Chapter -V

International and Regional Initiatives against Drug Trafficking

Introduction

In 2009, the United Nations Commission on Narcotic Drugs set a new date of 2019 to “eliminate or reduce significantly and measurably” the cultivation of illegal plant-based drugs, the demand for illegal drugs, the production and trafficking of synthetic drugs, the diversion and trafficking of precursor chemicals used in the manufacture of illegal drugs and drug-related money laundering\(^1\).

Many observers highlight the importance of international drug control policy, particularly because of the transnational nature of the drug trade, whereas others continue to criticize existing policies and mechanisms for failing to achieve sufficient progress in combating illegal drugs\(^2\). The UNODC has reported in recent years that global drug use has stabilized, on average; global opium poppy and coca cultivation is in decline; and global illicit drug seizures are up; and that a major contributing factor has been the continued international support
for drug control policies. Global co-ordination, many say, is vital for lasting success in combating the international drug trade. At the same time, however, others criticize the international drug control system for failing to achieve the United Nation’s stated goal of “eliminating or reducing significantly” by 2008 the production and availability of synthetic drugs and precursors, as well as the cultivation of the coca bush, cannabis plant and opium poppy.

Emerging questions in the drug policy debate include the following:

- In what ways are anti-drug strategies facilitating or driving recent increases in drug trafficking and the related violence?
- Are spikes in drug-related violence common or inevitable consequences of heightened anti-drug operations?
- In what ways might governments mitigate or dampen current and potentially future increases in drug trafficking and drug-related violence?
- How do anti-drug policies interact with counter terrorism, counterinsurgency, and anti-money laundering priorities, particularly in countries such as Afghanistan,
- What role should the States play in providing foreign counternarcotics assistance?
- How should policymakers weigh the benefits of aerial eradication as a anti-drug policy tool with the social, financial and political costs it may incur?
- To what extent is it a common phenomenon that human rights are violated over the course of drug-related investigations and operations?
- In what ways might human rights violations undermine or threaten drug control policies?
- To what extent should the UN anti-drug policy take into account economic development, social development, and health and harm reduction programmes, and are such efforts sufficiently coordinated with international and bilateral partners?
• How do anti-drug policies interact with related policy goals of anti-corruption, justice sector reform, and improving the rule of law?
• What legislative options might be available to prevent drug syndicate’s foreign safe havens from existing?

The present Chapter describes how the seeds for the global drug control system were sown, the international initiatives toward more repressive implementation, consequently leading to de-escalation efforts becoming more widespread; and in the last section projects a future for the ongoing reform process toward a modernization and humanization of the control system’s international legal framework as laid down in the UN drug control conventions.

The Foundations of International Drug Control

The construction of an international legal framework has gone through several stages in the past century since February 1909, when the International Opium Commission brought together twelve
countries in Shanghai to discuss options for international controls on the opium trade. The situation faced by the said nations represented in the Shanghai Commission was extremely difficult. The demand for opium, morphine and other highly addictive substances was high and since these substances were unregulated, addiction problems had started to develop, not only in China but also in other countries of the world.

Delegates to the Shanghai Commission were aware of the wider geographical scope of the drug problem and the nascent addiction of manufactured opiates. On the other hand, the opium trade was very lucrative, bringing in millions of dollars. Such enormous sums provided a livelihood for a large number of ordinary people. It is therefore all the more remarkable that the International Opium Commission took the daring step of putting public health issues above commercial interests and decided to call for a global effort to regulate drugs in order to protect the health of the people. The Shanghai Declaration, which was adopted at the Commission, was historic in many ways. For the first time, a community of nations agreed that the
non-medical use of opium should be a matter for careful regulation, or even prohibition. For the first time, the international community expressed the fact that certain drugs could be dangerous. The Commission agreed that the unrestricted manufacture, sale and distribution of morphine constituted a grave danger and called on Governments to make efforts to control it. And, for the first time, the efforts by the Government of China to eradicate the production and consumption of opium throughout its empire received unanimous international recognition.

In 1909, the Chairman of the Commission concluded his opening statement by saying that “much still needs to be done by our respective Governments and the nations we represent. As we move out to meet our responsibility, the appeal of one of the world’s more recent heroes comes to us - let us have faith that right makes might, and in that faith let us to the end dare to do our duty as we understand it.”

The Shanghai Declaration was thus the first pronouncement of the international community’s intensity to act against the growing
drug problem. And although the Commission was never intended to establish binding obligations, it nevertheless accelerated the efforts that, only three years later, led to the Hague Opium Convention of 1912, which established control of narcotic drugs as an institution of international law on a multilateral basis.

The first 1912 Hague Opium Convention and the treaties negotiated subsequently in the League of Nations era were more regulatory than prohibitive in nature, aimed to control the excesses of an unregulated free trade regime, substantially regarding opium. Restrictions were imposed on exports to those countries in which national laws had been introduced against non-medical use of opiates, but there were no treaty obligations to declare drug use or cultivation illicit, let alone to apply criminal sanctions. The early series of conventions in effect established administrative import and export regulations for opiates, cocaine and, from 1925, cannabis, without criminalizing the substances, users or growers of the raw materials.
The United States and China, the most ardent “prohibitionists”, both walked out of the 1925 International Opium Convention preparatory negotiations, because in their view sufficiently restrictive measures would not be imposed. Efforts by the United States to outlaw the production and non-medical use of alcohol and drugs were viewed skeptically by traditional colonial powers, particularly France, Great Britain, Portugal and the Netherlands, all of which operated lucrative drug monopolies in overseas possessions. Not only did they control the lucrative Asian opium market, these four nations supplied the pharmaceutical market in Europe and the United States.

Opium, morphine, heroin and cocaine were all widely used in medicinal preparations. The cocaine market increased exponentially during World War I when the drug was used as a local anesthetic on hundreds of thousands of soldiers and as a means of enduring the horrors of trench warfare. For pharmaceutical companies in Netherlands, Germany and Great Britain it was one of the most profitable products during the war. Most of the raw material came from
Dutch coca plantations in Java, at the time part of the Dutch East Indies colony, as well as some shipments originating from Peru.

Culturally, most of Europe had a perspective at odds with the Christian fundamentalism prevalent at the time in the United States. As noted in 1931 by the influential commentator Walter Lippmann:

To the amazement of the older nations of the earth, we have...enacted new legal prohibitions against the oldest vices of man. We have achieved a body of statutory law which testifies unreservedly to our aspiration for an absolutely blameless...life on earth⁹.

He pointed at the criminogenic effects of prohibition at the time, attributing the high levels of lawlessness to the fact that Americans desire to do so many things which they also desire to prohibit. Stories about gangs and mafia expanding control over entire cities did little to inspire
European policy makers at the time. The unenforceable laws that attempted to prohibit alcohol, gambling, drugs and commercialized sex also made risks small for the host of politicians, police officers, and gangsters profiting from the newly created illegal markets.

America had clearly become a land of criminal opportunity by the 1920s. The repeal of alcohol prohibition was a notable but rare admission in America that moral ideals are no match for human ingenuity and human nature. The alcohol prohibition regime lasted from 1920 to 1933; the period the United States was busy trying to replicate internationally the same model for other psychoactive drugs via the League of Nations. Despite concerted efforts, the lofty aspirations to export this policy were to remain largely unfulfilled until after World War II. After repealing alcohol prohibition in 1933, the United States continued its international drive on other drugs.

As the UN World Drug Report noted, the 1936 Convention was “the first to make certain drug offences international crimes” but was only signed by 13 countries and only came into effect during World
War II, when “drug control was certainly not top priority for most countries”\textsuperscript{12}. Only after the war, under the United Nations system, was the necessary political atmosphere created, enabling the globalisation of the prohibitive anti-drug ideals\textsuperscript{13}. Having emerged from the war as the dominant political, economic and military power, the United States was in the position to shape a new control regime and apply the required muscle to impose it on other nations. As a report to the Canadian Senate sums up: “Beginning in an era of morally tainted racism and colonial trade wars, prohibition-based drug control grew to international proportions at the insistence of the United States.”\textsuperscript{14}

The United States’ representative to the conference to negotiate the Single Convention in 1961 confirmed: “For more than half a century, the United States had been advocating the international control of narcotic drugs. On the initiative of the United States, the International Opium Commission had met at Shanghai in 1909; it had been largely responsible for the conclusion, three years later, of the first International Opium Convention, signed at The Hague.” He also
“recalled that the idea of a Single Convention had been a United States initiative.”

The UN Drug Control Conventions

The 1961 UN Single Convention on Narcotic Drugs replaced the previous international agreements that had been developing piecemeal since the early years of the twentieth century, but included new provisions not contained in earlier treaties, creating a stricter zero-tolerance and more prohibitive system for control. It also extended the existing trade control systems to include the cultivation of plants from which narcotic drugs were derived, thereby placing a special burden on the traditional producing countries.

The cultivation and extensive traditional use of opium poppy, coca and cannabis at that time was largely concentrated in Asia, Latin America and Africa. Traditional practice, including widespread traditional medicinal use of all three plants, was defined as ”quasi-medical” practice that had to be terminated. In fact, the UN Single
Convention of 1961 established the goal to eliminate opium over a 15-year period, and coca and cannabis within 25 years.

The 1961 Single Convention was established as a universal system for limiting the cultivation, production, distribution, trade, use and possession of narcotic substances strictly to medical and scientific purposes, with special attention on substances derived from plants: opium/heroin, coca/cocaine and cannabis. In the Convention’s four lists, more than a hundred substances are classified under various degrees of control. Among the most controversial classifications on the list, the coca leaf appears in List I and cannabis appears in both Lists I and IV, the latter reserved for the most dangerous substances.

The 1971 Convention on Psychotropic Substances developed in response to the diversification of drug use, introducing controls on more than a hundred “psychotropic” drugs, amphetamines, barbiturates, benzodiazepines and psychedelics, which are again distributed into four lists. Compared to the strict controls imposed on plant-based drugs, the 1971 treaty imposed a weaker control structure, due to pressure from
the European and North American pharmaceutical industry during the negotiations. According to a UN staff member of the Division of Narcotic Drugs and secretary of the Technical Committee of the Plenipotentiary Conference at the time: “The most important manufacturing and exporting countries tried everything to restrict the scope of control to the minimum and weaken the control measures in such a way that they should not hinder the free international trade”17.

The 1971 Convention consists of two treaties: one for "street drug" hallucinogens in Schedule I and one for ‘pharmaceuticals’ in Schedule II, III and IV. There are extremely strict control measures for Schedule I substances and very weak ones for Schedule II and III substances and nothing for Schedule IV substances. However, the provisions of the 1971 Convention do not allow the monitoring of the movements of international shipments which are necessary for the prevention of their diversion.

The scientifically questionable distinction between “narcotics” controlled by the 1961 Convention and so-called
“psychotropics” in the 1971 Convention, was largely invented because the pharmaceutical industry resisted the idea that its products might be subject to the stringent controls of the Single Convention. Effective lobbying and concerted efforts to weaken the 1971 treaty provisions were undertaken by the United States, United Kingdom, Canada, West Germany, Switzerland, The Netherlands and Belgium

The 1961 and 1971 Conventions primarily aimed to end traditional uses of coca, opium and cannabis, limit their cultivation to amounts needed for medical purposes and to curb the diversion of psychoactive pharmaceutical drugs for illicit (non-medical) purposes. The subsequent control system of the two treaties under the administrative mandate given to the International Narcotics Control Board (INCB) was also meant to guarantee that sufficient supplies would remain available for licit use. Contrary to popular belief, none of the scheduled drugs were ever made “illegal”. The drugs were not prohibited, but their production and trade were placed under strict controls in order to limit their use to medical and scientific purposes. Exactly the same controls apply to cocaine, methadone and oxycodone,
as well as many other drugs widely used in medical practice, such as diazepam, morphine and codeine, all controlled under these same treaties.

The oft-used term “illicit drug” does not appear in the UN Conventions. Only after the 1961 Convention control system was effectively implemented, did mass-scale illicit production begin for some of the listed substances. Until then, non-medical use was supplied by leakage from licit production. As the 1961 Convention entered into force in December 1964, the 15-year phase-out scheme for opium ended in 1979 as did the 25-year scheme for coca and cannabis in 1989. The few countries applying that transitional provision were obliged to prohibit production for non-medical purposes by those dates.

Licensed cultivation of cannabis for medical purposes did not exist at the time, and while licensed production of coca and opium did continue on a significant scale, the established international control system effectively ended the illicit diversion of cocaine and heroin from pharmaceutical sources. Demand for nonmedical use of cannabis,
cocaine and heroin, however, exploded in the Western world during the 1970s and 1980s, with large-scale illicit production to supply that market developing in the countries where the plants had been grown traditionally. International illicit drug trafficking rapidly expanded into a multi-billion business under control of criminal groups.

In response, the UN convened another conference to negotiate what became the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It provided special measures against illicit cultivation, production and trafficking of drugs, the diversion of chemical precursors, as well as agreement on mutual legal assistance, including extradition. The 1988 Convention significantly reinforced the obligation of countries to apply criminal sanctions to combat all the aspects of illicit production, possession and trafficking of drugs.

However, in many countries, personal consumption is not, an offence. The UN conventions do not oblige any criminal or administrative penalty to be imposed for consumption *per se*, as is
clearly stated in the official Commentary to the 1988 Convention: “It will be noted that, as with the 1961 and 1971 Conventions, paragraph 2 does not require drug consumption as such to be established as a punishable offence”\textsuperscript{20}. There are more and more countries in which possession of a quantity of drugs for personal use is decriminalised, no longer a priority for law enforcement or subject to reduced sentences\textsuperscript{21}. These changes in the law or its enforcement practice have an immediate positive effect on the overburdened penal system and overcrowding in prisons.

The 1971 Convention added to the confusion by introducing the dubious category of “psychotropic” drugs, which included opioids such as buprenorphine and pentazocine, but also the active ingredient THC of cannabis (scheduled in the 1961 Convention) and the active ingredient cathinone of the khat plant—which has never been scheduled. While the 1961 Convention included the precursors of the narcotic drugs, precursors and plants were excluded from the 1971 Convention. Some of those appeared later in the Lists of the 1988 Convention, like ephedrine, an alkaloid present in the not-scheduled
ephedra plant, used as a precursor for methamphetamine controlled under the 1971 Convention. In the course of the politicised negotiations around the three treaties, all logic was abandoned. Plagued with inconsistencies, the scheduling system attached to the three treaties must be brought back into coherence with a scientific rationale for scaling potential harms.

**The Enforcement Machinery**

The treaties also establish international mechanisms to monitor treaty adherence—through the International Narcotics Control Board (INCB)—and for the collection of data related to the illicit cultivation, production, and manufacture of proscribed drugs.

U.N. policymaking on drug-related matters takes place through the U.N. Commission on Narcotic Drugs, which is a functional commission of the U.N. Economic and Social Council. The U.N. Commission on Narcotic Drugs monitors global drug trends, develops strategies for international drug control, and recommends measures to
combat the world drug problem. The United Nations Office on Drugs and Crimes (UNODC) acts as the guardian of United Nations Convention against Transnational Organised Crimes (UNTOC) and its protocols. To support Member States in combating drugs, the UNODC conducts field-based technical assistance projects internationally and conducts research and analysis on current drug market trends. Regional counterdrug-related organizations also supplement multilateral efforts globally. Such efforts include the Inter-American Drug Abuse Control Commission (CICAD), which is the drug control arm of the Organization of American States (OAS), and the Drug Advisory Programme (DAP) of the Colombo Plan. CICAD serves as the regional policy forum for all aspects of Western Hemisphere illegal drug issues. DAP supports drug demand reduction, treatment, and rehabilitation in the Asia and Pacific regions.

**Counter Mechanisms**

- **Crop Eradication**

  Eradication programmes seek to combat the flow of plant-based illegal drugs at the root of the supply chain—in the fields where the
crops are grown. Crop eradication can take several forms, including: (1) aerial fumigation, which involves the spraying of fields with herbicide; (2) manual removal, which involves the physical up-rooting and destruction of crops; and (3) mechanical removal, which involves the use of tractors and all-terrain vehicles to harrow the fields.

Crop control is the most cost-effective means of cutting supply, because drugs cannot enter the illegal trade if the crops were never planted, destroyed, or left unharvested. Without drug cultivation, there would be no need for costly enforcement and interdiction operations. Proponents of eradication argue that it is easier to locate and destroy crops in the field than to locate subsequently processed drugs on smuggling routes or on the streets. Opponents of expanded supply reduction policy generally question whether reduction of the foreign supply of narcotic drugs is achievable and whether it would have a meaningful impact on levels of illicit drug use.

Manual eradication requires significant time and human resources, reportedly involving upward of 20 work-hours of effort to
pull up and destroy one hectare of coca plants. Aerial application of herbicide is not legal or feasible in many countries and is expensive to implement where it is permitted. Aerial fumigation is usually opposed on the ground that the herbicide chemical used has caused negative human, animal, and environmental consequences. Others question whether a global policy of simultaneous crop control is cost-effective or politically feasible because eradication efforts may also potentially result in negative political, economic, and social consequences for the producing country, especially in conflict or post-conflict environments. Further, aerial radication remains a high-risk activity, as spray planes and their crew are targeted by drug traffickers.

- **Combating the Flow of Drugs in Transit**

  Interdiction efforts seek to combat the drug trade as traffickers begin moving drug products from source countries to their final destinations. *Project Prism*, a U.N.-sponsored initiative, monitors and controls illicit trade in precursor chemicals used in the production
of amphetamine-type synthetic drugs. In US, the Obama Administration’s revised 2010 counter-narcotics policy for Afghanistan also emphasizes in particular interdiction and the dismantling of Afghan drug trafficking syndicates\textsuperscript{28}.

Drug trafficking organizations are however, reportedly growing increasingly sophisticated in their evasion techniques, and some observers are concerned that current interdiction capabilities may not be sufficient for long-term reductions in drug supplies. Proponents of strong drug interdiction policies, for example, have long been concerned that the nation’s focus on anti-terror objectives will detract from resources and political will needed to combat foreign illicit drug production and trafficking.

Some observers, however, caution that interdiction efforts could raise the retail price of illegal drugs, potentially resulting in a perverse incentive that actually increases the economic rewards to drug traffickers; interdiction efforts that appear to be reaping success in dismantling major drug trafficking networks may nevertheless pose the
unintended consequence of sparking short-term increases in drug trafficking-related violence, as surviving drug traffickers compete with one another for control—often violently—of drug routes. This appears to have been in part a contributing factor to the ongoing drug-related violence in Mexico—and some observers are raising the concern that similar consequences may occur in Afghanistan under the Obama Administration’s renewed emphasis on interdiction efforts to combat the Afghan opiate trade.\(^{29}\)

- **Dismantling Transnational Drug Networks**

  Tools available for targeting major drug traffickers and their illicit networks include establishing extradition agreements with foreign countries, freezing and blocking foreign criminal assets within the jurisdiction of the concerned State and building foreign capacity to investigate, arrest, prosecute, and incarcerate drug traffickers domestically.
Extradition is an important judicial tool against suspected drug traffickers located abroad. Some anecdotal evidence appears to suggest that the threat of extradition has affected the behaviour of foreign drug trafficking organizations\(^30\). Nevertheless, this counter-drug tool remains controversial and is not universally supported. For instance, many countries simply refuse to extradite drug traffickers, citing concerns about the potential use of the death penalty in the requesting State against its citizens and State sovereignty rights\(^31\). Some observers claim that suspected traffickers often take advantage of such limitations in the extradition system and seek safe haven in countries that are unwilling to extradite.

- **Freezing and Blocking Criminal Assets**

To reap the financial benefits of the illegal drug trade, traffickers must launder their illicit profits into the licit economy. As a result, many members of the international community have sought to use anti-money laundering efforts as a tool to combat this upstream activity in the illegal drug market. Currently, several agencies are
involved in international anti-money laundering efforts designed to enhance financial transaction transparency and regulation, improve co-operation and co-ordination between governments and private financial institutions, and provide countries with law enforcement training and support.\(^{32}\)

Skeptics of the use of anti-money laundering efforts to combat drug trafficking argue that tracking illicit financial transactions may be more difficult and may yield less success than other counterdrug tools.\(^{33}\) As the money laundering and financial crimes report reveals, major challenges in tracking and disrupting international money laundering activities remain.\(^{34}\) The same types of money laundering methods—bulk cash smuggling, trade based money laundering, and others—that are identified as issues of concern more than a decade ago remain among the most used forms of money laundering today.\(^{35}\) Further, emerging challenges include the growing volume of financial transactions, especially the volume of international electronic transfers, and the movement of illegal money laundering outside formal banking channels, including through “hawala”-type
chains of transnational money brokers and through the use of stored-value cards.

- **Building Foreign Law Enforcement Capacity**

Another element of U.N. efforts involves providing countries with the tools to improve their domestic efforts to dismantle drug networks. Such assistance, in the form of training, equipping, and other institutional capacity building, ultimately seeks to strengthen judicial and law enforcement institutions and assist in developing host nation administrative infrastructures to combat the illicit drug trade. Institutional development programmes focus mainly on fighting corruption and training to support criminal justice system reforms and the rule of law.

Some observers, however, argue that anti-drug policies are placing too little emphasis on projects that help countries develop a culture supportive of the rule of law. One expert observed that, “unless police organizations recognize and internalize what the rule of law
means, what its key characteristics are, and why the rule of law is necessary to accomplish their mission, no amount of aid will get the job done."

- **Creating Incentives for International Co-operation**

  Incentives in the form of financial assistance and trade preference programmes are usually created to develop counter-narcotics techniques; and to solicit international co-operation.

- **Conditions on Financial Aid**

  In an effort to deter governments from aiding or participating in illicit drug production or trafficking, suspension of financial assistance appropriations to countries that are major illegal drug producers or major transit countries for illegal drugs, is also resorted to.
Conclusion

International drug policy is led by the international drug control conventions. The supervision of the conventions and the monitoring of their implementation by States rest with the Commission on Narcotic Drugs and the International Narcotics Control Board, respectively. The conventions are concerned with the public health and social problems resulting from drug use. The conventions stress the need for demand reduction and prevention, along with measures to control the supply of narcotic drugs and psychotropic substances.

Parties to the Single Convention on Narcotic Drugs of 1961 have an obligation to furnish to the Board statistical information on narcotic drugs. The Board uses the statistical data and other information received from Governments to monitor licit activities involving narcotic drugs throughout the world. The analysis of statistical data allows the Board to determine whether Governments have enforced treaty provisions requiring them to limit to medical and scientific purposes the licit manufacture of, trade in and use of narcotic
drugs while, at the same time, ensuring the availability of narcotic drugs for legitimate purposes.

As at 1 November 2009, a total of 169 States and territories had submitted annual statistics on narcotic drugs for 2008; that figure represents 80 per cent of the 211 States and territories required to furnish those statistics. A total of 192 States and territories provided quarterly statistics of imports and exports of narcotic drugs for 2008; that figure represents 91 per cent of the 211 States and territories required to furnish such statistics. Ireland and the United States of America did not provide in 2009 the requested annual statistical reports in a timely manner.

The universal application of the system of estimates for narcotic drugs is a pre-requisite for the functioning of the international control system for narcotic drugs. Governments should establish estimates at the levels that are adequate to ensure access to narcotic drugs for medical treatment and to prevent diversion into illicit channels.
Pursuant to 1961 Convention, a State that permits the cultivation of the cannabis plant for the production of cannabis is required to establish a national cannabis agency to carry out the functions stipulated under the Convention. The agency designates the areas in which cultivation is permitted, licenses cultivators, purchases and takes physical possession of crops and has the exclusive right of wholesale trading and maintaining stocks. As for all narcotic drugs, parties to the Convention have the obligation to submit to the Board each year their estimates and statistical reports with respect to cannabis. Failure of a party to comply with mandatory control measures for the cultivation of the cannabis plant or the production or use of cannabis may facilitate the diversion of cannabis into illicit channels.

During the last few decades, the majority of State parties to the international drug control treaties have applied adequate control measures, as required under the treaties, to ensure that narcotic drugs and psychotropic substances are used only for medical and scientific purposes. However, despite the almost universal application of the
international drug control treaties, a number of State parties to the treaties have been turning to and persisting in the implementation of national policies that are not in line with the treaties. In particular, a number of State parties have permitted the use of “safer crack kits”, the “medical” use of cannabis, “coffee shops” and the establishment and operation of so-called “drug injection rooms”, which contravene the international drug control treaties. In response to the repeated warnings that those measures promote social and legal tolerance of drug abuse and drug trafficking and run counter to the provisions of the international drug control treaties, those State parties continue to argue that their domestic legal systems prevent them from fully complying with the treaties, as their state and/or provincial legislative and judicial structures and competencies are independent and prevail over their national or federal legislation and jurisdiction.

It is an undisputed fact that current international law recognizes the various national legal traditions and systems; and that all State parties to the international drug control treaties follow differing legal systems and apply legal traditions in which, in some
instances, the relationship between State or provincial and national or federal legislative, judiciary and jurisdictional issues is highly complex, sensitive and even controversial. However, in this connection, one has to stress the following basic principles of international law: (i) obligation of parties to fulfill their treaty-based obligations in good faith\textsuperscript{42} and (ii) primacy of international law over national legislation\textsuperscript{43}. Moreover, the 1961 Convention as amended by the 1972 Protocol sets very strict and unavoidable control measures for cannabis, limiting its use to medical and scientific purposes.

International drug control efforts cannot be successful in the long term without continuous efforts to reduce illicit drug demand. That is why the drafters of the international drug control conventions made demand reduction an obligation for Governments. Another important step forward was the adoption in 1998 of the Declaration on the Guiding Principles of Drug Demand Reduction, a globally accepted set of standards, at the twentieth special session of the General Assembly\textsuperscript{44}. 
One disturbing trend highlighted in the present study is the increasing abuse of pharmaceutical preparations containing substances under international control. In the United States of America, where the problem is well documented, the abuse of prescription medicines is more prevalent than the abuse of cocaine, heroin or methamphetamine. One matter of particular concern is that people often do not associate any particular risk with the non-medical use of pain medication. The extent of such abuse is underreported and not adequately studied. Hence it is recommended that Governments launch prevention programmes to make youth and families more aware of the dangers of abusing controlled medicines.

Drugs containing substances such as oxycodone, methadone and hydrocodone are subject to strict international control. States that are parties to the international drug control conventions are obliged to regulate access to those drugs and prevent their abuse. Illegal Internet pharmacies violate those regulations by making prescription drugs available to persons without the necessary prescription, which puts consumers of those substances at an inordinate risk. Overly
restrictive policies are contrary to one of the principles enshrined in the international drug control conventions: that the medical use of narcotic drugs is indispensable for the relief of pain and suffering and that adequate provisions must be made to ensure their availability for such purposes.

The 2010 United Nations Office on Drugs and Crime (UNODC) report on ‘The Globalization of Crime: A Transnational Organized Crime Threat Assessment’, the most comprehensive threat assessment undertaken to date, concludes that while the focus has been on combating organized criminal groups through investigation, arrest and detention, these efforts have done little to reduce the threats and minimize the impact of organized crime.\(^{45}\)

In the past decade, UNODC has made considerable progress in understanding the dynamic nature of transnational organized crime, and its inherent linkages and interdependence to other aspects of UNODC’s mandate: corruption, criminal justice reform, social development and health, and preventing terrorism and its
financing. There is now a far better understanding of how easily illicit networks can “permeate” government agencies and institutions – be it customs, courts, police, banks, social service institutions or parliamentarians – and the influence that illicit networks can have in the private commercial sector, insidiously using bribery and corruption to undermine legitimate trade and undermine entrepreneurship and investment. This demonstrates the fundamental spoiler that transnational organized crime can present to democracy, governance, the rule of law and economic and social development.

As the guardian of UNTOC and its Protocols, UNODC has supported Member States in ratifying these Instruments and to take the steps to give them effective implementation, through the drafting of better legislation that provides a holistic framework against organized criminal activities. UNODC has tested innovative approaches to address the pervasive effects of transnational organized crime, and urgently prioritizing the promotion of international co-operation in criminal matters, as an urgent priority⁴⁶.
In the past decade, there has been significant growth in the illicit trafficking of drugs. Trafficking is generally characterized by high levels of organization and the presence of strong criminal groups and networks. While such activities existed in the past, both the scale and the geographic scope of the current challenge are unprecedented.

In a number of drug producing countries, drug trafficking fuels brutal and long standing insurgencies. In several transit regions, criminal groups spread violence, fear and insecurity. These groups undermine already weak State authority and the rule of law by spreading corruption, compromising elections, and hurting the legitimate economy. In some regions, there is increasing convergence between organized crime and terrorist groups. In others, national counter-narcotic efforts have resulted in serious human rights violations. In most transit regions, the drug trade is causing significant increases in drug use, making it a prominent contributor to the spread of HIV/AIDS.
Anti-narcotics efforts have long been dogged by the displacement effect – successes in suppressing production and trafficking in one country or region lead to the problem emerging elsewhere. When drug trafficking finds new routes, other forms of organized crime tend to follow. Drug trafficking groups are diversifying into other criminal businesses, such as trafficking in other illicit products, extortion, kidnapping, protection rackets, gambling, prostitution, and extortion. In all cases, criminal influence and money are having a significant impact on the livelihoods and quality of life of citizens, most particularly the poor, women and children.

Against this background, UN Member States and regional organizations are increasingly turning to the UN to support them in their struggles against these challenges. The 2005 World Summit Outcome Document expressed Member States’ “grave concern at the negative effects on development, peace and security and human rights posed by transnational crime”, highlighting the UN’s role in addressing the threat. In numerous regions of the world, Member States are
increasingly seeking the support of UNODC to help them foster regional counter-narcotics co-operation.

The three Universal Drug Conventions against drug control, and more recently the United Nations Convention against Transnational Organized Crime (UNTOC) and its Protocols on Migrant Smuggling and Trafficking of Firearms, constitute the key framework for a strategic response. Yet, the 2010 UNODC report concludes that eliminating the groups and networks involved in illicit trafficking is not enough. And that as long as there is demand for illicit goods and services, the lucrative rewards involved will continue to serve as strong motivating factors and law enforcement initiatives will have only limited impact.

UNODC has identified six key challenges to a multilateral response to transnational organized crime:

(i) Lack of evidence base and understanding of the nature of the challenge:
There are at least two competing definitions of ‘organized crime’: the first focuses on particular groups of people, while the second focuses on particular types of crime. However, little further is known about either, given the naturally covert nature of the problem and the lack of co-ordination of international actors. Further research, data collection and analysis are imperative to develop an effective national and multilateral response.

(ii) Inadequate progress on the implementation of the international legal framework and multilateral instruments against transnational organized crime;

(iii) Insufficient capacity and co-ordination between law enforcement institutions at the national level to investigate transnational organized crime:

The perception today is that traditional organized criminal structures have reacted and adapted to the national law enforcement mechanisms commonly used to combat them.
In fact, there is a growing consensus that criminal organizations have become more versatile, nimble and flexible, rendering them far better able to adapt to the changing needs of the criminal marketplace than the national institutions designed to stop them. Transnational criminal networks are well organized. It is therefore critical that the approaches of national, regional and international bodies be more coordinated and comprehensive; attention needs to be directed toward establishing mutually cooperative systems to monitor illicit flows, share intelligence and carry out joint operations.

(iv) Weaknesses in criminal justice institutions and legal frameworks for international co-operation to effectively prosecute organized crimes:

The capacity and will to carry out effective prosecutions and trials of organized crimes require as a foundation, independent judges, a professional prosecutorial and
defence bar, and functioning judicial infrastructure and honest and capable law enforcement agencies. And yet, the implementation of UNTOC and the three Universal Drugs Conventions requires more specific skills and tools as well.

(v) Lack of information sharing and international cooperation to track and prevent the financial flows of proceeds of organized crimes.

In addition to the personal and societal consequences of organized crime, the enormous purchasing power that comes from the financial proceeds of organized crime poses a threat to society, and thus to international peace and security.

(vi) Lack of attention and awareness to the potential victims of transnational organized crime and building better understanding of the threats of transnational organized crime to society at large.
While many forms of organized crime involve violence or carry personal consequences, the threats must also be measured in terms of both direct and indirect impacts to society. For example, in destination countries, the impacts of drug trafficking may be realized in the numbers of individuals addicted to illegal drugs. For the users, the impacts may carry serious physical and mental health consequences. This, in turn, affects families, communities and society through the costs of drug related accidents, lost productivity, child neglect, abuse and psychological damage. However, it must also be noted that while the individual human costs may be more obvious in one region, countries rarely appreciate the spill-over effects in others, whether an origin, transit or destination country.

UNTOK gives legal force to a number of matters addressed in the 1998 Political Declaration and Action Plan against Money-Laundering and provides sets of preventive and criminal measures to
establish a legal and regulatory regime for any entity vulnerable to money-laundering. The 1988 Drugs Convention was the first instrument to provide a legal definition of money laundering. It also included *inter alia* provisions for confiscation of proceeds of crime. Both the Transnational Organized Crime Convention and the UN Convention against Corruption (UNCAC) have forcefully highlighted the crucial importance of action against money-laundering. UNTOC requires the criminalization of money laundering and the establishment of a domestic regulatory and supervisory regime for banks and other financial institutions to combat money laundering and recommend the setting up of financial intelligence units. UNCAC is the latest and most innovative instrument of international criminal law, and includes state-of-the-art measures against money laundering for any money remitters providing formal or informal services. UNCAC also includes one chapter on asset recovery that contains detailed anti-money laundering prevention provisions.

The 1999 International Convention for the Suppression of the Financing of Terrorism requires Member States to criminalize the
financing of terrorism and to take measures to protect their financial systems from being abused by persons planning or engaged in terrorist activities\textsuperscript{52}, and Security Council Resolution 1373, which was adopted just days after the September 11 terrorist attacks on the United States, makes provision to restrict the moment, organisation and fund-raising activities of terrorist groups, and encouraged member States to share intelligence to fight international terrorism.

Having laws to prohibit drug production, illicit trafficking and abuse, and to provide stern penalties to offenders are not enough alone to respond to the challenges of organized crime. The ability to prosecute transnational organized crime cases often hinges on the ability of law enforcement and criminal intelligence personnel to collect and analyze and share information that can be used as evidence to make the case. Dealing with financial, forensic or other evidence for serious crimes of this nature require specialized expertise and outstanding co-operation between different departments, provinces and countries.
At the forefront of drug or trafficking control, there must also be effective national, regional and international law enforcement co-operation. Good opportunities exist at borders for positive action to repress illicit drug trafficking, but significant achievements are seriously hampered by lack of means, and limited co-ordination and co-operation.

As organized crime becomes increasingly transnational and flexible, States often struggle to keep up. The UN High-Level Panel on Threats, Challenges and Change observed that the agility of modern criminal networks “stands in marked contrast to the cumbersome sharing of information and weak co-operation in criminal investigations and prosecutions on the part of States.” 53 It is imperative, therefore, that States increase their capacity to work together to combat transnational organized crime. Effective international cooperation in tracing, identifying, seizing and confiscating proceeds of crime is an absolutely critical component, if not the cornerstone to the response to illicit trafficking and terrorism.
Global illegal synthetic drug production is difficult to estimate. In general, the diverted chemicals typically are processed into illegal synthetic drugs in clandestine laboratories, which can range in size from small residential-sized kitchens to large-scale “superlabs” capable of processing high volumes of synthetic drugs\textsuperscript{54}. According to the United Nations, however, the “variety and easy accessibility of the starting materials needed to manufacture synthetic drugs allow production to occur virtually anywhere in the world\textsuperscript{55}.

There are between 11 and 21.2 million drug-injecting users, of which between 0.8 and 6.6 million may be living with HIV. Total global estimates of people living with HIV are between 30 and 36 million. However, there is no universal definition for “problem drug user.”\textsuperscript{56} U.N. data are based on information submitted by Member States and variously includes regular or frequent drug users deemed dependent on drug use and suffering from social and health consequences as a result of their drug use.
Drugs are both a cause and consequence of poverty, with “22 of the 34 countries least likely to achieve the Millennium Development Goals located in regions that are magnets for drug cultivation and trafficking”\textsuperscript{57}. Intravenous drug users are at particular risk of contracting diseases such as Hepatitis B, Hepatitis C, and HIV/AIDS. According to a recent study, as much as 31\% of injecting drug users may be living with HIV, representing as much as 18\% of the total number of people internationally living with HIV\textsuperscript{58}.

Security and law enforcement approaches to international drug control have failed to achieve notable successes in “eliminating or reducing significantly” the supply of illicit drugs—a goal the United Nations committed in 1998 to achieve by 2008; and in 2009, recommitted to achieve by 2019\textsuperscript{59}.

The United Nations Office on Drugs and Crimes argues that international concern with “public security” during the past decade has overshadowed other key tenets of drug control policy, including public health and drug demand reduction\textsuperscript{60}. Numerous international
non-governmental organizations (NGOs) also argue that greater emphasis should be placed on policies that emphasize efforts to reduce health and social consequences; programmes to promote treatment, rehabilitation, and social re-integration for drug users; as well as sustainable and comprehensive alternative development projects. Some advocates are calling for a re-evaluation of current international drug policies. Such calls for a new look at international drug policies are being advocated from an increasingly growing sector of the policy community. It remains unclear whether such policy debates can translate into lasting improvements to reduce the production, trafficking, use, and consequences of illegal drug trade.

In 2012, the world will commemorate a century of international drug control. The International Opium Convention was signed on 23 January 1912 in the Hague by the United States, China, France, Germany, Italy, Japan, the Netherlands, Persia (Iran), Portugal, Russia, Siam (Thailand), Nicaragua, the United Kingdom and the British overseas territories (including British India), out of legitimate concerns about drug-related problems and with the laudable aim to
protect the welfare of mankind. Over time the control system degenerated into a war on users, farmers and petty traders. The excessive negative consequences and negligible effectiveness have now been broadly acknowledged and a process of de-escalation is in full motion in many places. Guiding principles in that process are respect for human rights, harm reduction, decriminalisation, proportionality of sentences, a developmental approach to illicit cultivation, and an evidence-based return to rationality. The current treaty system is plagued with inconsistencies, its ambiguities an obstacle to policy improvements, and sooner than later the current set of drug control conventions need to be revised. Inevitably the ongoing reform process will collide with the zero-tolerance nature of the UN conventions and with a number of their outdated articles.

As was said in the first UN World Drug Report in 1997: “Laws – and even the international Conventions – are not written in stone; they can be changed when the democratic will of nations so wishes it”\textsuperscript{64}.
What the world needs is a group of countries willing to declare that the current treaty framework is no longer fit for purpose. A small group of countries initiated the development of an international drug control system a century ago. In 2012 another small group of countries could initiate its needed reform and design the outlines of a new legal framework for the next century, based on the many lessons learned over the past hundred years.

**Recommendations**

A. Recommendations to Governments

1. Treaty accession

The 1961 Convention as amended by the 1972 Protocol, the 1971 Convention and the 1988 Convention form the basis of the international drug control system. The accession of all States and the universal implementation of the provisions of the conventions are a fundamental pre-requisite for efficient drug control worldwide.
2. Treaty implementation and control measures

Universal accession to the three main international drug control treaties will, however, not be sufficient without effective and universal implementation of all the provisions of the treaties and the application of the necessary control measures by all Governments. The provisions of the treaties must be implemented in the entire territory of each State party, including its federated states or provinces. Local, regional and/or State measures that violate the provisions of the international drug control treaties facilitate the trafficking in and abuse of narcotic drugs and psychotropic substances.

3. Prevention of illicit drug production, manufacture, trafficking and abuse

One of the key objectives of the international drug control treaties is to limit to legitimate purposes the production, manufacture, export, import and distribution of, trade in and use of internationally controlled substances and to prevent their diversion and abuse. The
level of illicit opium poppy cultivation in Afghanistan continues to be high. In addition, Afghanistan has become a significant manufacturer of heroin and other opiates, as well as a major source of cannabis. Afghanistan also has one of the world’s highest rates for the abuse of opiates. Hence, the Government of Afghanistan must pursue its National Drug Control Strategy in order to achieve a substantial and permanent reduction in opium poppy and cannabis plant cultivation and in opium and cannabis production, trafficking and abuse.

4. Prevention of diversion of precursors into the illicit traffic

One of the objectives of the 1988 Convention is to prevent the diversion of precursors for subsequent use in the illicit manufacture of narcotic drugs or psychotropic substances. Hence, member States must take stringent steps in this regard.

5. Availability and rational use of narcotic drugs and psychotropic substances for medical purposes

One of the fundamental objectives of the international drug control treaties is to ensure the availability of narcotic drugs and
psychotropic substances for medical and scientific purposes and to promote access to and rational use of narcotic drugs and psychotropic substances. State Governments must ensure it.

6. **Illegal Internet pharmacies**

   The global nature of the problems of illegal sales of controlled substances through the Internet and the smuggling of controlled substances by mail require concerted action by the international community.

   **B. Recommendations to the United Nations Office on Drugs and Crime and to the World Health Organization**

   UNODC is the primary entity responsible for providing technical assistance in drug control matters and for coordinating the provision of such assistance by Governments and organizations. The treaty-based function of WHO is to provide recommendations, based on medical and scientific assessments, regarding changes in the scope of control of narcotic drugs under the 1961 Convention and
psychotropic substances under the 1971 Convention. In addition, WHO plays a key role in supporting access to and rational use of substances under international control. The lack of qualified drug control administrators is at the origin of persistent difficulties in many countries in implementing the control measures for licit activities involving narcotic drugs, psychotropic substances and precursor chemicals. This defect has to be cured immediately.

C. Recommendations to other international organizations

International organizations such as INTERPOL and the World Customs Organization play an important role in international drug control. In cases where States require additional operational support in specific areas, such as drug law enforcement, the INOB addresses relevant recommendations pertaining to the specific spheres of competence of the relevant international and regional organizations, including INTERPOL and the World Customs Organization. These organizations must respond expeditiously.
References


5. The value of Indian opium exported to China, for example, is said to have amounted to 3 million pounds sterling in 1907.

6. See the statement made by Hamid Ghodse, President of the International Narcotics Control Board, on 26 February 2009 at the event marking the centennial of the convening of the International Opium Commission in Shanghai, China.


Sinha, J. “ *The History and Development of the Leading International Drug Control Conventions*”, (Report prepared for the Canadian Senate Special Committee on Illegal Drugs, 2001)


If in those days the opium-producing countries had been as concerned about alcohol as Western countries were concerned about opium, we might have had an international convention on alcohol,” remarked the former head of the WHO Section on Addiction Producing Drugs. See, “Conversation with Hans Halbach”, 87 (6) *British Journal of Addiction*, 851-855, (June 1992.)


See generally, William B. McAllister, *Drug Diplomacy in the Twentieth Century: An International History*, (Routledge, 2000.)

Pakistan, India, Burma, Bangladesh and Peru


Colombia is currently the only country that conducts regular aerial spraying of coca and opium poppy.


For example, some Colombian drug traffickers are reportedly distancing themselves from overt drug distribution activities, which could be used as evidence to trigger extradition.

Burma is one such country, which continues to refuse to extradite suspected drug traffickers under indictment in the United States.

In U.S. Congress has been active in pursuing anti-money laundering regulations and programme oversight. In 1999, Congress passed the Foreign Narcotics Kingpin Designation Act to authorize the President to target the financial profits of significant foreign narcotics traffickers and their organizations (known as “Specially Designated Narcotics Trafficker Kingpins,” or SDNTKs).


See the statement of Dr. Roy S. Godson, Subcommittee on the Western Hemisphere, “Violence in Central America,” June 26, 2007.

See, for example, the Political Declaration and Plan of Action on International Co-operation towards an Integrated and Balanced Strategy to Counter the World Drug Problem (A/64/92-E/2009/98, sect. II.A); and *World Drug Report 2008* (United Nations Publication, Sales No. E.08.XI.11).

For example, Article 38 of the 1961 Convention as amended by the 1972 Protocol states: “The Parties shall … take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, aftercare, rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends.”

Article 20

See, Articles 23 and 28


See, Article 27. Ibid.


Transnational Organized Crime, (International Peace Institute Blue Papers, 2009) p. 4,


Supra.n.45 at p.11.

Antonio Maria Costa, Address to the Security Council Meeting, 24 February 2010. S/PV.6277, p.4

Adopted at the Twentieth Special Session of the United Nations General Assembly devoted to "Countering the World Drug Problem Together", (New York, 10 June 1998)


In addition to the UN Conventions, UN Security Council Resolutions 1267(1999), 1373 (2001), 1540 (2004). also provide for the same.


Liana Sun Wyler, International Drug Control Policy (Congressional Research Service March 21, 2011)


Supra.n.55 at p.125


60 *Ibid* at p. 217.

61 See for example, Vienna NGO Committee on Narcotic Drugs, “Beyond 2008 Declaration,” July 9, 2008; available at vngoc.org; Latin American Commission on Drugs and Democracy, “Drugs and Democracy: Toward a Paradigm Shift,” (April 2009).

