New York v. O’Neill*, 359 U.S. 1, 6 (1959).

62. *Id.* at 7.

63. *Id.*

64. *Executive Report*, *supra* note 50, at 196.

65. *Id.*

66. *Id.*

established."<sup>67</sup>

The Italian-American Treaty grants testifying citizens even more due process guarantees than does the interstate compulsory witness requirement.<sup>68</sup> For example, both the interstate-compulsory-witness requirement and the Treaty allow such compulsion orders to be dismissed if the orders are unreasonable and oppressive, and both grant safe conduct to testifying witnesses in the requesting country or American state.<sup>69</sup> Although the interstate compulsory witness requirement does not go any further, the Treaty additionally grants witnesses immunity for "any truthful testimony given in the requesting country pursuant to a request."<sup>70</sup> Thus, because the Supreme Court found no violation of due process rights under Florida's interstate-compulsory-witness requirement, the present Treaty between the United States and Italy, which grants even more due process protection than what the Supreme Court upheld on the interstate level, provides "sufficient protections to such persons to meet the due process standards enunciated by the . . . Court in *O'Neill*."<sup>71</sup>

Third, the Treaty is constitutional because, just as in the interstate-compulsory-witness requirement, a presumption of constitutionality exists. In *O'Neill*, the Supreme Court ruled that a presumption of constitutionality of compulsion of witnesses on an interstate level existed since there was no specific "constitutional provision granting him [a testifying citizen] relief from this obligation to testify even though he must travel to another State to do so."<sup>72</sup> This presumption is applicable to the Treaty's international compulsory-witness provision because,

unless the Constitution clearly prevents United States courts from ordering persons to travel to Italy at the expense of the Italian government to appear and testify, under guarantees of safe conduct and immunity, in connection with a criminal investigation or proceeding in Italy, Article 15 is a constitutional grant of power.<sup>73</sup>

Therefore, because the United States Constitution does not expressly prohibit the United States from compelling American citizens to testify in criminal proceedings in Italy, the provision is not unconstitutional.<sup>74</sup> The three reasons outlined above show that the international compulsion of witnesses for testimonial purposes is constitutional in

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67. *New York v. O'Neill*, 359 U.S. 1, 8 (1959).

68. *Executive Report*, *supra* note 50, at 196.

69. *Id.*

70. *Id.*

71. *Id.*

72. *New York v. O'Neill*, 359 U.S. 1, 11 (1959).

73. *Executive Report*, *supra* note 50, at 196.

74. *Id.*

the United States.

(b) *Italian Constitution*.—In Italy, the international compulsion of witnesses for testimonial purposes is also constitutional pursuant to the Constitution of the Republic of Italy.<sup>75</sup> First, under the Italian Constitution, the Treaty validly and only temporarily restricts freedom of movement.<sup>76</sup> Article 3 of the Italian Constitution provides that “[I]t shall be the task of the Republic to remove obstacles . . . restricting in practice the freedom . . . of citizens.”<sup>77</sup> In allowing the Italian Government to restrict the freedom of its citizen-witnesses by forcing them to go to the United States to testify in criminal proceedings, the Treaty initially appears to be violative of article 3. As in the case of the United States, however, the Treaty does not violate an Italian citizen’s right to freedom under the Italian Constitution because such a restriction is only temporary and is offset by the reciprocal ability of the Italian Government to compel American witnesses to testify in Italy.<sup>78</sup>

Second, under the Italian Constitution, the Treaty provides the due process rights necessary to make the Treaty constitutional. Article 13 of the Italian Constitution stipulates that “there shall be no form of detention, inspection, or search of the person, nor any other restriction whatsoever of personal liberty . . . [without the decision of] the judicial authorities . . . [as] prescribed by law.”<sup>79</sup> Although the Treaty, at first, appears to contravene this article by allowing Italian citizens to be detained in the United States while they testify, the Treaty does not infringe upon the rights granted to Italian citizens by article 13. This article allows Italian judicial authorities, with legal justification, to detain Italian citizens.<sup>80</sup> By the same token, Italian authorities have legal jurisdiction to compel Italian witnesses to testify in American courts concerning illegal narcotics traffickers to promote a safer world which is less corrupted by the flow of illegal drugs across transnational borders.

Third, the Italian Constitution presumes constitutionality. Because there is no specific provision in the Italian Constitution which prohibits Italian citizen-witnesses from being compelled to testify in American drug enforcement proceedings, a presumption of constitutionality of the compulsion-of-witnesses provision in the Treaty

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75. COSTITUZIONE [COST.] (Italy), reprinted in M. CAPPELLETTI, *THE ITALIAN LEGAL SYSTEM: AN INTRODUCTION* 281 (1967).

76. This interpretation of the Italian Constitution is not intended to be a thorough investigation of the document, but simply an analysis of selected provisions. See *infra* notes 77-80 and accompanying text.

77. COST., art. 3.

78. See *supra* notes 65-66 and accompanying text.

79. COST., art. 13.

80. *Id.*

arises. Therefore, for the three reasons outlined above, the Treaty's allowance for compulsion of witnesses pursuant to article 15 is constitutional under Italian law.

2. *Provisions of the Treaty's Forfeiture Clause.*—The second major innovative program of the Mutual Legal Assistance Treaty with Italy is embodied in article 18. Article 18, paragraph 1 gives both Italy and the United States the right, in exigent circumstances, to freeze assets “in a requested country which are subject to forfeiture to the requesting country.”<sup>81</sup> Paragraph 2 stipulates that “such assets [are] to be forfeited to the requesting country pursuant to the laws of the requested country.”<sup>82</sup> The importance of article 18 is that it provides the United States and Italy with the opportunity to deprive “international drug traffickers and members of organized crime of the fruits of their criminal activity and of the means to finance further criminal activities.”<sup>83</sup>

Although the Treaty has been in effect since 1985, article 18, paragraph 2 has not been adopted.<sup>84</sup> This failure of ratification leaves open the choice of law question of which country's law will be applied to forfeit assets in a requested country to a requesting country. Despite the inherent problems in articles 15 and 18 of the Treaty, these highlighted provisions illustrate the Italian and the American commitment to working together to combat effectively through innovative measures the heroin trafficking problem existing between the two countries.

### C. *Increased Scope of Activities of Drug Enforcement Administration (DEA) Personnel in Italy*

By January 31, 1987, DEA had in its employ a total of eleven Americans—seven special agents and four other employees—in Italy.<sup>85</sup> Out of the forty-four countries to which the DEA sends employees, Italy has the sixth largest number of DEA personnel.<sup>86</sup> These figures indicate that not only does the United States believe Italy to be a major source of the international drug trafficking prob-

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81. *Executive Report*, *supra* note 50, at 197.

82. *Id.*

83. *Id.*

84. UNPUBLISHED TREATIES, *supra* note 46, at 84. Article 18 is the only provision of the Treaty that was required to be ratified separately after the adoption of the Treaty. Nadelmann, *supra* note 46, at 494. In 1985, both countries anticipated reaching “a resolution of the problem [of adoption of article 18] in the near future.” *Id.* As of 1988, however, article 18, para. 1 is in force but para. 2 remains unadopted. UNPUBLISHED TREATIES, *supra* note 46, at 84.

85. *Worldwide Drug Situation*, *supra* note 2, at 95. In a list of DEA employees in other foreign countries, Mexico ranks the highest with 51 DEA personnel, followed by Thailand with 44, Columbia with 29, Pakistan with 19, and Bolivia with 14. *Id.*

86. *Id.*



lem, but also that the DEA personnel in Italy must be working with the Italian government to try to combat this international crisis.

DEA's role in Italy is primarily a supportive one. Historically, DEA has provided "expert advice and authorized investigative intelligence and training assistance"<sup>87</sup> to Italy. Specifically, DEA personnel train Italian law enforcement officers "in the areas of drug investigations [and] drug identification."<sup>88</sup> Furthermore, DEA personnel, while helping Italian authorities, "conduct [drug] investigations and . . . exchange and develop intelligence."<sup>89</sup>

A significant limitation on the DEA's role in illegal drug trafficking investigations in Italy is exemplified in the Mansfield Amendment (Amendment) to the Foreign Assistance Act of 1971.<sup>90</sup> The Amendment prohibits American law enforcement authorities from being present at an arrest scene in a foreign country.<sup>91</sup> As early as 1985, DEA officials were requesting a modification of this Amendment to allow DEA (or other American government) authorities to be present at the scene of an arrest of a suspected drug trafficker in a foreign country.<sup>92</sup>

First, the DEA indicated that, in some foreign nations, and particularly in less developed countries, "the most efficient means of transporting foreign officers to a remote location where a raid or other enforcement activity is to take place is by U.S. aircraft or vessel."<sup>93</sup> This type of activity, however, would "invariably place a U.S. enforcement officer at an arrest scene . . . in violation of the current Mansfield restrictions."<sup>94</sup> Thus, the Amendment, as it read in 1985, placed an undue burden on American law enforcement authorities who were not even intentionally attempting to be present at an arrest scene but who were simply trying to get the foreign officers to places designated for raids or other drug enforcement activities. By encouraging American authorities not to transport foreign officers to arrest scenes (so the American authorities would not violate the Mansfield Amendment), the Amendment undermined such arrests.

Second, DEA argued that the Amendment forced American au-

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87. *Security and Development Assistance—International Narcotics Control: Hearings on S.381-27 Before the Comm. on Foreign Relations*, 98th Cong., 2d Sess. 1056 (1984) [hereinafter *Security and Development Assistance*] (statement of the Honorable Francis M. Mulen, Jr., Administrator, DEA).

88. *Id.* (statement of Senator Hawkins).

89. *Id.*

90. Foreign Assistance Act of 1971, Pub. L. No. 92-226, § 481, 86 Stat. 20, 24 (1972). The pertinent provision of the Mansfield Amendment is discussed in *International Narcotics Control Programs Review: Hearings on H. 381-57 Before the Comm. on Foreign Affairs*, 99th Cong., 1st Sess. 124 (1985) [hereinafter *Int'l Narcotics Control Review*].

91. *Int'l Narcotics Control Review*, *supra* note 90, at 124 (statement of Frank Monastero, DEA).

92. *Id.*

93. *Id.*

94. *Id.*

thorities to spend "an inordinate amount of time in planning to avoid being present at an arrest scene. Even then, they [could not] always anticipate all of the rapidly changing circumstances encountered in an enforcement operation."<sup>95</sup> Therefore, because American authorities were constantly aware of the risks of violating the Amendment, the Americans' only option was an "overcautious approach which results in loss of effectiveness."<sup>96</sup>

Third, the Mansfield Amendment, as it read in 1985, severely hampered the cooperative efforts of the two countries when the American authorities could not be present at arrest scenes because the foreign officers needed the Americans "to guide, advise or assist . . . [them because they lacked the] expertise in critical operational techniques."<sup>97</sup> Fourth, allowing DEA to be present at arrest scenes would enable them to follow-up more quickly on "perishable intelligence obtained by foreign officers in such situations."<sup>98</sup>

Finally, foreign officials were likely to be left with a negative impression of cooperative anti-narcotics-trafficking programs with the United States if American authorities assisted the foreign government until immediately before the arrest, and then simply left.<sup>99</sup> Such negative feelings can be illustrated by the possibility that the "prohibition [made] it appear as though . . . [Americans] agents [were] asking host country officers to alone assume the risks in furtherance of what are clearly joint objectives."<sup>100</sup>

Congress most likely took these arguments into account when it drafted the International Cooperation Act of 1989 (Act).<sup>101</sup> Although the Act prohibits an American law enforcement authority,

from directly effecting an arrest in any foreign country as part of any foreign police action with respect to narcotics control efforts, . . . it does permit, with the approval of the U.S. Chief of Mission, a U.S. officer or employee to be present at the scene of an arrest and to assist foreign officers who are effecting an arrest.<sup>102</sup>

An American authority, however, may take direct action "to protect life or safety if exigent circumstances arise which are unanticipated and which pose an immediate threat to U.S. officers or employees, officers or employees of a foreign government, or members of the

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95. *Id.* at 125.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Int'l Cooperation Act, supra* note 44.

102. *Id.* at 93, tit. III, ch. I, § 301, ch. 2(E), § 3281(a).

public."<sup>103</sup>

If this piece of legislation is enacted into law, even in normal nonexigent situations, American authorities would at least be allowed to be present at an arrest scene and to assist the foreign officials. This ability will allow American authorities to transport foreign officials to remote locations for raids, to waste no valuable time determining the manner in which to avoid an arrest scene, to assist foreign officials who lack expertise in critical techniques, to complete follow-up analysis on perishable items faster, and to create general goodwill with the foreign countries. The benefits of this modification of the Mansfield Amendment will help the United States not only with its heroin trafficking problem with Italy but also with illegal narcotics trafficking with other foreign nations.

#### *D. Effectiveness of Italian-American Cooperative Efforts*

According to a 1984 DEA report,

In the past 15 months it is estimated this flow [of heroin from Italy to the eastern portion of the United States] has been decreased by 25 percent [from 80 percent]. The traditional Mafia hierarchy in Sicily has disappeared—either hiding or killed in fratricidal disputes. Between 1978 and 1983 ten operational heroin conversion labs were seized in Italy. It is estimated that 2 to 3 labs presently exist, but they are not as sophisticated as those previously seized. There have been hundred of prosecutions of drug law violators throughout Italy, particularly in Sicily, and approximately 80 percent of the major prosecutions resulted partly from intelligence and assistance provided by DEA. There has been a 98 to 99 percent conviction rate on the cases in which DEA has been involved.<sup>104</sup>

Thus, narcotics trafficking from Italy in 1984 was substantially lower than the 1978 level.<sup>105</sup> Furthermore, according to the 1988 International Narcotics Control Strategy Report, during the period of 1985 to 1988, "the quantity of heroin exported from Italy to the United States has been reduced significantly."<sup>106</sup>

The paucity of recent statistics on the amount of heroin trafficking between Italy and the United States raises two propositions. First, due to limited resources, the United States has recently decided to concentrate its drug-supply reduction efforts on other, more

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103. *Id.*

104. *Int'l Narcotics Control*, *supra* note 6, at 187.

105. *Id.* at 188.

106. *Worldwide Narcotics Review of the 1988 International Narcotics Control Strategy Report: Hearings on H.381-57 Before the Comm. on Foreign Affairs*, 100th Cong., 2d Sess. 64 (1988) [hereinafter *1988 International Narcotics Control Strategy Report*] (statement of David Westrate, Assistant Administrator for Operations, DEA).

dangerous drug-source countries such as Columbia, Bolivia, and Mexico. This proposition is very likely true because recent American government initiatives to assist drug-source countries in combatting the narcotics trafficking problem do not mention Italy as a country needing more American assistance.<sup>107</sup> Second, the reduction of heroin transported from Italy to the United States must have been significant enough for American government officials to conclude that the current levels of such trafficking are too insignificant to include in governmental reports.<sup>108</sup> Thus, because the reduction in heroin entering the United States through the Sicilian Mafia connection has been greatly reduced, the previously high level of American assistance in Italy is perhaps no longer needed.

According to 1987 statistics, the amount of such heroin imported into the United States over the past decade "is far less."<sup>109</sup> The United States Attorney for the Southern District of New York attributes such success to the historical "cooperation between the U.S. government and the Italian government to reduce this particular form of drug importation and distribution."<sup>110</sup> Specifically, Senator Joseph R. Biden, Jr., Chairman of the Senate International Narcotics Control Caucus, explains that the Pizza Connection Case "could not have been investigated and prosecuted without an extraordinary amount of cooperation between United States law enforcement officials and officials from . . . Italy."<sup>111</sup> Senator Biden highlights the Mutual Legal Assistance Treaty between the governments of the United States and Italy as making the high degree of cooperation between the two countries possible.<sup>112</sup>

Although there is no direct evidence linking the reduction of heroin imports to the operation of the Mutual Legal Assistance Treaty, the innovative and stringent provisions of the Treaty must have had some sort of positive effect on the heroin trafficking prob-

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107. See *supra* note 44 and accompanying text.

108. *Id.*

109. *Int'l Security Threat*, *supra* note 1, at 28. For example, the Assistant Director of the Federal Bureau of Investigation's New York Office reveals that "heroin importation in New York City through the vehicle of the Sicilian Mafia has dropped off." *Id.* at 43.

Although Italy and the United States have made significant progress in combatting the heroin trafficking problem over the past decade, the Sicilian Mafia remains "very active in the importation, exportation," and production of heroin. 1988 *International Narcotics Control Strategy Report*, *supra* note 106, at 64.

The Magistrate of Palermo, Italy stated that despite the excellent results achieved by the United States and Italy in combatting the heroin trafficking problem by the middle of 1987, if the two countries were to believe that they have completely defeated the Mafia, they would be making "a serious error." *Int'l Security Threat*, *supra* note 1, at 32. Thus, although the Italian and American governments have diminished much of the Mafia's heroin trafficking into the United States, the Mafia continues to export heroin to the United States. *Id.* at 41.

110. *Id.* at 29.

111. *Id.* at 5.

112. *Id.*

lem. For instance, although the United States has had the authority to "extradite fugitives, including [American] citizens, to foreign countries"<sup>113</sup> for many years, the Italian-American treaty has given the United States the ability to seek to have "its courts, at the request of a treaty partner [Italy], to compel the appearance of witnesses from this country at the trial of such fugitives in the courts of a treaty partner."<sup>114</sup> Furthermore, although the United States has also had the authority "to secure the extradition of fugitives from foreign countries,"<sup>115</sup> for many years, the Treaty now allows the United States "to request those countries [for example, Italy] to compel the appearance and testimony of witnesses from those countries at the trial of such fugitives in the United States."<sup>116</sup> The unprecedented stringent measure of this Treaty which allows for the compulsion of witnesses for testimonial purposes must have had some sort of deterrent effect on potential heroin traffickers. This Treaty should continue to have such an effect in the future and could lead, conceivably, to convictions of heroin traffickers as a result of the testimony of a witness compelled to appear in court.

While there is no direct link between the Treaty and actual reduction of heroin trafficking between the United States and Italy, some evidence exists which connects DEA support to the reduction of heroin trafficking.<sup>117</sup> For example, the Italian Government, with the assistance of DEA, "vigorously enforced the new anti-Mafia laws<sup>118</sup> which resulted in substantial prison terms for members of leading Sicilian crime families, disrupted the entire Mafia hierarchy in Sicily, and led to the pre-trial detention of many narcotics and organized crime suspects."<sup>119</sup> This particular combined Italian-American effort has led to an approximated twenty-five percent reduction in the amount of heroin shipped from Italy to the eastern portion of the United States by the mid-1980s.<sup>120</sup> Thus, the high level of commitment between the Italian and American governments substantially reduced the amount of heroin that the Sicilian Mafia has been able to transport to the United States.

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113. *Executive Report*, *supra* note 50, at 196-97.

114. *Id.* at 197.

115. *Id.*

116. *Id.*

117. *See also supra* notes 104-06 and accompanying text.

118. One such anti-Mafia law authorizes Italian law enforcement authorities to imprison anyone who even associates with Mafia figures. *See Security and Development Assistance*, *supra* note 87, at 1064.

119. *Int'l Narcotics Control*, *supra* note 6, at 121.

120. *Id.*

#### IV. Using the Italian-American Cooperative-Effort Programs as a Role Model for International Drug Trafficking Problems

##### A. *Ineffectiveness of Present Programs*

As Senator Alfonse D'Amato, Co-Chairman of the Caucus on International Narcotics Control, revealed, in comparison with the level of cooperation between Italy and the United States,

too many countries are not doing what they should be doing to cooperate fully with us. Too many countries: 1) did not convict or extradite to the United States a single major drug trafficker; 2) have no effective conspiracy laws; 3) seized only a tiny fraction of the narcotics they produce; 4) actually increased their production of narcotics; 5) signed no Mutual Legal Assistance Treaty with us; 6) failed to combat the corruption pervading their governments; and 7) did not allow DEA agents to join them in even a single law enforcement action, debrief a single arrestee, have any access to informants, or in any way operate within their borders.<sup>121</sup>

As the above passage illustrates, to combat effectively the international narcotics trafficking problem, the United States and foreign countries must be able to work together. No one country can accomplish this job on its own. The following three examples show that the United States has not been able to cross the very important threshold of cooperation with several key drug-supplying countries.

1. *Mexico*.—Because the amount of narcotics transported out of Mexico has increased tremendously since 1982, Mexico is now a "major source of heroin and . . . a major transshipment point for cocaine."<sup>122</sup> United States Customs officials and other law enforcement authorities who work along the United States-Mexico border find little cooperation initiated or encouraged by the Mexican Government.<sup>123</sup> Occasional instances of cooperation between the two countries usually involve the exchanging of information where one side "provides information on a stolen car and in turn information is given with respect to a bank robbery."<sup>124</sup> According to William von Raab, former United States Customs Service Commissioner, "[t]here are no Custom officers who have brought to my attention any noticeable or tangible cooperation between the law enforcement officials at a working level in Mexico and Customs officials."<sup>125</sup> Despite a drug trafficking problem in Mexico that is increasing at an

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121. *Int'l Security Threat*, *supra* note 1, at 20.

122. *Id.* at 92.

123. *Id.*

124. *Id.*

125. *Id.*

alarming rate, little effective cooperation, including a signed Mutual Legal Assistance Treaty (Treaty) or an extradition treaty,<sup>126</sup> exists between Mexico and the United States.

2. *Panama*.—Moreover, the “most sensitive and urgent of all American attempts to negotiate a [Mutual Legal Assistance Treaty] MLAT has been with Panama.”<sup>127</sup> Latin American drug traffickers favor Panama as a “bank haven and money laundering center”<sup>128</sup> for their illegal narcotics activities.<sup>129</sup> Despite the obvious need for cooperation to resolve this problem, “Panamanian leaders have proved highly resistant to any efforts to pierce their bank secrecy laws and efforts to negotiate a treaty . . . [since 1985] have been sporadic at best.”<sup>130</sup> Although Interpol<sup>131</sup> has met with some limited success in organizing an agreement in which all signing countries would allow an international narcotics trafficking exception to their bank secrecy laws, such a treaty will not come into force for many years.<sup>132</sup>

Thus, as illustrated by the Mexican and Panamanian situations, little cooperative effort between these countries and the United States exists despite the need for some effective measures to reduce the international drug trafficking problem. Furthermore, the Mexican and Panamanian situations are not the only instances of lack of cooperation by the United States and foreign countries. According to the House Committee on Foreign Affairs Task Force on International Narcotics Control, many “international narcotics control programs overseas are not working because of lack of cooperation [due to] . . . corruption in the host government . . . [and/or] problems in management on the United States side.”<sup>133</sup>

3. *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*.—The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances<sup>134</sup> which was “adopted at an international conference . . . in Vienna in November and December 1988” and which has been signed by sixty nations seeks “to establish a comprehensive set of laws and guidelines for a concerted and more effective effort on an

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126. *Id.* at 4.

127. Nadelmann, *supra* note 46, at 501.

128. *Id.* at 502.

129. *Id.*

130. *Id.*

131. Interpol stands for the International Criminal Police Organization, which serves as a “coordinating group for international law enforcement.” BLACK’S LAW DICTIONARY 733 (5th ed. 1979).

132. Nadelmann, *supra* note 46, at 502.

133. *Foreign Aid Sanctions Against Drug Producing and Trafficking Nations: CRS Seminar on S.940-5*, 100th Cong., 1st Sess. 2 (1987).

134. *Convention*, *supra* note 1.

international basis to combat illicit trafficking."<sup>135</sup> Although the motives behind the Convention are certainly commendable, the signatory countries failed to draft the stringent measures needed to effectively combat the international drug problem.<sup>136</sup>

Two particular provisions of the Convention leave loopholes which are detrimental to the Convention's purpose of establishing effective weapons to combat international narcotics trafficking.<sup>137</sup> First, article 7 of the Convention mandates that the signatory parties must give each other the "widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offenses."<sup>138</sup> Despite this requirement in article 7, the Convention creates a loophole by granting the signatory countries the power only to encourage, and not to compel, both expert and lay witnesses to testify in criminal proceedings.<sup>139</sup> As opposed to the Italian-American Treaty which compels witnesses from either country to testify in the other country,<sup>140</sup> the Convention simply gives the witnesses the opportunity not to testify.<sup>141</sup> This provision has the potential of completely destroying the prosecution's cases if key witnesses simply choose not to appear in court.

Furthermore, article 32 of the Convention, which deals with dispute settlements, provides another loophole.<sup>142</sup> In "a dispute relating to the interpretation or application of this Convention,"<sup>143</sup> signatory nations are required to attempt negotiation and, if that fails, to refer the problem to the International Court of Justice for a ruling.<sup>144</sup> Under paragraph 4 of article 32, the nations, upon signature or ratification, may elect not to be bound by the requirement.<sup>145</sup> The more

135. *Id.*, letter of transmittal, at iii.

136. *See, e.g., supra* notes 50-84 and accompanying text.

137. *See supra* note 135 and accompanying text. *See also Convention, supra* note 1, at 1-2.

138. *Convention, supra* note 1, art. 7, para. 1. Article 7, para. 2 provides that "[m]utual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:"

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures;
- (d) Examining objects and sites;
- (e) Providing information and evidentiary items;
- (f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

*Id.*

139. *Convention, supra* note 1, art. 7, paras. 4 and 18.

140. *See supra* notes 50-80 and accompanying text.

141. *See supra* note 139 and accompanying text.

142. *Convention, supra* note 1, art. 32.

143. *Id.*, para. 1.

144. *Id.*, para. 2.

145. *Id.*, para. 4.



states that elect not to be bound by the International Court's decisions, the more potential problems will occur because disputes over interpretation and application of this Convention may very well remain unsettled and thereby cause feelings of ill-will to develop between the disputing countries. This problem could ultimately lead to less cooperation among the nations in international drug trafficking investigations which would be detrimental to combatting the international drug trafficking problem.

Despite these inherent problems in the Convention, the agreement does contain some strict standards for international drug trafficking investigations. In particular, article 5 of the Convention requires adopting nations "to enable their courts or other competent authorities to order the production or seizure of bank, financial and commercial records necessary to trace, identify, seize and forfeit proceeds and instrumentalities of drug trafficking."<sup>146</sup> As opposed to the Panamanian Government which until recently, has upheld its bank secrecy laws even in international drug trafficking investigations,<sup>147</sup> the Convention specifically stipulates that no signatory nation can refuse to comply with the confiscation requirements on the basis of its bank secrecy laws.<sup>148</sup> The Convention, therefore, contains some strict measures designed to effectively combat the international narcotics trafficking crisis. The Convention, however, does not do as much as it should to solve the problem.

### *B. The Need to Use the Italian-American Program as a Role Model*

The inherent problems in the Mexican and Panamanian situations as well as the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances illustrate the need for a truly effective program which can reduce the amount of narcotics transported on an international level. Specifically, the Mutual Legal Assistance Treaty (Treaty) between the United States and Italy should serve as the role model for the United States when it is attempting to work with other foreign countries in reducing the amount of illegal narcotics entering the United States from these nations. The Treaty with Italy contains stringent measures, in particular the compulsion-of-witnesses and forfeiture clauses, which can effectively deter drug traffickers.<sup>149</sup> In order for the United States to adopt strict Treaties with other foreign countries, the United States and these nations must be willing to exert the degree of cooperation

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146. *Convention, supra* note 1, art. 5, para. 3.

147. *See supra* note 130 and accompanying text.

148. *Convention, supra* note 1, art. 5, para. 3.

149. *See supra* notes 50-84 and accompanying text.

that the United States and Italy enjoy. Without a high level of cooperation such as is present between the United States and Italy, a strict Treaty will not be possible because the signatory countries will not be able to work together.

Several experts in the international narcotics field believe that the Treaty and overall high degree of cooperation between the United States and Italy should serve as a role model. Chairman Rangel, leader of the 1984 United States delegation to Italy, expressed his desire to see the Italian-American narcotics trafficking reduction programs, such as the MLAT between the United States and Italy, "serve as a model for other nations to follow."<sup>150</sup> Furthermore, Italian Foreign Minister Giulio Andreotti advised that other countries should follow the Italian-American example of sharing information on international narcotics trafficking.<sup>151</sup>

Through a high level of cooperation and a strict Treaty between the two countries, the Italian-American program achieved significant success in reducing the amount of heroin transported from Italy to the United States. The United States does not enjoy such cooperation and does not have the use of such a strict bilateral agreement with many other foreign countries. Because of this fact and the understanding that these other foreign countries have drug trafficking problems increasing at an alarming rate, these other foreign nations and the United States should adopt the Italian-American model.

## V. Conclusion

Though predicting the extent of the international narcotics trafficking problem in the future may be speculative, the drug problem will certainly continue to grow unless the international community bands together to create effective and strict treaties designed to increase the probability of convicting known drug traffickers. If these illegal narcotics traffickers know that upon being caught transporting drugs they will be convicted and severely punished, they might stop their illegal activities altogether. Even if such offenders continue to sell drugs and are actually convicted and imprisoned for their activities, then at least when they are in prison, they will not be distributing drugs. Either way, drugs will be removed from the streets. Such treaties, however, will not come about overnight. The United States and other foreign countries should work together in all phases of the investigation process—investigating, locating, arresting, and prosecuting drug traffickers.

The success that the American and Italian governments have

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150. *Int'l Narcotics Control*, *supra* note 6, at 190.

151. *Id.* at 191.

achieved in significantly reducing the amount of heroin that the Sicilian Mafia previously had been able to transport to the United States lends credibility to the Treaty with Italy as well as to the high degree of cooperative efforts exerted by officials from both countries. The importance of reducing the trafficking of drugs worldwide demands that countries work together, like the Italian and American Governments have, in all phases of an investigation. The goal of reducing narcotics consumption and international drug trafficking can only be accomplished by strict international agreements and underlying cooperative efforts.

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