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**INTERNATIONAL DRUG TRAFFICKING  
FROM THE LAW TO THE PRACTICE: THE  
ROLE OF UNODC AND THE AFGHAN CASE**

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## ABBREVIATIONS

The following abbreviations have been used in this thesis:

Art. Article

ff. Following

Para. Paragraph

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AIA Afghan Interim Administration

ANDS Afghanistan National Development Strategy

ATS Amphetamine-type Stimulants

CAP Center for American Progress

CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CCPCJ Commission on Crime Prevention and Criminal Justice

CEDAW Convention on the Elimination of All Forms of Discrimination against Women

CERD Convention on the Elimination of All Forms of Racial Discrimination

CMO Comprehensive Multidisciplinary Outline for Future Activities

CNA Competent National Authorities

CND Commission on Narcotic Drugs

COAFG Country Office of Afghanistan

CRC Convention on the Rights of the Child

DSB Drug Supervisory Body

EU	European Union
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IGO	Inter-governmental Organization
INCB	International Narcotics Control Board
ISAF	International Security Assistance Force
ISF	Integrated Strategic Framework
JCMB	Joint Coordination and Monitoring Board
JIU	Joint Inspection Unit
LoN	League of Nations
MDGs	Millennium Development Goals
MLA	Mutual Legal Assistance
NDCS	National Drug Control Strategy
NGO	Non-governmental Organization
OAC	Opium Advisory Committee
OIOS	Office of Internal Oversight Services
PCB	Permanent Central Board
PCOB	Permanent Central Opium Board
TAPI	Turkmenistan – Afghanistan – Pakistan - India
UDHR	Universal Declaration of Human Rights

UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNAT <sup>a</sup>	United Nations Administrative Tribunal
UNAT <sup>b</sup>	United Nations Appeals Tribunal
UNCICP	United Nations Center for International Crime Prevention
UNDAF	United Nations Development Assistance Framework
UNDCP	United Nations International Drug Control Programme
UNDG	United Nations Development Group
UNDT	United Nations Dispute Tribunal
UNGASS	Special Session of the United Nations General Assembly
UNIDCP	United Nations International Drug Control Programme
UNOCAL	Union Oil Company of California
UNODC	United Nations Office on Drugs and Crime
UNODCCP	United Nations Office for Drug Control and Crime Prevention
UNOV	United Nations Office at Vienna

# INTRODUCTION

Today, we live in an ever-increasing interconnected world and if on the one hand, our daily life becomes easier, from the financial transactions to the international commerce, on the other hand, during the last decades, some criminal phenomena have taken advantage of the most important technological innovations in order to expand their reach and to increase their profits. The result is that it has become more difficult to counteract crimes like drug trafficking, money laundering and corruption, because their effects cross the national and regional borders, thus becoming in certain cases a truly global threat. Consequently, the international juridical framework evolved through multilateral schemes of cooperation trying to keep up with all these transformations and many international control systems and bodies were created.

The present thesis is about the drug trafficking phenomenon from a juridical point of view, thoroughly analyzing its specificities, its effects, the international conventions that aim at regulating it and the bodies entrusted with the task of counteracting it. In particular, this dissertation wants to answer some specific questions. First, what is drug trafficking from a juridical point of view and could it be considered a threat to the regional and international peace and security? Secondly, what does the international legal framework provide for in the fight against drug trafficking and how did it evolve? Thirdly, what is the main supranational entity entrusted with the aim of counteracting drug trafficking and how does it function? Fourthly and finally, are these norms and bodies effective or is there a discrepancy between the theory and the practice?

The topic of this dissertation was chosen among all the others possible for just one

reason. The awareness of the drug trafficking phenomenon actually does not exist. It is astonishing that the situation of certain countries, like Afghanistan, is at the center of the international debate and on the agenda of all the national media but there is not a complete comprehension of the juridical, social and political phenomena that affect them. Given this premise, it was my main aim that of bringing to light the legal nature of this crime and to contextualize it within the international legal framework and at the same time to analyze in depth a case study, namely Afghanistan. In particular, the question that from the very beginning gave origin to the present thesis is one. Despite an overcrowded international legal framework, the situation in Afghanistan is often presented as precarious. Why then are not there improvements and rather it is considered the first opium exporter of the world?

This thesis constitutes the attempt of approaching this thematic from the most complete perspective possible, trying to combine the numerous studies on the drug-related international legal framework and on the Afghan situation with the scarce available information about the functioning of the most supranational body entrusted with the task of combating drug trafficking, namely the United Nations Office on Drugs and Crime (UNODC). A gap was found in the literature about the functioning and the internal processes of this Office and most of the research phase was thus dedicated to this end. Furthermore, despite the numerous national claims about the seriousness of the drug trafficking phenomenon, which imposes negative impacts at all levels, namely national, regional and international levels, as of today, there has not been a formal recognition by the existent supranational and security-related organization, that is the United Nations. For this reason, a part of the research has been devoted to the possibility of classifying drug trafficking as a threat to intentional peace and security.



In order to answer to the above-mentioned questions and to rationally exploit all the resource material, this dissertation is divided into four different chapters.

The first chapter will deal with the analysis of the drug trafficking phenomenon, trying to assess whether it could be considered a threat to the regional and international peace and security or not. The study of the most eminent scholars will be taken into consideration, especially as regards the concept of “security” and the term “threat”. Finally, the main negative impacts that drug trafficking imposes on all societies will be matched with the most important international conventions on human rights, in order to demonstrate the serious threat it represents at all levels, namely the national, regional and international levels, for the entire humankind, especially in a globalized world.

The second chapter deals with the international legal framework from a historical and juridical point of view. It is important in fact to bear in mind the evolution of the norms and provisions that today regulate this phenomenon. A brief overview of all the treaties, conventions and protocols signed and ratified before 1945 will be first offered. Then, the three UN-sponsored conventions that are still in force will be taken into consideration and thoroughly analyzed, presenting the main norms, their characteristics, their strengths and weaknesses.

The third chapter aims at studying in depth one of the most important bodies entrusted with the task of counteracting drug trafficking and its side effects on all societies, namely UNODC. It will be presented from different points of view. First, from a legal point of view, its legal basis and mandate will be delineated, together with a highlight of the legal nature of the employment relationship of the UNODC officials, with special reference to their independence and immunity and to the UN internal justice system.

Secondly, from an organizational point of view, it will be described its structure. Thirdly, from an operational point of view, the various tools it has in order to comply with its mission will be enumerated and described. Finally, from an economic point of view, its budget and fund-raising strategy will be taken into consideration, since the efficiency of the Office revolves around this aspect.

The fourth chapter will be devoted to a case study. In the social sciences, it is not possible to develop a context-independent theory and for this reason, a case study was introduced in the present work in order to offer a concrete knowledge of the topic. Many countries are involved and affected by the drug trafficking phenomenon, but rarely a country has passed through a tough history, with invasions, wars, civil wars and guerrillas like Afghanistan. It has always been at the center of the interests of the international community and today, unfortunately, it conveys a picture of lawlessness, transnational organized crime and terrorism. Consequently, the chapter will first explore the troubled historical background of this country, in order to better comprehend the actual situation. Then, the UNODC action in Afghanistan will be presented from a normative, operational and programmatic point of view. Finally, a quantitative and qualitative evaluation of the UNODC action will be offered in order to detect if there exists a discrepancy between the laws and the practice.

This analysis will provide sufficient elements in order to circumscribe in all respects the drug trafficking phenomenon and thanks to all the relevant source material that has been selected for the purpose of this thesis, to state that it constitutes a threat to regional and international peace and security and that despite the numerous treaties, conventions and bodies that try to combat it, it is a phenomenon difficult to eradicate. We might even talk about a wide discrepancy between the norms and the practice, the latter being

represented by the outstanding case of Afghanistan, where the abstract normative provisions clash with the lawlessness and the harsh social and economic situation the international organizations find on field. Obviously, then, despite the huge efforts the international community makes and despite the considerable set of norms that are in force, it is not possible at all to achieve the expected outcomes.

# **1. DRUG TRAFFICKING AS A THREAT TO REGIONAL AND INTERNATIONAL PEACE AND SECURITY**

In this chapter, I am going to analyze the drug trafficking phenomenon in the light of the international legal framework in order to assess if it could be considered a threat to regional and international peace and security.

If the word “peace” does not leave space for misunderstanding, as it is widely recognized that it consists of the absence of war, there is much more concern for the meaning of the word “security”. Security as a concept has passed through a long evolution during the last century that shall be discussed here in order to understand where its boundaries are and what might fall within them.

It is then for this reason that I will analyze the evolution of the concept of security from its mere military understanding under the realist paradigm, passing through the liberal definition of collective security, up to the present notion of the “Three Ds”, namely Defence, Development and Diplomacy that all together comprehend all the relevant aspects of human life.

Secondly, I will rapidly discuss the term “threat” and all the implications it carries with it. Because of the term’s relevance within the UN system, the practice of the Security Council will help to provide the legal limits its discretion encounters in determining the existence of a threat to the international peace and security and to precisely define its powers in this regard.

This theoretical study gives the possibility to ask ourselves if under the current and widely accepted definition of the words “security” and “threat”, it is possible to consider drug trafficking as a threat to regional and/or international peace and security. I will explain how the negative impacts of this phenomenon can be matched with the norms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and thus, how they can be classified on a three-level scheme: State, regional and international level. In fact, with a thorough analysis of numerous sources such as declarations of international and regional organizations, international legal documents and essays of eminent scholars, I will demonstrate that today drug trafficking can be actually considered a concrete threat to regional and international security.

## **The evolution of the concept of security**

### **The realist and the liberal paradigms**

Across the centuries, the concept of security has changed, depending on the historical and philosophical contexts. In the first half of the XX century, before the Cold War, the realist paradigm was extremely diffused among the chancelleries of Europe and generally everywhere. Traditionally, the concept of security was associated with that of “State”. The latter was considered the main actor of the international scene, always in pursuit of its national interest, declined in a continuous research for power and security. It was from these considerations that the idea of national security was born. George Kennan defined it in 1948 as *“the continued ability of the country to pursue the*

*development of its internal life without serious interference, or threat of interference, from foreign powers”<sup>1</sup>.*

From an historical point of view, the realist paradigm was certainly a product of its time. In fact, the world and Europe in particular were perceived as a chaotic background in which States had to perform their prerogatives. Cooperation was not an option in the light of a continuous competition in the search for relative power. In fact, States felt constrained to act unilaterally and to form volatile alliances in order to reach their national interests and to face critical situations: this is what is commonly known as “Collective Defence”.

From an international point of view, no authority was above the State. Thus, none of the international or regional organizations that seldom appeared in that period had an enforcement power and they were consequently weak from their origins. It is in this perspective that the League of Nations must be read. Its legal and organizational weaknesses prevented it from becoming what every State aspired to after the I World War: a truly cooperative mechanism to prevent war.

After the II World War, the world equilibrium had to be re-constructed and with the precedent of the failure of the League of Nations, the United Nations was legally built on a completely different approach. In particular, the liberal paradigm provided for the theoretical framework.

Deeply rooted in the thinking of the previous centuries, liberalism found free expression in the architecture of the newly born IGO. For the first time, the preeminent actor is not

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<sup>1</sup> *The evolution of the concept of security.* (2011, June). Retrieved March 24, 2014, from Ministro de Defensa - Instituto Espanol de Estudios Estrategicos: [http://www.ieee.es/en/Galerias/fichero/docs\\_marco/2011/DIEEEM05-2011\\_EvolutionConceptSecurity\\_ENGLISH.pdf](http://www.ieee.es/en/Galerias/fichero/docs_marco/2011/DIEEEM05-2011_EvolutionConceptSecurity_ENGLISH.pdf)

the State, but the individual with all the rights and freedoms that stem from this assumption. In this regard, we can cite Art. 55 of the UN Charter:

*“with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a) higher standards of living, full employment, and conditions of economic and social progress and development; [...] c) universal respect for, and observance of, human rights and fundamental freedoms for all [...]”*<sup>2</sup>.

The State is considered a pluralistic player, whose interest is shaped by many internal and external factors, but liberalism also takes into consideration other actors, such as nonstate actors and transnational and transgovernmental groups. Cooperation is deemed possible and necessary in order to maintain peace: it is in this period that the concept of Collective Security takes shape. The latter is defined as a balance of interest of the different actors involved, with the primary aim of reducing uncertainty and of avoiding the use of force.

A posteriori, we know that also this approach showed some weaknesses that during the Cold War became evident in the continuous recourse to the veto within the Security Council.

### **Globalization and a wider concept of security**

Globalization has revealed itself as an important destabilizing phenomenon in relation to the concept of security. In fact, with the expansion and the increasing velocity of the interconnectedness among all the people in the world, thanks to the new technologies, some crimes that previously were a matter of concern only for States, they now cross

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<sup>2</sup> United Nations. (1945, June 26). *Charter of the United Nations*. Retrieved May 4, 2014, from United Nations: <http://www.un.org/en/documents/charter>

national borders and are of truly international interest. Some example might be the transnational organized crime, terrorism, money laundering, smuggling and so forth.

Moreover, “under the impact of the current global economic crisis, the international environment, which is growing more complex, shows that the challenges of today security cannot be divided between those of "internal or external" character and between the "civilian and military" ones”<sup>3</sup>.

In this new environment, the most eminent scholars, jurists and politicians re-elaborated the concept of security in an all-embracing way, so as to comprehend new issues that go beyond the mere national military aspect typical of the realist paradigm and so as to go beyond even of the liberal one. In line with these new developments, two trends appeared.

The first one is centred on four different meanings of the general concept of security: Common Security, Integrated Security, Defensive Security and Cooperative Security. In particular, the latter presupposes the coordination of the main fields of action of States, namely the economic one, as well as the diplomatic, the political, the informative, the military and the civilian ones with the aim of promoting a closer collaboration between the governmental and non-governmental actors, also through informal forums. A practical example of the Cooperative Security can be easily found in the New Strategic Concept of the NATO elaborated during the Lisbon Summit in 2010.

The second trend refers to liberalism with even more emphasis, by claiming a more central position for the individual in the international arena, leaving the States aside. In

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<sup>3</sup> *The evolution of the concept of security*. (2011, June). Retrieved March 24, 2014, from Ministro de Defensa - Instituto Espanol de Estudios Estrategicos: [http://www.ieee.es/en/Galerias/fichero/docs\\_marco/2011/DIEEEM05-2011\\_EvolutionConceptSecurity\\_ENGLISH.pdf](http://www.ieee.es/en/Galerias/fichero/docs_marco/2011/DIEEEM05-2011_EvolutionConceptSecurity_ENGLISH.pdf)



name of a global sovereignty, eventually the individual rights and dignity prevail over international law. It is in this perspective that the idea of Human Security has been introduced, which at later stages has provided fertile ground for the development of the Responsibility to Protect theory, which, however, has not obtained a clear and definitive consensus among the international community.

At this point, it is clear that an extended concept security has overcome the national one. The instruments at the States' disposal are the classical ones, which however can be combined into two different ways: Hard Power and Soft Power, the latter being coined by Joseph S. Nye in the nineties. Obviously, the first one conceives the use of force, or better the use of coercive measures as the best means to guarantee security, whereas the second one implies the use of persuasive tones to reach the same aim, as the European Union currently does.

Recently, these two opposed approaches have been fused and found expression together in the "Three Ds" theory, an acronym that stands for Defence, Diplomacy and Development. It can also be defined as Smart Power: "the ideal combination of soft and hard powers, through a strategy that integrates the resources and instruments of the three powers of external action: military power (Defence), Diplomacy and international help (Development), the three "D", with a common goal: global security"<sup>4</sup>.

Nowadays, many States and IGOs apply this latest form of security, as it guarantees the attainment of all internal objectives without, at least in theory, causing harm to the other members of the international security and instead highlighting the importance of human

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<sup>4</sup> *The evolution of the concept of security*. (2011, June). Retrieved March 24, 2014, from Ministro de Defensa - Instituto Espanol de Estudios Estrategicos: [http://www.ieee.es/en/Galerias/fichero/docs\\_marco/2011/DIEEEM05-2011\\_EvolutionConceptSecurity\\_ENGLISH.pdf](http://www.ieee.es/en/Galerias/fichero/docs_marco/2011/DIEEEM05-2011_EvolutionConceptSecurity_ENGLISH.pdf)

life and the inalienable individual rights. We might even say that we are not talking of a national nor of an international security, but of a universal security, taking into account all the diverse actors that populate the global scene. Actually, champions of this view are the United Nations, in particular in the execution of the peacekeeping missions, France, as it explicitly declared in the 2008 White Book on Defence and National Security and the United States of America, which however has recently demonstrated an interest also for the idea of Sustainable Security.

The Center for American Progress (CAP) theorized the latter, trying to re-formulate the US policy towards China, which had proven unsustainable for two reasons: economically, as the defence expenses drained the Treasury, and politically, because the military and coercive means are not feasible in the current world politics. Thus, combining national security, Human Security and Collective Security, “it is necessary to spend less money on arms and, with the money saved by this action, more on Sustainable Security initiatives. In other words, the rebalancing of the "3D instruments" should also be reflected on the US budgets, without, however, putting the military supremacy at risk”<sup>5</sup>.

In conclusion, after having deeply analyzed the evolution of the concept of security, we can definitely state that today international security includes a wide array of notions that fall outside the simple military field and comprehends all the relevant aspects of human life. Moreover, a wide consensus has been built around it, since most States, IGOs and NGOs explicitly adhere to this new vision.

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<sup>5</sup> *The evolution of the concept of security*. (2011, June). Retrieved March 24, 2014, from Ministro de Defensa - Instituto Espanol de Estudios Estrategicos: [http://www.ieee.es/en/Galerias/fichero/docs\\_marco/2011/DIEEEM05-2011\\_EvolutionConceptSecurity\\_ENGLISH.pdf](http://www.ieee.es/en/Galerias/fichero/docs_marco/2011/DIEEEM05-2011_EvolutionConceptSecurity_ENGLISH.pdf)

## **The definition of the word “threat”**

The integrated definition of security I have presented allows considering as threats all those situations that challenge the international system. “Thus, [...] threats are defined by their impact (international violence or state instability) rather than by their type or origin. This provides a starting point for an integrated analysis of international security that allows for the inclusion of any threat, referent object, or response, so long as it affects the international system or involves the international community”<sup>6</sup>.

However, the term “threat” assumes a particular relevance within the UN system, as it is the basis for the recourse to Chapter VII of the UN Charter. It is for this reason that I will now explore the definition of the word “threat” according to the practice of the Security Council, the discretion the latter has in determining a “threat to international peace and security” and the powers it has been given by the UN Charter to face it.

According to the wording of Art. 39 of the UN Charter, Chapter VII can be invoked only when the Security Council has previously determined that a particular situation constitutes a threat to the peace, or a breach of the peace or an act of aggression. There is wide consensus about the fact that the Security Council enjoys a broad discretionary power in interpreting these three wordings and that its practice is based on a case-by-case assessment.

With regards only to the term “threat”, the discretionary powers of the Security Council are even broader. In fact, many kinds of situations might fall within this classification and they are not necessarily correlated with the use of the military force. “Under “threat

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<sup>6</sup> St. Jean, L. (n.d.). *The changing nature of "International Security": the need for an integrated definition*. Retrieved May 7, 2014, from The Inter-University Seminar on Armed Forces and Society: <http://www.iusafs.org/pdf/stjean.pdf>

to peace” may fall also situations internal to a State, considered to be able to have a significant impact in the surrounding region, or behaviours of the state itself”<sup>7</sup>. Among all the cases in which the Security Council has determined the existence of a threat to peace, the most relevant are gross violations of human rights<sup>8</sup>, international terrorism<sup>9</sup>, civil war, ongoing conflicts and piracy<sup>10</sup>.

However, a question arises: are there limits to the Security Council’s discretion? If the Security Council decides on a case-by-case basis, in theory anything could be a threat if the situation appears to be so, but according to Conforti, “the only conceivable limit in these circumstances is that which derives from the belief of the generality of States of the international community”<sup>11</sup>. In sum, a consensus should back every decision or assessment of the Security Council, so as to assure that it acts on behalf of the international community. For this reason, the resolutions issued by the General Assembly have a special relevance even if they do not have any binding nature: indeed, they express the opinion of a broader spectrum of States than the one of the Security Council. If the latter successfully predicts what will or will not encounter a stern opposition, it is certainly legitimated by at least the majority of the Member States.

At this point, it is important to clarify what the Security Council can legitimately do, once a threat to the peace has been ascertained. In general, according to Art. 39 of the UN Charter, the Security Council might make recommendations, or take the provisional measures envisioned in Art. 40 or “decide what measures shall be taken in accordance

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<sup>7</sup> Conforti, B. (2005). *The law and practice of the United Nations*. Leiden: Martinus Nijhoff Publishers.

<sup>8</sup> E.g., Res. 824 in 1993 requesting Yugoslavia to end hostilities against the cities of the safe area.

<sup>9</sup> E.g. Res. 1373 of September 2001.

<sup>10</sup> E.g. Res. 1816 of June 2008.

<sup>11</sup> Conforti, B. (2005). *The law and practice of the United Nations*. Leiden: Martinus Nijhoff Publishers.

with artt. 41 and 42”<sup>12</sup>. The most problematic part is certainly the measures involving the use of force envisaged in Art. 42, as the Security Council may intervene in both international and internal conflicts and these interventions do not come under the limit of domestic jurisdiction provided for by Art. 2 para. 7 of the UN Charter.

In theory, the Security Council should act directly through a UN military force in what has been called an international police action. Nevertheless, the provisions contained in Artt. 43 ff. have never been applied and a truly international military force under the aegis of the Security Council never constituted. Consequently, during these decades, the Security Council acted in two different ways that will now be discussed.

The first one is the peacekeeping operation. This kind of intervention totally remains under the Security Council authority and its duration and mandate are always limited and precisely prescribed. Nevertheless, in order to participate to a peacekeeping operation, Member States shall give their consent. It is an aspect that should not be underestimated, because even if the Security Council retains important monitoring powers, the States still have to give their consent for the peacekeeping operation to occur. Against those who think that its legal framework is an alleged Chapter VI and a half, I rather support the theory according to which the peacekeeping operations find their legal basis in a customary norm under Chapter VII.

The second way the Security Council acted is through the authorization to Member States. However, the UN Charter explicitly talks about an “authorization” only in Chapter VIII, “admitting that the Council can rely, upon authorization, on regional

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<sup>12</sup> United Nations. (1945, June 26). *Charter of the United Nations*. Retrieved May 4, 2014, from United Nations: <http://www.un.org/en/documents/charter>

organizations”<sup>13</sup>. Articles 43 ff. were designed in order to centralize the international police power in the organization and to avoid unilateral military initiatives by the Member States. Moreover, as the praxis confirms, often the so-called “authorization” has rather taken the juridical form of a delegation. “An authorization of the Security Council to carry out acts in themselves unlawful, but considered to be a lawful ground for exclusion of the unlawful act, it means to emphasize that the action is still conducted by the United Nations, under the rules of the Charter, regardless of whether the States could have legitimately done it themselves independently, in whole or in part. It is as if the Council intends to “authorize” States to act on its behalf, which technically amounts to a delegation”<sup>14</sup>. Nevertheless, the norms contained in Chapter VII give the Security Council the power neither to authorize nor to delegate individual Member States to use the military force.

The above-mentioned excursus about the meaning of the word “threat” within the UN system, about the practice of the Security Council and finally, about the powers it enjoys and the limits it encounters has been necessary for the future developments of this dissertation. In fact, it served to clarify that if drug trafficking was considered by the Security Council as a threat to peace, this would not imply the use of force through the authorization/delegation to Member States. Moreover, as I will explain later on, the use of military force would be neither a legally viable option nor the best one to counteract this phenomenon.

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<sup>13</sup> Conforti, B. (2005). *The law and practice of the United Nations*. Leiden: Martinus Nijhoff Publishers.

<sup>14</sup> *Ibidem*.

## **Drug trafficking as a threat to peace and security**

At this point, the question if drug trafficking can be considered as a threat to peace and security can be answered. In the light of the meaning that international law and politics have attributed to the words “threat” and “security, I am now going to explain why drug trafficking can be considered a threat to peace and security at State, regional and international level. On the one hand, I will take into consideration some of the most important international treaties: the UN Charter and the International Bill of Human Rights, which is composed of the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights. On the other hand, I will classify the impacts that drug trafficking produces trying to match them with the relative articles of the above-mentioned treaties in order to give a solid legal basis to my reasoning.

I retrieved all drug trafficking impacts from different sources, because there is no exhaustive list. Consequently, in order to present the opinion of the most important actors on the international scene, whether IGOs, NGOs, States, or think tanks, I collected the most representative documents of each of them. What resulted was surprising: their opinions unconsciously overlap. Thus, I simply classified all the possible consequences deriving from drug trafficking and I created a scheme, which has the ideal aim to reflect a still hidden global opinion.

Drug trafficking impacts can be divided into four main categories defined by their target: society, public health, economy and governance. I will now expose all these impacts, matching them with the most important norms of the above-mentioned treaties.

## **Society**

On the occasion of the 2012 UN International Day against Drug Abuse and Illicit Trafficking, the General Assembly dedicated a daily session to this topic. By means of a panel discussion, the impacts of drug trafficking on society and development were deeply analyzed and what emerged was a dark description of its consequences.

The panellists explained that “drugs and crime undermine development by eroding social and human capital”<sup>15</sup>. In a country where cultivation and trafficking of drugs involve almost all the segments of the society, the quality of life worsen to the detriment not only of the skilled workers who are forced to leave in search for better opportunities abroad, but also of the unskilled workforce that remains and suffers the direct effects of unemployment and lack of education possibilities.

From a general point of view, limited focus has been dedicated to the spillover effects of drug trafficking. Nevertheless, it is of fundamental importance to highlight that this phenomenon poses serious challenges within the society, mining its stability from the inside. In the 2011 Resolution 66/183, the General Assembly expressed deep concern about the fact that “despite continuing efforts by States, relevant organizations, civil society and non-governmental organizations, the world drug problem continues to constitute a serious threat to public health and safety and the well-being of humanity, in particular children and young people and their families, and to national security and

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<sup>15</sup> *Thematic Debate of the 66th session of the UN General Assembly on Drugs and Crime as a Threat to Development*. (2012, June 26). Retrieved March 24, 2014, from United Nations: <http://www.un.org/en/ga/president/66/Issues/drugs/drugs-crime.shtml>



sovereignty of States, and that it undermines socioeconomic and political stability and sustainable development”<sup>16</sup>.

Drug trafficking has severe consequences on the livelihoods of citizens, as it has been demonstrated that it is one of the main causes of the increase in poverty and violence. Aning and Pokoo, in their analysis “Drug trafficking and threats to national and regional security on West Africa”<sup>17</sup> have shown how on the one side, together with other factors such as porous borders and weak institutions, poverty fuels criminal activities linked to the drugs traffickers, and how on the other side, drug trafficking deepens the poverty problem in these regions. It is a vicious circle, which is difficult to eradicate, unless international cooperation is set to face the challenge.

Moreover, in 2003, during the OSCE seminar held in Tashkent, Uzbekistan, the Deputy Director of the Centre for Crime Prevention at the UNODC underlined the nexus between drugs trafficking and irregular immigration. The flow of people is an important issue for those countries that share their borders with the so-called narco-States or are near them. Examples might be first, certainly Russia, which faces today the serious threat of the illicit drug trafficking from Afghanistan and secondly, the United States. In particular, the US National Security Council stated that “international human smuggling networks are linked to other transnational crimes including drug trafficking [...]. They can move criminals, fugitives, terrorists and trafficking victims, as well as economic

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<sup>16</sup> UN General Assembly. (2011, December 19). *A/Res/66/183 International cooperation against the world drug problem*. Retrieved May 11, 2014, from General Assembly of the United Nations: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=%20A/RES/66/183](http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/66/183)

<sup>17</sup> Aning, K., & Pokoo, J. (2013, December 31). *Drug Trafficking and Threats to National and Regional Security in West Africa*. Retrieved March 24, 2014, from West Africa Commission on Drugs: [www.wacommissionondrugs.org/wp-content/uploads/2013/04/Drug-Trafficking-and-Threats-to-National-and-Regional-Security-in-West-Africa-2013-04-03.pdf](http://www.wacommissionondrugs.org/wp-content/uploads/2013/04/Drug-Trafficking-and-Threats-to-National-and-Regional-Security-in-West-Africa-2013-04-03.pdf)

migrants. They undermine the sovereignty of nations and often endanger the lives of those being smuggled”<sup>18</sup>.

In sum, poverty, immigration, human smuggling, and erosion of the human and social capital and of the social stability are the main spillover effects of drug trafficking on society. We are now able to determine if a match might be established with the norms provided by the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenants on Civil and Political Rights (ICCPR).

Together with the UN Charter, these three international legal documents ensure the rights therein contained to all individuals within the territory of the signatory States, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

With regard to the rights that concern the social aspect of human life, we should refer only to the Universal Declaration of Human Rights and to the International Covenant of Economic, Social and Cultural Rights. Three rights are expressed and recognized by both documents: the rights to work, the right to an adequate standard of living and the right to education.

The right to work is articulated in Art. 23 of the UDHR and in Art. 6 of the ICESCR. The wordings of these two articles are almost identical and for argument’s sake, I will enunciate Art. 23 para. 1 of the UDHR: “Everyone has the right to work, to free choice

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<sup>18</sup> National Security Council. (2011, July 25). *Transnational Organized Crime: a Growing Threat to National and Internatioanl Security*. Retrieved March 24, 2014, from National Security Council: <http://www.whitehouse.gov/administration/eop/nsc/transnational-crime/threat>

of employment, to just and favourable conditions of work and to protection against unemployment”<sup>19</sup>.

The right to an adequate standard of living is expressed in Art. 25 of the UDHR and in Art. 11 of the ICESCR, the enunciation of latter being: “The States Parties to the present Covenant recognize the right to everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent”<sup>20</sup>.

Finally, the right to education is stated in Art. 26 of the UDHR and Art. 13 of the ICESCR. As a reference, I will take into consideration Art. 13 para. 1 of the ICESCR: “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace”<sup>21</sup>.

In conclusion, drug trafficking impacts on society infringe some of the most important articles of these two international legal documents, which are the expression of a

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<sup>19</sup> UN General Assembly. (1948, December 10). *The Universal Declaration of Human Rights*. Retrieved May 11, 2014, from United Nations: <http://www.un.org/en/documents/udhr/>

<sup>20</sup> UN General Assembly. (1966, 1-a, December 16). *International Covenant on Economic, Social and Cultural Rights*. Retrieved May 11, 2014, from United Nations Human Rights: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>21</sup> *Ibidem*.

widespread consensus, as they were signed and ratified by the almost generality of States of the international community.

### **Public health**

“Narcotic drugs constitute one of the major challenges to modern societies. Drug abuse destroys human health and dignity, causes the loss of thousands of lives in Europe and brings sorrow and despair to many individuals and their families”<sup>22</sup>. This is the incipit of a draft resolution adopted unanimously on 23 April 2013 by the Committee on Political Affairs and Democracy of the Council of Europe.

All researchers agree that the most relevant impacts of drugs relapse on public health. According to the 2013 World Drug Report, “there were between 102,000 and 247,000 drug-related deaths in 2011, corresponding to a mortality rate between 22.3 and 54.0 deaths per million population aged 15-64”<sup>23</sup>. Asia detains a record in this sense, as UNODC estimates that only in 2011, 118,443 people have died. If we consider the phenomenon globally and on a longer temporal scale, it is clear that it is a continuous genocide that we might and shall prevent. In addition to drug-related deaths, which alone would allow talking about an international threat, there are also other aspects to take into consideration.

First, we should consider the risk of a diffusion of diseases like HIV and hepatitis B and C. In fact, they are communicable diseases that can be easily transmitted through drug injection. Data are clear: according to UNODC estimates, in 2011, 11.5% of the 14

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<sup>22</sup> Tomlinson, E. (2013, September 24). *Drug traffic from Afghanistan as a threat to European security*. Retrieved March 24, 2014, from Parliamentary Assembly - Council of Europe: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19717&lang=en>

<sup>23</sup> UNODC. (2013). *2013 World Drug Report*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

million who injects drugs worldwide were living with HIV, with little regional variation, whereas 51% were living with the hepatitis C virus and finally, 8.4% were living with the hepatitis B virus.

Secondly, the impact of drug trafficking on public health is considerable also from an economic point of view. In fact, we should bear in mind “the need to provide treatment to drug-dependent persons, which has a considerable cost for the individuals, their families and for society as a whole”<sup>24</sup>. Long-term drug treatments have certainly great benefits, but they do vary a lot in terms of accessibility and effectiveness. Considering just the United States, a one-year drug treatment for opioids dependence costs less than one year of imprisonment. Nevertheless, on the other hand, in 2011, about \$193,096,930 were spent, to deal with drug-related crime expenses (criminal justice system, crime victim costs, etc), health expenses (treatments, hospital, insurance, etc) and productivity losses<sup>25</sup>. The financial burden faced by the United States is comparable with that of other regions, such as Europe, Asia and Africa.

The impacts of drugs on human life and on public health are impressive, but we now have to investigate the possible connections with the above-mentioned international treaties.

Article 6 of the ICCPR set forth the inherent right to life of every human being and specifies that “this right shall be protected by law”. Certainly, this right has complicated

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<sup>24</sup> Tomlinson, E. (2013, September 24). *Drug traffic from Afghanistan as a threat to European security*. Retrieved March 24, 2014, from Parliamentary Assembly - Council of Europe:

<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19717&lang=en>

<sup>25</sup> Data are retrieved from “The economic impact of illicit drug use on American society” written in 2011, by the National Drug Intelligence Center of the US Department of Justice:

<http://www.justice.gov/archive/ndic/pubs44/44731/44731p.pdf>

repercussions on issues like euthanasia, capital punishment and abortion, but in this case, we should think about drug-related deaths that can be annually avoided.

Furthermore, articles 9 of the ICESCR and 22 of the UDHR deal with the right to social security, which consists of social insurance programs in order to provide minimum levels of social security for all those who have not access to private social insurance.

Finally, many treaties have recognized the right to health, among which the UDHR and the ICESCR. In fact, Art. 25 para. 1 of the UDHR so declares: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”<sup>26</sup>. “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health” is enunciated also in Art. 12 of the ICESCR, whose second paragraph explicitly considers “the prevention, treatment and control of epidemic, endemic, occupational and other diseases”<sup>27</sup>.

In conclusion, public health is subjected to many challenges imposed by drugs abuse and trafficking and the aforementioned treaties are only few examples of the international protection accorded to human life against this kind of threats.

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<sup>26</sup> UN General Assembly. (1948, December 10). *The Universal Declaration of Human Rights*. Retrieved May 11, 2014, from United Nations: <http://www.un.org/en/documents/udhr/>

<sup>27</sup> UN General Assembly. (1966, 1-a, December 16). *International Covenant on Economic, Social and Cultural Rights*. Retrieved May 11, 2014, from United Nations Human Rights: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

## **Economy**

Economy is one of the fields in which the adverse effects of drug trafficking are better known and globally recognized. All IGOs, NGOs, think tanks and States of the international community have continuously acknowledged that this phenomenon provokes distortions of the legitimate economy and favours the rise of transnational organized groups, which undermine economic stability. Globalization, in this context, has been certainly a factor for the spread of this awareness, because the growing extensity, intensity and velocity of global interactions can be associated with their deepening impact such that the effects of distant events can be highly significant elsewhere and specific local developments can come to have considerable global consequences<sup>28</sup>. Let us then enumerate the main negative impacts that drug trafficking imposes on the economic field.

The above-mentioned OSCE seminar held in Tashkent in 2003 gave a negative picture of drug trafficking most of all in the economic field and the Personal Representative of the OSCE Netherlands Chairman-In-Office, Daan Everts, stated that it “devastates national economies. The violence and insecurities it brings stops serious foreign and local investors from investing. Criminal networks are increasingly infiltrating the legitimate economy – not just with their money but also with their ethics”<sup>29</sup>. In particular, with regard to the deprivation of investment opportunities, it should be added that the companies willing to invest in countries affected by this kind of situation have

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<sup>28</sup> The concept is retrieved from “Global transformations. Politics, economic and culture” (1999) by Held D. et al., Stanford University Press: Stanford, California.

<sup>29</sup> *OSCE seminar identifies drugs trafficking as major threat to economic security*. (2003, March 17). Retrieved March 24, 2014, from Organization for Security and Cooperation in Europe: <http://www.osce.org/eea/55132>

to face enormous additional costs for insurance and security reasons, which adversely impact foreign direct investments (FDIs) in those regions.

The entire international community has highlighted that the major threat coming from drug trafficking networks is the lack of developmental possibilities for all developing and poor States, which continue to lag behind in the international economic arena. In fact, such networks “take advantage of the weakness of States in conflict situation and make the return to peace and economic development a more protracted and more difficult process for those States”<sup>30</sup>.

Another major negative impact is money laundering, without which drug trafficking maybe would not be even possible, as it presupposes the movement of large amounts of money whose provenience is not legal. The contrary is also true: there exist also cases in which the collection of funds is initially legal (e.g. the chain of Islamic charities), but at later stages, a portion of this money becomes an economic source of illegal activities, such as armed struggle and terrorism.

However, money laundering alone has important adverse effects on a society. First, with the increase in shadow economic activities, the legitimate economy is undermined “for example, by using fronting companies whose real purpose is to hide criminal funds. As these business activities are not profit motivated or based on market forces, they can offer products at prices that undercut legitimate business”<sup>31</sup>. Secondly, it undermines the financial reputation of the country, thus provoking a flight of FDIs. Thirdly, by

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<sup>30</sup> *Transnational Threats to International Peace and Security*. (2014). Retrieved March 24, 2014, from France at the United Nations: <http://www.franceonu.org/france-at-the-united-nations/thematic-files/peace-and-security/transnational-threats-to/france-at-the-united-nations/thematic-files/peace-and-security/transnational-threats-to/article/transnational-threats-to>

<sup>31</sup> ONDCP. (2011). *Threats of Drug Trafficking, Money Laundering and the Financing of Terrorism*. Retrieved March 24, 2014, from Office of National Drug and Money Laundering Control Policy - Antigua and Barbuda: <http://ondcp.gov.ag/threats.php?aid=732>



affecting money demand, money volatility and misallocation of resources, money laundering makes economic policies less effective.

Furthermore, taking into account the environments in which some drugs are cultivated, I have noticed how gender equality is never fully respected. In fact, especially in the cultivation of certain types of drugs, such as the opium poppy, women are employed together with young males to bear many hard work hours in the fields. Since in certain areas opium cultivation constitutes the only form of sustenance and also the most profitable one, the opium enables women to access cash income and credit out of which it is hard, if not even impossible to get out. In fact, often the drug-related criminal networks pay in advance the harvest, with the certainty that the farmers and women in particular do not have alternative ways of livelihood to pay it back, in an otherwise ultra-traditional Islamic society. Moreover, rarely these farmers own the field they harvest, but instead they work as day labourers.

In conclusion, drug trafficking mainly provokes the distortion of the legitimate economy, it undermines economic stability, it deprives societies of developmental possibilities, by driving away business and FDIs, it leads to forms of discrimination and it carries with it the phenomenon of money laundering, which adversely affects the economy, too. We now turn our attention on considering whether or not these consequences of drug trafficking infringe some of the fundamental human rights protected in the UDHR, the ICESCR and the ICCPR.

As I have already said, these three treaties forbid any form of discrimination and all take into consideration the role women should play in the society. As a matter of fact, Art. 3 of the ICESCR prescribes that “the States Parties to the [...] Covenant undertake to

ensure the equal right of men and women to the enjoyment of all economic [...] rights set forth in the [...] Covenant”<sup>32</sup>.

Covering all relevant economic rights in the wider range of fundamental human rights, the ICESCR tackles also the problem of just and favourable conditions of work, always in respect of gender equality. In particular, in Art. 7 the States Parties recognize:

*“(a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*  
*(b) Safe and healthy working conditions [...]”*<sup>33</sup>

Furthermore, both the ICESCR and the ICCPR take into consideration the right of self-determination. Against the backdrop of a situation in which people are constrained for economic reasons by drug-related criminal networks to cultivate and refine drugs without any legal alternative of livelihoods, this right assumes a particular importance. Art. 1 of the ICCPR affirms that “by virtue of that right (all peoples) freely determine their political status and freely pursue their economic, social and cultural development”<sup>34</sup>.

The lack of livelihood alternatives infringes also Art. 11 para. 2 of the ICESCR, which obliges the States Parties “to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by

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<sup>32</sup> UN General Assembly. (1966, 1-a, December 16). *International Covenant on Economic, Social and Cultural Rights*. Retrieved May 11, 2014, from United Nations Human Rights:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>33</sup> *Ibidem*.

<sup>34</sup> UN General Assembly. (1966, 1-b, December 16). *International Covenant on Civil and Political Rights*. Retrieved May 11, 2014, from United Nations Human Rights:

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources [...]”<sup>35</sup>.

Finally, the 1948 UDHR recognizes the right to own property and that “no one shall be deprived of his property”<sup>36</sup>.

Obviously, money laundering is a crime in almost every State of the international community and even if it cannot be outlawed in a fundamental human right, beyond the three here proposed, many national laws and international treaties have the scope to combat it. At global level, it is useful to mention the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 2000 Convention against Transnational Organized Crime and the 2003 UN Convention against Corruption.

## **Governance**

My thesis is that drug trafficking imposes great threats against peace and security at national, regional and international level and I believe that its impacts on the governance of some States show how it is a phenomenon that goes well beyond national borders. In fact, a vast literature deals with this aspect of drug trafficking as it is the one that concerns the most the equilibrium of the international community.

Political stability is at stake when drug trafficking creates the preconditions to its functioning. The roots of this phenomenon lie hidden in an illegal substratum of the State and they are difficult to eradicate, because it involves also institutional actors,

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<sup>35</sup> UN General Assembly. (1966, 1-a, December 16). *International Covenant on Economic, Social and Cultural Rights*. Retrieved May 11, 2014, from United Nations Human Rights: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

<sup>36</sup> UN General Assembly. (1948, December 10). *The Universal Declaration of Human Rights*. Retrieved May 11, 2014, from United Nations: <http://www.un.org/en/documents/udhr/>

State officers, politicians as well as the military establishment in an indestructible chain of corruption.

The question of corruption is a thorny one. Corruption is the vehicle through which criminal networks are able “to infiltrate security and government agencies, transform or influence the motivation of its members, reorient objectives towards the spoils of drug trafficking activity thus influencing questions of State legitimacy and the legitimacy of democratic processes”<sup>37</sup>. Corruption is the means that let them create a system of connivance, which allows drug trafficking to exist and expand. After all, a narco-State is defined as a country de facto controlled by drug cartels where drugs are openly cultivated and traded with a tacit governmental approval. It is for this reason that in his 2013 report “Drug traffic from Afghanistan as a threat to European security”, Lord John E. Tomlinson acknowledges that drug trafficking constitutes a real threat to the rule of law, as well as UNODC Executive Director Yury Fedotov had done in 2011 in a meeting within the UN Security Council.

The immediate and clear consequence is the weakening of social structures and institutions and democracy is the first victim of this system. The vicious circle of corruption and threats to governance can be best explained when we include in the equation the transnational organized crime (T.O.C.) variable. On the one hand, T.O.C. weakens State institutions and put at risk democracy; on the other hand, it best flourishes in a State with a weak rule of law. Thus, we can conclude that drug trafficking simultaneously presupposes and creates anti-democratic environments.

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<sup>37</sup> Aning, K., & Pokoo, J. (2013, December 31). *Drug Trafficking and Threats to National and Regional Security in West Africa*. Retrieved March 24, 2014, from West Africa Commission on Drugs: [www.wacommissionondrugs.org/wp-content/uploads/2013/04/Drug-Trafficking-and-Threats-to-National-and-Regional-Security-in-West-Africa-2013-04-03.pdf](http://www.wacommissionondrugs.org/wp-content/uploads/2013/04/Drug-Trafficking-and-Threats-to-National-and-Regional-Security-in-West-Africa-2013-04-03.pdf)

Corruption of government and military officials seems a fundamental factor for the rise of the levels of violence, according to Aning and Pokoo. In fact, “drug trafficking in West Africa has not yet spurred significant levels of violence. Most cases hinged on corruption and bribery rather than violent coercive methods. Where violence has existed, it has tended to erupt when government and military officials are vying for access to drug-trafficking-related rents”<sup>38</sup>. Nevertheless, the most diffused kind of violence is the one that results “from clashes between various criminal groups involved in drug trafficking” and from drug abuse itself, as “people under the influence of drugs [...] more often engage in aggressive or violent anti-social behaviour and commit crimes”<sup>39</sup>. The picture that preliminarily results from this analysis tells us that the rise in violence due to drug trafficking and abuse has a direct impact on the respect of the rule of law and on the social and institutional structure of a State.

However, the most dangerous threat due to drug trafficking is the financing of T.O.C. and of terroristic groups. There is no doubt that the relevance accorded to these two categories is well motivated as they might provoke disastrous effects well beyond national borders of the State where they primarily operate and conceal themselves.

Drug trafficking generates profits for an estimated 322 billion dollars a year<sup>40</sup>. To whom do those profits go? The answer is quite simple, as there are multiple, certain proofs that transnational organized crime and terroristic groups are involved at all stages of drug

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<sup>38</sup> Aning, K., & Pokoo, J. (2013, December 31). *Drug Trafficking and Threats to National and Regional Security in West Africa*. Retrieved March 24, 2014, from West Africa Commission on Drugs: [www.wacommissionondrugs.org/wp-content/uploads/2013/04/Drug-Trafficking-and-Threats-to-National-and-Regional-Security-in-West-Africa-2013-04-03.pdf](http://www.wacommissionondrugs.org/wp-content/uploads/2013/04/Drug-Trafficking-and-Threats-to-National-and-Regional-Security-in-West-Africa-2013-04-03.pdf)

<sup>39</sup> Tomlinson, E. (2013, September 24). *Drug traffic from Afghanistan as a threat to European security*. Retrieved March 24, 2014, from Parliamentary Assembly - Council of Europe: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19717&lang=en>

<sup>40</sup> Data retrieved March 24, 2014, from United Nations: <http://www.un.org/en/ga/president/66/Issues/drugs/drugs-crime.shtml>

production and trafficking. We now move to consider T.O.C. and terrorists through different analysis, because of their different way of acting.

With regard to drug-related T.O.C., the latter is directly involved in the production and diffusion of all kinds of drugs, because they are personally part of the productive chain and personally responsible for drug trafficking through many trade routes. Terroristic groups, instead, usually prefer the imposition of taxes on the harvest and its traffic. It is a sort of toll that farmers and local criminals voluntarily pay in exchange for protection and access to forms of micro-credit.

Aning and Pokoo have demonstrated the nexus between drug trafficking activities and terrorism in northern Mali, where according to them “drug trafficking, smuggling and other form of organized criminal activity can be taken advantage of to finance the activities of some of these groups, who over time, have come to wield decisive political and military influence”<sup>41</sup>. It is for this reason that the United Kingdom in 2008 affirmed in a cable<sup>42</sup> that narcotics’ trafficking was the largest threat to peace and stability in West Africa.

Terrorism is a sensitive topic for almost all the countries of the international community, especially after the 9/11 attacks. In an article released in 2012 by the U.S. Department of Defence, a hard commitment was stated: narco traffic is a major national security challenge. In the words of William F. Wechsler, deputy assistant secretary of defence for counternarcotics and global threats, “what we now see around the world are

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<sup>41</sup> Aning, K., & Pokoo, J. (2013, December 31). *Drug Trafficking and Threats to National and Regional Security in West Africa*. Retrieved March 24, 2014, from West Africa Commission on Drugs: [www.wacommissionondrugs.org/wp-content/uploads/2013/04/Drug-Trafficking-and-Threats-to-National-and-Regional-Security-in-West-Africa-2013-04-03.pdf](http://www.wacommissionondrugs.org/wp-content/uploads/2013/04/Drug-Trafficking-and-Threats-to-National-and-Regional-Security-in-West-Africa-2013-04-03.pdf)

<sup>42</sup> Cable n° VZCZCXRO7009 from US embassy in London to US Secretariat of State retrieved from <https://www.wikileaks.org/>

loose criminal networks that have diversified their illicit activities and also may have connections with other hostile actors, including terrorist groups, insurgencies and elements of rogue or hostile States”. [...] This is why “these networked adversaries are able to have greater impact on the global security environment than in previous times”<sup>43</sup>.

If a position like this might not be surprising for the United States, it is so in other countries that usually are not at the forefront in the fight against terrorism, or, at least it does not seem so. It is the case of Antigua and Barbuda, which has become a transit country in the drug trafficking routes and has devoted many efforts to eradicate this phenomenon. Among the crimes the Office of National Drug and money laundering Control Policy combats, there is also terrorist financing, which is possible thanks to an intense money laundering activity.

The main negative impacts on the governance have been presented and now, I will go through the most fundamental human rights listed in the above-mentioned international documents.

From a political point of view, all peoples have the rights of self-determination, as already state before, by virtue of which they shall freely determine their political status. Nevertheless, the rights protected are much more. In fact, artt, 25, 26 and 27 of the ICCPR are the core provisions that protect the rule of law and lay the foundations of democracy. Article 25 recognizes the right of every citizen to “take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be

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<sup>43</sup> Miles, D. (2012, May 17). *Drug Trafficking Threatens National Security, Official Says*. Retrieved March 24, 2014, from US Department of Defense: <http://www.defense.gov/News/NewsArticle.aspx?ID=116381>

elected at genuine periodic elections which shall be universal and equal suffrage [...]”<sup>44</sup>. Article 26 affirms the equality before the law, whereas article 27 recognizes minorities’ rights. The main instruments, however, to effectively combat all these crimes are the above-mentioned 2000 Convention against Transnational Organized Crime and the 2003 UN Convention against Corruption.

As regards the link between terrorism and drug trafficking, we should remember that the international community has given special attention to this issue. Fundamental are the various resolutions and presidential statements of the Security Council and the resolutions of the General Assembly, which certainly express a wider consensus.

The most representative one is the SC Resolution 1373/2001. First, the Security Council reaffirms that “any act of international terrorism constitute a threat to international peace and security”. Then, it “notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security”. Finally, it declares that “knowingly financing [...] terrorist acts (is) contrary to the purposes and principles of the United Nations”<sup>45</sup>.

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<sup>44</sup> UN General Assembly. (1966, 1-b, December 16). *International Covenant on Civil and Political Rights*. Retrieved May 11, 2014, from United Nations Human Rights:

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>45</sup> S/RES/1373/2001



The Security Council released also a presidential statement<sup>46</sup> on this topic, in which “the Council notes with concern the serious threats posed in some cases by drug trafficking and related transnational organized crime to international security in different regions of the world [...]. The increasing link, in some cases between drug trafficking and the financing of terrorism, is also a source of growing concern” (UN Security Council, 2009). With regard to the situation in Afghanistan, the Security Council issued two resolutions in 2008<sup>47</sup> and in 2009<sup>48</sup>, which acknowledge “the existing links between international security, terrorism and T.O.C., money-laundering, trafficking in illicit drugs and illegal arms”<sup>49</sup>. In a more recent presidential statement, the Security Council explicitly refers to many transnational crimes, including drug trafficking, as “evolving challenges and threats to international peace and security”<sup>50</sup>.

On the other hand, the General Assembly has continuously devoted efforts in combating drug trafficking with all instruments at its disposal. Already in 1998, it noted with concern the “links between illicit drug production, trafficking and involvement of terrorist groups, criminals and T.O.C.”<sup>51</sup>. It went even further with Resolution 64/179 (2009), in which it refers to drug trafficking with the word “threat” and it notes “the negative effects of T.O.C., including smuggling of and trafficking in [...] narcotic drugs[...] on development, peace and security and human rights”<sup>52</sup>.

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<sup>46</sup> PRST/2009/32

<sup>47</sup> S/RES/1817 (2008)

<sup>48</sup> S/RES/1890 (2009)

<sup>49</sup> S/RES/1817 (2008)

<sup>50</sup> S/PRST/2012/16

<sup>51</sup> A/RES/S-20/2

<sup>52</sup> A/RES/64/179

In the same year, during a Security Council meeting on Drug Trafficking as a Threat to International Peace and Security, the Secretary-General Ban Ki-moon even termed drug trafficking as “a leading threat to international peace and security”<sup>53</sup>.

In conclusion, the international community has built a robust consensus around the fact that drug trafficking constitutes a threat to international peace and security, with a wide legal background formed by international treaties, conventions, statements and resolutions.

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<sup>53</sup> UN Secretary General Ban Ki-moon. (2009, December 8). *Secretary-General's remarks to Security Council meeting*. Retrieved May 21, 2014, from United Nations Secretary-General: <http://www.un.org/sg/statements/?nid=4289>

## 2. THE INTERNATIONAL LEGAL FRAMEWORK

This chapter aims to describe the evolution of the international legal framework with regard to the fight against drugs cultivation, trafficking and abuse. The international awareness that a multilateral cooperation was needed to effectively eradicate this ever-increasing problem arose at the beginning of the XX century. At that time, the most traded drug was opium and the country that suffered the most from its trafficking and sale was China. In the mid-1800s, China had been already involved in the Opium Wars against the United Kingdom and it had tried several times to ban the import and abuse of a drug whose consumption was believed a moral vice and an economic threat. From a global perspective, opium, together with cocaine and other drugs, dominated the economic exchanges all around the world. Nevertheless, all western societies began viewing drug consumption and its unrestricted availability as a threat to health and social activists claimed some form of regulation. “A new type of international cooperation also contributed to creating a multilateral drug control regime in the early twentieth century. Pioneered during the mid-1800s, numerous organizations emerged to confront issues that required trans-national attention in an increasingly interconnected world”<sup>54</sup>.

In fact, in 1907, the first treaty between the United Kingdom and China was signed and ratified. However, this constituted only the first step of a long and tortuous road that would bring to the signing of many other conventions and protocols, among which there are the three UN-sponsored Conventions that are still in force. The analysis of such

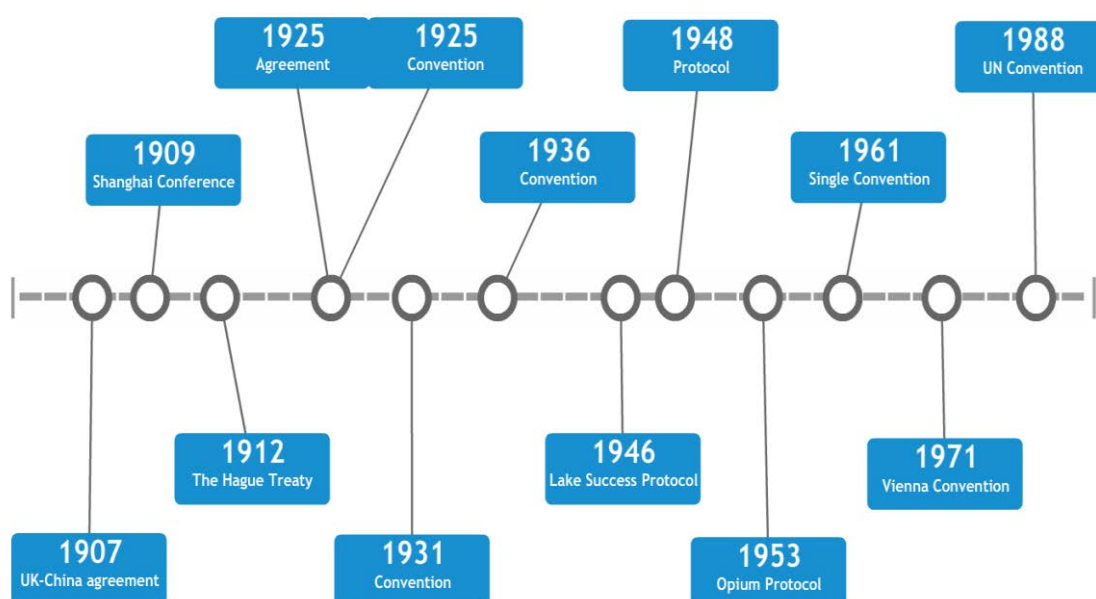
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<sup>54</sup> McAllister, W. B. (2000). *Drug Diplomacy in the XX Century*. London: Routledge.

treaties will highlight the goals reached during almost a century and will certainly help to orient oneself among the various institutions, bodies and commissions that have operated in this field. Some of the latter have been overcome, but others still play a significant role nowadays.

I will first offer a brief overview of all the treaties, conventions and protocols signed and ratified prior to the creation of the United Nations. Then, I will thoroughly analyze three UN-sponsored Conventions: the 1961 Single Convention, the 1971 Vienna Convention on Psychotropic Substances and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. These constitute the pivot around which the international legal framework about drugs revolves and they laid the foundations for all those bodies that today cooperate at national, regional and international level.

**Table 1 – Timeline of the drug-related agreements, conventions and protocols**



## **Drug-related treaties and conventions before 1945**

The 1907 Ten Year Agreement between the United Kingdom and China was very simple in its formulation: on the one hand, the United Kingdom agreed to reduce the Indian opium exports to China by 10% per year; on the other hand, China agreed to reduce its opium cultivation at the same pace. This treaty set the stage for later negotiations, by highlighting the importance of reducing the supply side. Even if initially it succeeded in curbing the licit opium exchanges between these two countries, however, the amount of illicit trafficking and smuggling of opium increased exponentially. The situation changed radically when the United States acquired great economic power and, since opium trade represented an economic impediment for its exchanges with the Chinese market, it “provided the final catalyst leading to international drug control”<sup>55</sup>. It is for this reason that the United States convened the first international conference on the opium question in Shanghai in 1909.

The work of this conference would be known as the Shanghai Opium Commission and substantially, it was the preparatory work for the first international drug-related treaty, the 1912 International Opium Convention of The Hague. In its initial phase, however, this Commission was not given any plenipotentiary powers and the list of participants included almost all the colonial powers: Great Britain, the USA, France, the Netherlands, Portugal, Germany, Austria-Hungary, Italy, Russia and Japan, as well as China, Persia (Iran) and Siam (Thailand). The only country that did not attend, despite a formal invitation was Turkey. Thanks to the huge amount of evidences about drug consumption, revenues and trafficking, the Shanghai Conference assumed a particular relevance because, even if it did not create any binding obligations on the participant

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<sup>55</sup> McAllister, W. B. (2000). *Drug Diplomacy in the XX Century*. London: Routledge.

parties, it highlighted the importance of facing the drug question on a multilateral ground.

The path towards multilateralism went hand in hand with the shift from a non-binding formulation to a multilateral binding treaty. In 1912, a conference was convened in The Hague and the participants included the Netherlands, China, France, Germany, Italy, Japan, Persia, Portugal, Russia, Siam (Thailand), the United Kingdom and the British overseas territories (including British India), and the United States of America. The result was the International Opium Convention, which consisted of six chapters and 25 articles, dealing with not only opium and morphine, but also cocaine and heroin. Thus, it was broad in its scope, but the treaty did not succeed in some of the most important prearranged goals. In fact, many countries did not want to stop drugs cultivation and in Art. 1 of the above-mentioned convention, they choose the verb “control” instead of “eradicate” with regard to opium production. Among the failures of the Convention, we should mention first, the absence of any timetable for the gradual suppression of opium smoking; secondly, the absence of any effective method to control and reduce drugs imports and exports and finally, the requirement that all the 34 manufacturing and producing countries should ratify the treaty before it could legitimately enter into force. The latter proposal was made by the German delegation and in the short-run, it prevented the treaty from entering into force.

This problem was soon solved when, after the I World War, an identical article was inserted in all the peace treaties: in Art. 296 of the Versailles Treaty, in Art. 247 of the Treaty of Peace between the Allied and Associated Powers and Austria, in Art. 230 of the Trianon Treaty with Hungary, in Art. 174 of the Neuilly Treaty with Bulgaria and in Art. 280 of the Sevres Treaty with Turkey. These articles recite as follows:

*“Those of the High Contracting Parties who have not yet signed, or who have signed but not yet ratified, the Opium Convention signed at The Hague on January 23, 1912, agree to bring the said Convention into force, and for this purpose to enact the necessary legislation without delay and in any case within a period of twelve months from the coming into force of the present Treaty.*

*Furthermore, they agree that ratification of the present Treaty should in the case of Powers which have not yet ratified the Opium Convention be deemed in all respects equivalent to the ratification of that Convention and to the signature of the Special Protocol which was opened at The Hague in accordance with the resolutions adopted by the Third Opium Conference in 1914 for bringing the said Convention into force.*

*For this purpose the Government of the French Republic will communicate to the Government of the Netherlands a certified copy of the protocol of the deposit of ratifications of the present Treaty, and will invite the Government of the Netherlands to accept and deposit the said certified copy as if it were a deposit of ratifications of the Opium Convention and a signature of the Additional Protocol of 1914”<sup>56</sup>.*

Consequently, with the signing and ratification of the I World War peace treaties, the International Opium Convention was finally ratified by the almost generality of States of the international community.

In the subsequent twenty years, the newly born League of Nations (LoN) played a significant role in promoting an ever-increasing control over drugs and other international treaties and conventions. Already in 1920, the Opium Advisory Committee<sup>57</sup> (OAC) was created with the purpose of establishing a control over the implementation of the 1912 Convention and it was composed by the government representatives. The League of Nations provided the OAC with administrative and executive support through the Opium and Social Question Section within the LoN Secretariat, while the League Health Committee used to give advices on medical

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<sup>56</sup> *The Versailles Treaty*. (1919, June 28). Retrieved June 3, 2014, from Yale Law School - Lillian Goldman Law Library: [http://avalon.law.yale.edu/subject\\_menus/versailles\\_menu.asp](http://avalon.law.yale.edu/subject_menus/versailles_menu.asp)

<sup>57</sup> It was the forerunner of the Commission on Narcotic Drugs (CND)

matters. However, this Committee could not play a significant monitoring and enforcement role: in fact, despite its hard line on drug matters, the USA had to abandon the leading role within it, since it was not part to the League of Nations and most of the colonial powers decided for a less restricted policy on the supply side.

In 1925, two additional international documents were signed. The first one is the Agreement concerning the Manufacture of, Internal Trade in, and Use of, Prepared Opium, which entered into force the following year. A strong statement opened the text: the signing parties were “fully determined to bring about the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium”<sup>58</sup>. Nevertheless, it was signed and ratified only by seven countries. The second agreement had far-reaching consequences. It was the new International Opium Convention, also known as the 1925 Convention. It introduced the import/export authorization method, which is still used today. This method consists in the monitoring of the competent national authorities of both importing and exporting countries, through the emission of detailed authorizations that have to include the quantity of the controlled substance and all the relevant personal information of both the exporter and the importer. The 1925 Convention made an important step also in the regulation of cannabis, which was therein included for the first time. Among the successes of this convention, we should recall the institution of the Permanent Central Board<sup>59</sup> (PCB), also referred to as the Permanent Central Opium Board (PCOB), even if it joined the already busy and chaotic drug-control bureaucracy. The PCOB was devised as a semi-independent body, composed by non-governmental experts and its main task was to monitor the statistical

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<sup>58</sup> UNODC. (2009). *A century of international drug control*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

<sup>59</sup> It is the forerunner of the actual International Narcotics Control Board (INCB)



data provided by member States. Nevertheless, in case of non-compliance, it was not given any enforcement power: it could only ask for an explanation through the League of Nations and bring the issue to the attention of the member States. On the other hand, the 1925 Convention showed old weaknesses. First, there no existed any obligation to limit opium cultivation to medical purpose and this is the reason why neither the USA nor China signed this Convention. Despite the fact that the USA had abandoned the conference, it was eventually involved in the work of the PCOB, consequently creating a truly international environment of cooperation in drug control. Secondly, both the lack of a universal ratification and the economic crisis of the 1920s prevented the 1925 Convention, and the previous international agreements as well, from becoming effective.

As a result, in 1931, those member States willing to ensure greater efficiency decided to sign and ratify the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, which entered into force in 1933. It consisted of six Chapters and 34 articles; exceptionally, 67 States ratified it and among them, there were all manufacturing countries. However, the real novelties introduced by this new convention were two. First, it created a compulsory system of estimates, which every signing State had to deliver to the Drug Supervisory Body (DSB), the latter being specifically created with the aim of monitoring the whole system. Secondly, all the controlled substances were divided into different categories according to their different addictive propensity and thus, submitted to different levels of control by the legitimate authorities.

Until then the international legal framework had dealt only with the licit trade of the controlled substances, introducing different forms of regulation. Certainly, all the

above-mentioned systems reached the goal of facing a severe problem from a multilateral perspective. Still, it was an incomplete solution. In fact, especially after the 1929 crisis and during the prohibitionist era in the USA, the illicit trafficking of the controlled substances increased exponentially. In order to solve the problem of the illicit drug smuggling, in 1936, a new conference was held, whose main outcome was the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs.

The 1936 Convention represents the first attempt of eliminating the illicit trafficking in drugs, by making it a punishable offence. Thus, the States parties agreed to “make the necessary legislative provisions for severely punishing”<sup>60</sup> this crime by imprisonment and for the first time, by considering the possibility of extradition in case of crimes committed abroad. Despite the fact it is a milestone in the overview of all the international drug-related agreements and conventions, this Convention was signed and ratified only by 13 countries and among the non-signatories States, there was also the USA. “Moreover, it only became effective in October 1939, i.e. after World War II had started, and drug control priorities had been supplanted by more immediate foreign policy imperatives”<sup>61</sup>.

## **UN-Sponsored Conventions**

After the II World War, the United Nations assumed all the functions previously performed by the League of Nations with regard to the drugs question. In its first session, in 1946, the UN Economic and Social Council (ECOSOC) substituted the OAC with the Commission for Narcotic Drugs (CND). All these structural changes required a

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<sup>60</sup> Convention for the Suppression of the Illicit traffic in Dangerous Drugs retrieved June 18, 2014 from Organization of American States: <http://www.cicad.oas.org/EN/treaties/mj3.htm>

<sup>61</sup> UNODC. (2009). *A century of international drug control*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

substantial modification of the previous conventions and in 1947, the Lake Success Protocol was signed and ratified with this specific purpose.

In this new context, new substances appeared, such as methadone and pethidine and the CND concluded that these new drugs constituted a real threat. Since eventual amendments to the previous conventions would have been hard to pass, the CND proposed to create a new Protocol. In 1948, the Synthetic Narcotics Protocol was signed and entered into force the following year and by 1954, it placed under control 20 new substances.

Hereinafter, in 1953, many countries of the international community cooperated to elaborate another protocol, the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in and Use of Opium, known also as the 1953 Opium Protocol. The protocol aimed at limiting the cultivation and use of opium to medical and scientific purposes. In fact, only seven countries received the authorization by this international agreement to cultivate the opium poppy and to export it, under a stricter national control system. Moreover, the PCOB had enforcement and monitoring powers, while the DSB received estimates by the signatory States. “The 1953 Opium Protocol contained the most stringent drug-control provision that had ever been embodied in international law”<sup>62</sup>. Nevertheless, its ratification proved to be a thorny problem: in all, 61 States ratified it, but only two countries out of the seven allowed exporting opium, namely Iran and India, ratified it in the 1950s. In the short run, its efficacy was mined. In fact, in the meanwhile the 1961

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<sup>62</sup> UNODC. (2009). *A century of international drug control*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

Single Convention entered into force, superseding the 1953 Opium Protocol, which thus remained in effect only for less than two years.

### **The 1961 Single Convention and the 1972 Protocol amending the 1961 Convention**

Many international legal agreements formed the legal framework in the fight against drug abuse and trafficking. In addition to the difficulty in the ratification of most of them, it was also a tough task for jurists and lawyers to manage all those overlapping provisions. Already in 1948, the ECOSOC had called for the consolidation of all the existing drug-related treaties, but it was only after three different drafts elaborated by the CND and as many rejections by the governments that in 1961, a conference was convened in New York. Seventy-three delegations participated, together with many IGOs. Adopted in 1961, the Single Convention entered into force in 1964 and today, it has an almost universal accession, as it has been amended by the 1972 Protocol. The latter has been due to some important changes occurred during the 1960s and in particular to the “war on drugs” launched by the US President Richard Nixon. Significantly, it was the US to call for a revision of the 1961 Single Convention, with the aim of strengthening the control system and the fight against the illegal trafficking. Made up of 22 amendments, it has been signed and ratified by almost all those countries that had already ratified the Single Convention. Notably, three countries did not, namely Afghanistan, Chad and the Lao PDR.

According to the guidelines provided by the ECOSOC, the convention should have focused on three core objectives: “to limit the production of raw materials; to codify the existing conventions into one convention and to simplify the existing drug control

machinery”<sup>63</sup>. Let us now see the main provisions of the 1961 Single Convention out of the 51 articles that compose it, as amended by the 1972 Protocol.

In its preamble, the Single Convention opens with an explicit link with the previous conventions and agreements: the acknowledgment that “the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering”<sup>64</sup>. However, it also highlights the importance of fighting “this evil”; a fight that requires a “coordinated and universal action [...] (under) the competence of the United Nations”<sup>65</sup>. The word “evil” is obviously an emotive term, but it sets the tone of the convention. Even if the preamble does not have a binding nature, “because (the word evil) helped to understand the intentions of the negotiators it had a juridical force for the purposes of interpretation”<sup>66</sup>.

Article 4 presents the general obligations, which fall on the signatories. In particular, “the parties shall take such legislative and administrative measures as may be necessary:

- (a) To give effect to and carry out the provision of this Convention within their own territories;
- (b) To cooperate with other States in the execution of the provisions of this Convention; and
- (c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs”<sup>67</sup>.

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<sup>63</sup> Bewley-Taylor, D., & Jelsma, M. (2011, August 17). *Regime change: Re-visiting the 1961 Single Convention on Narcotic Drugs*. Retrieved June 9, 2014, from University of Washington:

<http://faculty.washington.edu/acs22/SinklerSite/447/Bewley-Taylor%20%26%20Jelsma%202012%20Regime%20Change.pdf>

<sup>64</sup> *Single Convention on Narcotic Drugs*. (1961). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/pdf/convention\\_1961\\_en.pdf](http://www.unodc.org/pdf/convention_1961_en.pdf)

<sup>65</sup> *Ibidem*.

<sup>66</sup> Bewley-Taylor, D., & Jelsma, M. (2011, August 17). *Regime change: Re-visiting the 1961 Single Convention on Narcotic Drugs*. Retrieved June 9, 2014, from University of Washington:

<http://faculty.washington.edu/acs22/SinklerSite/447/Bewley-Taylor%20%26%20Jelsma%202012%20Regime%20Change.pdf>

<sup>67</sup> *Single Convention on Narcotic Drugs*. (1961). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/pdf/convention\\_1961\\_en.pdf](http://www.unodc.org/pdf/convention_1961_en.pdf)

According to the Commentary on the 1961 Single Convention, prepared by the Secretary-General, among the above-mentioned legislative measures, there could be also those legislative acts that authorize the government to give effect, through a decree, to the decisions of the CND or of the ECOSOC with regard to the inclusion of a new substance in the lists. The article also mentions “administrative measures”: in this case, this wording refers to the requirement of a national “special administration, for the purpose of applying the provisions of the Single Convention”<sup>68</sup>, but also of a number of measures dealing with the quantity of staff deployed, the inspection system and the training facilities. Moreover, in accordance to the international cooperation mentioned in the preamble, all the signing States agreed to take all those measures proper to facilitating it and the article makes thus an explicit reference to Artt. 35 and 36, which respectively deal with the cooperation in the fight against the illicit drug trafficking and with the extradition of the illicit drug traffickers. In this sense, all member States of the Single Convention should take all those necessary measures to prevent their territories from becoming a “base of operation of the illicit traffic in other countries or to become a refuge of international illicit traffickers”<sup>69</sup>. The limitation to medical and scientific purposes of the trade in and use of controlled drugs is an important achievement of the Single Convention, even if the ephemeral 1953 Protocol already contained a similar proposition. Nevertheless, there is not a unanimous definition of the expression “medical purposes”, upon which States agreed, because its meaning varies depending on times, circumstances and places and this leaves room for a certain leeway to the Parties of the Convention in the application of the penal provisions.

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<sup>68</sup> *Commentary on the Single Convention on Narcotic Drugs* . (1962, August 3). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_single\\_convention\\_1961.pdf](http://www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_single_convention_1961.pdf)

<sup>69</sup> *Ibidem*.

Then, in Art. 5 the Single Convention lists the international organs it entrusts with the responsibilities and functions with respect to the international control of drugs. The United Nations have a general competence on this matter. This means that “all Parties to the Convention, whether Members of the United Nations or not, are thus bound not only to carry out the provisions of the Single Convention, but also those of the (UN) Charter, relating to drugs”<sup>70</sup>. On the other hand, the CND and the INCB are the other organs entrusted with functions by the Single Convention. In particular, pursuant to Art. 8, the CND is authorized to amend the Schedules, to make recommendations and to call the attention of the INCB to any relevant matter, but every of its decisions must be previously approved by the ECOSOC or by the General Assembly. The INCB is instead an independent and quasi-judicial monitoring body, specifically created by the Single Convention to substitute the PCB and the DSB in their functions and responsibilities. For this reason, it examines the estimates furnished by the States and according to Art. 15, it shall prepare an annual report, to be submitted to the ECOSOC through the CND and to be published by the Secretary-General. The INCB membership has been increased by the 1972 Protocol from eleven to thirteen members, elected by the ECOSOC. This increase has been due to the fact that the membership of the IGOs and of the multilateral treaties was enlarging, thus making compelling the need to give a broader representation. Furthermore, in its 1972 revised version Art. 9 presents two additional paragraphs, namely para. 4 and 5. The former practically authorizes the INCB to deal with almost every aspect of the implementation of the treaty, even if it emphasizes the importance of the cooperation with national governments. It cannot be

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<sup>70</sup> *Commentary on the Single Convention on Narcotic Drugs* . (1962, August 3). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_single\\_convention\\_1961.pdf](http://www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_single_convention_1961.pdf)

otherwise, since the consent of the latter is required for the Board to make recommendations and to lend assistance. In the wake of the previous paragraph, para. 5 continues to stress the role of international cooperation and for this reason, it requires the INCB decisions to be consistent with the research of further cooperation with member States and it solicits the continuity of the dialogue between them and the Board, since the latter meets only a few weeks per year.

After this preliminary analysis, with regard to the first and the second objective that the ECOSOC had articulated in 1948, the Single Convention has been largely successful. In fact, the first objective, i.e. the consolidation of all the previous conventions and agreements in one Single Convention led to the termination of all previous drug-related international treaties, except for the 1936 Convention on the Illicit Traffic in Dangerous Drugs. Only its Art. 9 did not remain in force, because it was replaced by Art. 36 of the 1961 Single Convention, which sets forth new penal provisions. On the other hand, the second objective, namely the simplification of the international drug control system and machinery, was largely achieved. The decision to merge the PSB and the DSB into the newly born INCB should be read in this light. We should now focus on the third and final prearranged goal: the extension of controls to new areas.

From a general point of view, the Single Convention mainly focuses on the supply side of drugs. Nevertheless, for the first time Art. 38 mentions also the drug demand problem. In the wake of the challenges dealt with by the 1971 Vienna Convention, the article has been amended by the 1972 Protocol and its new text tries to reflect the increasing awareness that a multidisciplinary approach is required to effectively counteract the drug trafficking and abuse. Insofar the article takes into consideration the importance of the prevention of drug abuse and all those measures that involve the drug



addicts, such as treatment, education, rehabilitation and so forth, the demand side is effectively faced.

Furthermore, if the Single Convention contained tough norms against the illicit production of opium, it also dealt with the production of other substances, such as poppy straw, coca-leaf and cannabis, thus enlarging the scope of action of the Convention itself. To this end, Art. 23 command the creation of one or more national opium agencies, thus requiring, according to Art. 23 para. 2 subparagraph (e), “a government monopoly of the wholesale and international trade in the agricultural product in question”<sup>71</sup> in order to remove this possibility from the private sector. These agencies should determine what areas are authorized to cultivate the opium poppy for producing opium and identify, through detailed licences, who is authorized to cultivate, sell and deliver them to the national agencies. The same control system provided for by Art. 23 is conceived in Art. 26 also for those countries that permit the cultivation and production of the coca-bush and the coca-leaf and in Art. 28 with regard to the cultivation of cannabis.

The 1961 Single Convention preserves the import/export certification system created by the 1925 Convention and maintains the schedule system provided for by the 1931 Convention, but it expands it to four categories. Nevertheless, it should be noted that the Single Convention does not explicitly make illegal the scheduled drugs. Significantly, they are only strictly controlled in order to limit their production and trade to medical and scientific purposes. In fact, “the oft-used term illicit drug does not appear in the

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<sup>71</sup> *Commentary on the Single Convention on Narcotic Drugs* . (1962, August 3). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_single\\_convention\\_1961.pdf](http://www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_single_convention_1961.pdf)

Single Convention, it only distinguishes between licit and illicit (non-licensed) cultivation, production, trade and possession”<sup>72</sup>.

Pursuant to Art. 41, the Single Convention entered into force on the thirtieth day after the date on which the fortieth State has deposited the ratification: this happened in 1964 in the case of the unamended 1961 Convention and in 1975 in the case of the 1972 Protocol. The Convention applies “to all non-metropolitan territories for the international relations of which any Party is responsible, except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom”<sup>73</sup>.

Amendments to the Single Convention are envisaged in Art. 47, whose procedure requires that the Party interested in modifying the convention shall communicate the draft of the amendment to the Secretary-General, who will transmit it to the other Parties and to the ECOSOC. The latter can decide either to convene a conference to discuss the proposed amendment or to directly ask the Parties whether they accept it or not. However, if within eighteen months of its first appearance it is not openly rejected by any Party, the amendment is then deemed approved and it enters into force.

Like in every international agreement or treaty, the Convention considers the possibility of future disputes about the implementation of the norms therein contained. Art. 48 envisages all classical instruments to peacefully settle the dispute, such as negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies and

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<sup>72</sup> Bewley-Taylor, D., & Jelsma, M. (2011, August 17). *Regime change: Re-visiting the 1961 Single Convention on Narcotic Drugs*. Retrieved June 9, 2014, from University of Washington: <http://faculty.washington.edu/acs22/SinklerSite/447/Bewley-Taylor%20%26%20Jelsma%202012%20Regime%20Change.pdf>

<sup>73</sup> *Single Convention on Narcotic Drugs*. (1961). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/pdf/convention\\_1961\\_en.pdf](http://www.unodc.org/pdf/convention_1961_en.pdf)

judicial process. If, however, the means provided in the first paragraph should prove insufficient to solve the dispute, then the Parties may refer the dispute to the International Court of Justice (ICJ).

In conclusion, the 1961 Single Convention, as amended by the 1972 Protocol represents the highest efforts until then to simplify the drug-related bureaucracy and to tighten up the provisions. It is “greater than the sum of the parts it replaced”<sup>74</sup>. In part, this is true. On the one hand, the Single Convention has introduced tough penal provisions for drug traffickers although remaining in a multilateral framework, thus providing a starting point for the following treaties. On the other hand, the main aim of the Single Convention was to remain “Single”. Nevertheless, that was not the case from the very beginning. Its ratification left in force the 1936 Convention and just one year before the 1972 Protocol amending the Single Convention, another international convention was signed and then ratified, namely the 1971 Convention on Psychotropic Substances, followed seventeen year later by the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

### **The 1971 Convention on Psychotropic Substances**

Immediately after the ratification of the 1961 Single Convention, the market was invaded by new synthetic drugs. From an historical point of view, already after the II World War, Japan had experienced an increase in the use of methamphetamines, but the phenomenon turned to be truly global in the 1960s, when the pacifist movements all

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<sup>74</sup> Bewley-Taylor, D., & Jelsma, M. (2011, August 17). *Regime change: Re-visiting the 1961 Single Convention on Narcotic Drugs*. Retrieved June 9, 2014, from University of Washington: <http://faculty.washington.edu/acs22/SinklerSite/447/Bewley-Taylor%20%26%20Jelsma%202012%20Regime%20Change.pdf>

over the world abused of psychedelic drugs, which became the particularity of this sub-culture for over a decade.

Initially, even if some of those substances were included in the Single Convention, none of the governments imposed strict forms of regulation. However, when it appeared clear that the abuse of such drugs was becoming a real threat for the health of thousands of people, some limitations were introduced, especially in the developed countries, while in the developing ones, the situation deteriorated because the pharmaceutical companies marketed there their products in huge quantities.

Consequently, in 1967, the INCB, together with the UN Legal Office and the WHO warned about the consequences of such a massive distribution of psychotropic drugs into the market and prompted the adoption of a new treaty in order to contain the phenomenon. The following phase was characterized by intense negotiations among the States and the pharmaceutical companies and the result was a compromise, which took the name of “Vienna Convention”, approved in 1971. It entered into force in 1976 and as of 2008, 183 States were part of it, representing 95% of all the UN Member States.

The 1971 Vienna Convention placed under strict control a wide array of substances, which were divided into four different schedules that are subdue to different degrees of control, from the strictest to the most tolerant one. In its structure, the 1971 Vienna Convention resembles the 1961 Single Convention and in fact, the latter proved to be a useful basis to create an effective control system, even if with some key innovations. It is composed of 33 articles and now, the most significant ones will be here discussed.

First, the convention limits the use of substances listed in the I Schedule to scientific and “very limited medical purposes”. The reason behind such a wording is that when

the text was approved, very little therapeutic value was recognized to those drugs. However, in the Commentary on the Convention on Psychotropic Substances, it is also acknowledged that “one cannot foresee at present whether a substance in that Schedule may be found very useful in the treatment of frequently occurring diseases”<sup>75</sup>. Thus, differences might arise in the interpretation of the expression “very limited medical purposes” and States are left free to determine its exact meaning, depending on time and circumstances.

Nevertheless, in Art. 8, it is required that “the manufacture of, trade (including export and import trade) in, and distribution of substances listed in Schedules II, III and IV be under licence or other similar control measure”<sup>76</sup>, exactly following the procedure envisaged in art. 7 for the drugs of Schedule I. The licence system is very similar to the one created by the 1961 Single Convention. The Parties substantially agreed to apply a strict control over the authorized people engaged in the manufacture, trade in and distribution of those substances. On the one hand, in the case of the I Schedule, the States undertake to limit as much as possible the import and export of those drugs. On the other hand, with regard to the remaining Schedules, the States shall provide security measures to the establishments and according to Art. 9, those substances must be “dispensed for use by individuals pursuant to medical prescription only”<sup>77</sup>. With the latter provision, the 1971 Vienna Convention imposes stricter norms on the use of psychotropic substances than the Single Convention had done. In fact, the main difference between the two international conventions is that the Single Convention

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<sup>75</sup> *Commentary on the Convention on Psychotropic Substances*. (1971, February 21). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_Convention\\_1971.pdf](http://www.unodc/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_Convention_1971.pdf)

<sup>76</sup> *Convention on Psychotropic Substances*. (1971). Retrieved March 24, 2014, from [http://www.unodc.org/pdf/convention\\_1971\\_en.pdf](http://www.unodc.org/pdf/convention_1971_en.pdf)

<sup>77</sup> *Ibidem*.

required the medical prescription only for the drugs listed in Schedule I, while in the 1971 Vienna Convention this requirement is extended to all categories.

With regard to the discipline of the import/export of such drugs, the 1971 Vienna Convention requires different degrees of control and authorizations depending on the Schedule. The I Schedule is obviously the most strictly supervised: only the competent authorities or agencies are authorized to import and export such substances. This makes the trade exchanges in these products very difficult. With regard to the II Schedule, “manufacturers, wholesale distributors, exporters and importers have to keep records showing in detail the quantities manufactured, each acquisition and disposal, the date, supplier and the recipient”<sup>78</sup>. Instead, for the last two Schedules, controls are less strict. In fact, the competent authorities shall provide the INCB only with aggregate quantities of manufactured, imported and exported drugs, and no separate import/export certification is required.

The 1971 Vienna Convention envisages some penal provisions against the illicit traffic in the controlled substances, thus following the path opened by the Single Convention. In particular, Art. 21 presents the same wording of Art. 35 of the latter and the same considerations might be applied to both. First, States should take both preventive and repressive actions against illicit traffic and for this specific purpose, they are invited to create a “particular administrative agency [...] ensuring cooperation and exchange of information”<sup>79</sup>. Among the preventive measures, all those strategies aiming at preventing the State territory “from becoming a base of operation of the illicit traffic in

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<sup>78</sup> *Convention on Psychotropic Substances*. (1971). Retrieved March 24, 2014, from [http://www.unodc.org/pdf/convention\\_1971\\_en.pdf](http://www.unodc.org/pdf/convention_1971_en.pdf)

<sup>79</sup> *Commentary on the Convention on Psychotropic Substances*. (1971, February 21). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_Convention\\_1971.pdf](http://www.unodc/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_Convention_1971.pdf)

other countries or a place of refuge of traffickers undoubtedly constitute a legal obligation of Parties”<sup>80</sup>. When a State discovers a case of illicit traffic or when a seizure from such traffic takes place, it shall first send a report to the Secretary-General (Art. 16) and then transmit it the Parties to the Convention directly concerned, such as those where the trafficking occurred or whose nationals are involved (Art. 21). The text puts great emphasis on the importance of cooperation: para. (b) of Art. 21 compels States to cooperate with each other in the fight against the illicit trafficking in psychotropic, whereas para. (c) specifies that cooperation should be close with “international organizations”, whether intergovernmental or non-governmental. With regard to psychotropic substances and in general to drugs, the United Nations is the competent organization with whom all Parties to the 1971 Vienna Convention should cooperate. Even if it is not explicitly spelled out, this kind of cooperation is required also from non-Member States of the United Nations, in order to avoid inconsistencies in the implementation of the convention.

Besides, Art. 22 deals with the penal provisions for drug traffickers. In its formulation, the article wanted to reach three sets of goals: first, the obligation to approve a national law in order to persecute drug traffickers should act as a deterrent; secondly, legislation would be uniform in all States; finally, there would not be lack of jurisdiction, which otherwise would let drug traffickers escape from prosecution. The first part of the first paragraph recites as follows:

*“Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under*

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<sup>80</sup> *Commentary on the Convention on Psychotropic Substances*. (1971, February 21). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_Convention\\_1971.pdf](http://www.unodc/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_Convention_1971.pdf)

*this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty”<sup>81</sup>.*

This provision is identical in its formulation to para. 1 of Art. 36 of the Single Convention, but with a significant difference. The latter considered the offences “contrary to the provisions of this Convention”, while Art. 22 of the 1971 Vienna Convention takes into consideration those “contrary to a law or regulation adopted in pursuance of its obligations under this Convention”. The reason for the use of this more specific expression is due to the fact that “in the case of non-self-executing treaties, such as the Single Convention and the Vienna Convention, the offences whose punishment they require have to be contrary to national legislation”<sup>82</sup>. In sum, the convention makes an international offence the illicit traffic in psychotropic substances, against which each State must adopt a national law. In this sense, intentionality represents an aggravating factor and the *condicio sine qua non* drug trafficking constitutes an extradition crime, “provided that extradition shall be granted in conformity with the law of the Party to which application is made”<sup>83</sup>.

The particularity of Art. 22 is the subparagraph (b) of para. 1. In fact, in derogation to the subparagraph (a), it envisages a different punishment for abusers who have committed serious offences, by considering the possibility of treatments, rehabilitation and social integration. With a very similar wording to Art. 38 of the Single Convention, the demand side is also dealt with by Art. 20 of the 1971 Vienna Convention, according

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<sup>81</sup> *Convention on Psychotropic Substances*. (1971). Retrieved March 24, 2014, from [http://www.unodc.org/pdf/convention\\_1971\\_en.pdf](http://www.unodc.org/pdf/convention_1971_en.pdf)

<sup>82</sup> *Commentary on the Convention on Psychotropic Substances*. (1971, February 21). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_Convention\\_1971.pdf](http://www.unodc/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_Convention_1971.pdf)

<sup>83</sup> *Convention on Psychotropic Substances*. (1971). Retrieved March 24, 2014, from [http://www.unodc.org/pdf/convention\\_1971\\_en.pdf](http://www.unodc.org/pdf/convention_1971_en.pdf)



to which the Parties shall take all necessary preventive measures to avoid the abuse in psychotropic substance and all practical measures to rehabilitate drug addicts and to reintegrate them in the society.

The 1971 Vienna Convention added further tasks and responsibilities to the already burdened bodies, such as the INCB and the CND. The CND has the competence to consider all matters that relate to the convention and thus, it has the power to make recommendations and to add new substances to any of the four Schedules, with a two-thirds majority. In addition, it shall receive the annual reports that the Parties are obliged to furnish regarding the working of the Convention in their territories.

Besides receiving the statistical data from the Parties, the INCB has two kinds of tasks with regard to the 1971 Vienna Convention. First, it shall prepare annual reports, which have to be transmitted to the Parties and then published by the Secretary-General. Secondly, it can take practical measures to ensure the implementation of the Convention. Art. 19 considers a set of measures that are identical to those envisaged by Art. 14 of the Single Convention. In fact, the INCB has the right to ask for explanations, if it “has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of a country or region to carry out the provisions of this Convention”<sup>84</sup>. It might then both adopt remedial measures and call the attention of the Parties. In case of absolute necessity, it might even adopt a recommendation asking for the block of the import and/or export of certain psychotropic substances.

Pursuant to Art. 26, the 1971 Vienna Convention came into force on the ninetieth day after the fortieth State deposited its instrument of ratification or accession and it applies

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<sup>84</sup> *Convention on Psychotropic Substances*. (1971). Retrieved March 24, 2014, from [http://www.unodc.org/pdf/convention\\_1971\\_en.pdf](http://www.unodc.org/pdf/convention_1971_en.pdf)

to all non-metropolitan territories for which the Parties are responsible, as in the case of the 1961 Single Convention. Also with regard to the possibility to amend the convention and to solve future disputes on its implementation, the 1971 Vienna Convention adopted identical provisions to those of the Single Convention.

In conclusion, the 1971 Vienna Convention applied a control system very similar to that of the Single Convention, even if some considerations should be made.

First, the pharmaceutical industries attended the preparatory meetings and the negotiations were highly influenced by their presence. The resulting treaty represents a compromise between them and the anti-drugs pressure groups: the four-fold schedule structure and the considerable differences in the relative controls show the willingness to apply stricter measures to the first two schedules, while leaving the other two almost without restrictions. Moreover, as Martin Jelsma argued: “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”<sup>85</sup>. Undoubtedly, the pharmaceutical industries exercised a strong influence during the drafting phase. Nevertheless, it should be noted that the States, the WHO and the CND may start a procedure in order both to add new substances to the lists and to move a substance from one category to another one, thus leaving to these international actors the possibility to amend the convention preventing the pharmaceutical industries from exercising their influence.

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<sup>85</sup> Jelsma, M. (2011, January). *The development of international drug control: lessons learned and strategic challenges for the future*. Retrieved June 9, 2014, from Global Commission on Drug Policies: [http://www.globalcommissionondrugs.org/wp\\_content/themes/gcdp\\_v1/pdf/Global\\_Com\\_Martin\\_Jelsma.pdf](http://www.globalcommissionondrugs.org/wp_content/themes/gcdp_v1/pdf/Global_Com_Martin_Jelsma.pdf)

Secondly, many authors, as Martin Jelsma, have affirmed that the 1971 Vienna Convention represents a weaker instrument in the fight against drugs production, trade in and abuse of, than the Single Convention does. However, as it has been certainly noted, they are similar in their structure and both the international conventions do not make “illegal” the production, the trade in and abuse of all the controlled substances, thus making the two conventions more similar in their scope and their effectiveness than it is usually thought.

Finally, together with the 1961 Single Convention and the still-in force 1936 Convention, the 1971 Vienna Convention burdens with further administrative tasks the existing supranational bodies and imposes additional changes within the national legal framework on States, thus potentially creating a chaotic control machinery.

### **The 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**

Contrary to the previous conventions, the path that led to the 1988 Convention was not linear, but instead cluttered with outstanding political developments. From a historical and social perspective, in the following years after the entry into force of the 1971 Vienna Convention, drug abuse and trafficking underwent a sharp increase, as a consequence of both the implementation of the previous conventions and of some political upheavals. At a first glance, it might seem a paradox, but indeed two events should be considered. On the one hand, both the Single Convention and the 1971 Vienna Convention succeeded in curbing the production of drugs in countries like Turkey; on the other hand, the 1979 Iranian revolution criminalized the opium production in the country. Despite being different, these two events had the unintended

and far-reaching consequence of shifting the production of drugs to other regions, like the Golden Triangle and in particular Afghanistan. Similar phenomena occurred also with regard to cocaine and cannabis. On the basis of these considerations, the CND launched the idea of a new all-encompassing drug control strategy, which was finally approved and signed in 1981 and which took the name of “International Drug Abuse Strategy”. The latter had ambitious objectives: “improvement of the drug control system; maintenance of a balance between legitimate drug supply and demand; eradication of illicit drug supply; reduction of illicit traffic; reduction of illicit demand and prevention of drug abuse; and commitment to the treatment, rehabilitation and social integration of drug abusers”<sup>86</sup>.

Another step towards an increasing awareness about the seriousness of the drug issue was made by the General Assembly. The 1984 “Declaration on the Control of Drug Trafficking and Drug Abuse” acknowledged that “drug production, trafficking and abuse “constitute a grave threat to the security and development of many countries and peoples and should be combated by all moral, legal and institutional means, at the national, regional and international levels”<sup>87</sup>. Furthermore, especially during the 1980s, the links between the profits generated by drug trafficking and the financing of armed groups, like the mujahedeen in Afghanistan, and of organized criminal groups, like the Medellin and Cali drug cartels, became evident.

Such considerations and events led to the convocation of a ministerial-level conference, which approved in June 1987 the Comprehensive Multidisciplinary Outline for Future

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<sup>86</sup> UNODC. (2009). *A century of international drug control*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

<sup>87</sup> UN General Assembly. (1984, December 14). *Declaration on the Control of Drug Trafficking and Drug Abuse*. Retrieved June 15, 2014, from United Nations: <http://www.un.org/documents/ga/res/39/a39r142.htm>

Activities (CMO). The latter is an unprecedented political document that deserves a particular attention, since it would be an important source of inspiration during the drafting phase of the 1988 UN Convention. In fact, for the first time, the importance of a balanced approach, which takes into account the reduction of both the demand and the supply of drugs, was fully recognized. Moreover, it called for a reinforcement of the existing control instruments and dealt with drug trafficking, control deliveries, extradition and money laundering. To celebrate the result of such a unique general political willingness, 26<sup>th</sup> June became the “International Day against Drug Abuse and Illicit Trafficking, which today is still observed.

The UN Conference held in Vienna in 1988 represents the last step of the evolution and improvement of the means at the States’ disposal in order to counteract the drug phenomenon. The outcome was the well-known UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which constitutes a benchmark in the international legal framework, because of its far-reaching results. The Conference was held with the aim of filling the gaps left by the previous conventions and in this regard, it was certainly successful. The 1988 Convention is made up of 34 articles and if “only” 106 States participated at the preparatory conference, now 183 States are parties to it. Significantly, “non-parties to the Convention are just three countries in Africa (Equatorial Guinea, Namibia and Somalia), one country in Asia (Timor Este), one country in Europe (Holy See), and seven island countries in the Oceania region (Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Tuvalu)”<sup>88</sup>.

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<sup>88</sup> UNODC. (2009). *A century of international drug control*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

The following part of the paragraph will be devoted to a thorough analysis of the main provisions of the 1988 UN Convention. First, it would be useful and interesting to examine the Preamble. The Preamble to the convention represents once again the willingness of the signatories to cooperate in the fight against drug trafficking and abuse but its most significant part recites as follows:

*“(the Parties are) Deeply concerned by the magnitude and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society. [...]*

*Recognizing the links between illicit traffic and other related organized criminal activities, which undermine the legitimate economies and threaten the stability, security and sovereignty of States. [...]*

*(They are) Aware that illicit traffic generates large financial profits and wealth enabling transnational crime organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels. [...]*

*Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic”<sup>89</sup>.*

For the first time, all the consequences of drug trafficking finally received a full and complete attention by the international community, in particular by taking into consideration all aspects on which the drugs might impose their bad effects. The States so desired to make all necessary efforts to combat what was once defined “an evil” and that now is finally conceived as a serious threat at all levels.

This political statement is mutually reinforced by the scope of the convention outlined in Art. 2, which calls for international cooperation in order to more effectively face the

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<sup>89</sup> *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. (1988). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/pdf/convention\\_1988\\_en.pdf](http://www.unodc.org/pdf/convention_1988_en.pdf)

drug issue. However, since the 1988 Convention was so broad in scope, in particular in its penal provisions, the States wanted to make clear in the second and third paragraphs of this article that “the obligations assumed by parties would in no way infringe universally recognized legal principles such as the sovereign equality and territorial integrity of States”<sup>90</sup>.

An innovative article is certainly Art. 3, which enumerates the actions that, according to the convention, constitute criminal offences. The wording “criminal offences” is fundamental in this context, because for the first time, what was in the previous conventions and treaties considered a punishable offence, now it has been elevated to the status of criminal offence, with far-reaching consequences especially with regard to the extradition issue. Among these criminal offences, there are the production, the manufacture, the preparation, the possession, the transport and the purchase of any narcotic drug or any psychotropic substance, but a true and astonishing novelty is money laundering. Surprisingly, its insertion within this list not only allows considering it as one of the adverse effects of and presupposition of drug trafficking, but it also permits States to take harsh measures to combat it, among which also confiscation.

From Art. 3, four additional different provisions stem, which provide four different means to counteract these criminal offences: jurisdiction, confiscation, extradition and the controlled delivery. First, according to Art. 4 of the 1988 UN Convention, two kinds of jurisdictions are envisaged: obligatory and discretionary. With regard to the first one, States shall obligatorily establish jurisdiction over the criminal offences listed in Art. 3

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<sup>90</sup> *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. (1988, December 20). Retrieved March 24, 2014, from United Nations Office in Drugs and Crime: [http://www.unodc.org/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_united\\_nations\\_convention\\_1988\\_E.pdf](http://www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_united_nations_convention_1988_E.pdf)

in two cases: “when the offence is committed in (their) territory” and when “the offence is committed on board of a vessel flying (their) flag or an aircraft which is registered under (their) laws”<sup>91</sup>. An example of discretionary jurisdiction is instead in case that a national commits one of those criminal offences. From this preliminary analysis, it is clear that there exist multiple grounds on which jurisdiction might be established and this might constitute a problem for a crime which is transnational in nature like drug trafficking. “Concurrent claims to jurisdiction will inevitably arise”<sup>92</sup>, but the 1988 UN Convention does not even try to solve this problem.

Secondly, Art. 5 allows the confiscation of the proceeds derived from the criminal offences listed in Art. 3 and of the materials and equipments necessary to produce or transport the controlled substances, whether narcotics or psychotropics. Each Party to the convention substantially agreed to create the legal basis for such a measure, to empower its courts and not to have recourse to the bank secrecy to abstain from implementing this article. Moreover, there might be the case that a Party submits a confiscation request to another Party and in this case, cooperation and a steady implementation of the request are required and it is envisaged the possibility of sharing the proceeds confiscated.

Thirdly, extradition is disciplined by Art. 6, which establishes all the criminal offences of Art. 3 as extraditable offences. It is important to remind that among those offences, there was included money laundering. States might refuse to extradite only when there

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<sup>91</sup> *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. (1988). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/pdf/convention\\_1988\\_en.pdf](http://www.unodc.org/pdf/convention_1988_en.pdf)

<sup>92</sup> *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. (1988, December 20). Retrieved March 24, 2014, from United Nations Office in Drugs and Crime: [http://www.unodc.org/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_united\\_nations\\_convention\\_1988\\_E.pdf](http://www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_united_nations_convention_1988_E.pdf)



are “substantial grounds [...] to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions”<sup>93</sup>. Substantially, this norm makes a clear reference to Art. 33 of the 1951 Refugee Convention. Nevertheless, in this case, the State shall anyway “submit the case to its competent authorities for the purpose of prosecution”<sup>94</sup>.

Fourthly and finally, the 1988 UN Convention created or better inserted among the measures to combat the criminal offences of Art. 3, also the controlled delivery, which in fact was already provided for in the 1987 CMO. This instrument allows to “facilitate the identification, arrest and prosecution of the organizers and financiers in the criminal venture in question, instead of merely arresting those involved at the lower level in the hierarchy”<sup>95</sup>.

Following the path opened by the previous conventions, also the 1988 UN Convention puts a particular emphasis on the importance of international cooperation in the fight against drugs production, trafficking and abuse. It is for this reason that three articles are devoted to ensure and promote collaboration, exchanges of information and of training and assistance to transit States. Art. 7 provides for the mutual legal assistance, which should represent a form of collaboration with regard to investigations, prosecutions and judicial proceedings, through one or more designated national authorities. Art. 9 instead envisages fast and secure channels of communication and obliges States to create common training programmes, with the aim of sharing as much information and knowledge as possible. Finally, Art. 10 has been devoted to the

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<sup>93</sup> *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. (1988). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/pdf/convention\\_1988\\_en.pdf](http://www.unodc.org/pdf/convention_1988_en.pdf)

<sup>94</sup> *Ibidem*.

<sup>95</sup> UNODC. (2009). *A century of international drug control*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

assistance that states shall provide for transit States and especially for the developing ones, which might not have effective means to combat the crimes listed in Art. 3. For this reason, among the measures that might be taken to give effect to such cooperation, also the financial assistance is taken into consideration.

The 1988 UN Convention does not only face drug trafficking, but it significantly addresses also the eradication of the cultivation and of the demand of narcotic drugs and psychotropic substances. In this regard, a complete novelty is the provision contained in Art. 14. In fact, even if the eradication of the cultivation is one of the primary aims of this article, there is also a call for alternative livelihoods in order to provide a sustainable basis for economic development. In addition, when addressing the issue of the demand of drugs, para. 4 of Art. 14 mentions the CMO as a balanced model to counteract the drug issue with a multidisciplinary approach.

At this point, it would be useful to analyze the functions and responsibilities attributed to the CND and the INCB. On the one hand, the CND has the duty to receive from the Parties all the information about “the text of laws and regulations promulgated in order to give effect to the Convention” and “particulars of cases of illicit traffic within their jurisdiction”<sup>96</sup>. However, the most important functions are those included in Art. 21, among which there is the revision of the convention, the power to make recommendations, to take appropriate actions and to call the attention of the INCB when deemed necessary. On the other hand, in addition to the annual report, the functions of the INCB do not change from the ones envisaged by the two previous conventions, the Single Convention and the 1971 Vienna Convention.

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<sup>96</sup> *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. (1988). Retrieved March 24, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/pdf/convention\\_1988\\_en.pdf](http://www.unodc.org/pdf/convention_1988_en.pdf)

The general features of the 1988 UN Conventions are included in its final articles. First, obviously, this convention does not derogate the provisions, both rights and obligations, of the 1961 Single Convention and of the 1971 Vienna Convention (Art. 25).

Moreover, contrary to the previous treaties, the 1988 Convention was open for signature not only to States, but also to Namibia, that it was undergoing an independence process from the State of South Africa, and, more interestingly, to regional economic integration organizations, such as the European Community, which signed the convention in 1989. “Article 26 reflects the evolution that has taken place in United Nations practice with regards to the entities that may become parties to multilateral conventions, intended to be of a universal character, concluded under the auspices of the Organization”<sup>97</sup>.

The procedure to amend the convention (Art. 31) differs from the one envisaged in the previous conventions. In fact, if one of the above-mentioned international actors to which the signature was and is open proposes an amendment that is not rejected within twenty-four months, the latter is deemed accepted and it enters into force. If instead the amendment is rejected, the UN Secretary-General may convene a conference and if, during the latter the proposed amendment is finally approved, it shall be embodied in a separate Protocol.

Finally, Art. 32 faces the possibility of future disputes about the implementation of the convention. As preliminary means to peacefully settle these disputes, the article enumerates the classical legal instruments, namely arbitration, mediation, conciliation, enquiry and so forth. Besides, its second and third paragraphs constitute the basis to

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<sup>97</sup> *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*. (1988, December 20). Retrieved March 24, 2014, from United Nations Office in Drugs and Crime: [http://www.unodc.org/documents/treaties/organized\\_crime/Drug%20Convention/Commentary\\_on\\_the\\_united\\_nations\\_convention\\_1988\\_E.pdf](http://www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_united_nations_convention_1988_E.pdf)

submit the legal dispute to the ICJ: the States may refer the dispute to this court, while the regional economic integration organizations may only request a decisive advisory opinion. Nevertheless, para. 3 creates the prerequisites for all the above-mentioned international actors to avoid the jurisdiction of the ICJ at the moment of ratification or of accession.

In conclusion, the 1988 UN Convention represents the ultimate effort of harmonizing the international legal framework, in order to fill the void left by the previous conventions and to make the States adapt their criminal enforcement systems with the aim of fighting against the illicit drug trafficking. Nevertheless, the scope of the convention is much broader than that of the previous ones and also drug demand and drug production are among the goals of the convention. Worthy of mention is also the reference to human rights: para. 2 Art. 14 “explicitly obligates Parties to respect fundamental human rights when they take measures to prevent and eradicate the illicit cultivation of plants containing narcotics or psychotropic substances, such as opium, cannabis and coca”<sup>98</sup>. The instruments at the States’ disposal are more than the ones previously envisaged and they constitute an effective basis to pursue the aims of the convention. The 1988 UN Convention is therefore a successful attempt of modernizing and improving the existing legal framework, with a special focus on its effectiveness. Nevertheless, the Convention is not free from criticisms. In fact, Bewley and Jelsma have argued that both the 1971 Vienna Convention and the 1988 UN Convention “have led again to many inconsistencies within the current global drug control treaty

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<sup>98</sup> Sinha, J. (2001, February 21). *The history and development of the leading international drug control conventions*. Retrieved June 9, 2014, from Parliament of Canada: <http://www.parl.gc.ca/content/sen/committee/371/ille/library/history-e.htm>

system”<sup>99</sup>. Despite some negative remarks, the shortcomings of the 1988 Convention are not so serious so as to constitute a legitimate ground for a complete revision of the drug control regime. It is for this reason that in 1994, the INCB stated in a report that “it does not appear necessary to substantially amend the international drug control treaties at this stage, but some technical adjustments are needed in order to update some of their provisions”<sup>100</sup>.

## **Recent developments**

The 1988 UN Convention had far-reaching consequences and made possible the achievement of important goals. In fact, it succeeded in dismantling many criminal networks all over the world and through the Financial Action Task Force (FATF), effective measures were taken to face the phenomenon of money laundering.

Despite these positive results, drug production, trafficking and consumption continued to be an important issue on the international agenda. Once again, the international community as a whole demonstrated the political willingness to confront with this problem and to find a solution on multilateral grounds. During a Special Session of the United Nations General Assembly (UNGASS), a Political Declaration and a Declaration on the Guiding Principles on Drug Demand Reduction were unanimously adopted. The former’s aim was to renew the efforts in the drug control area and the “implementation rate of around 60% is impressive given the fact that no sanction mechanisms existed in

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<sup>99</sup> Bewley-Taylor, D., & Jelsma, M. (2011, August 17). *Regime change: Re-visiting the 1961 Single Convention on Narcotic Drugs*. Retrieved June 9, 2014, from University of Washington:

<http://faculty.washington.edu/acs22/SinklerSite/447/Bewley-Taylor%20%26%20Jelsma%202012%20Regime%20Change.pdf>

<sup>100</sup> INCB. (1994). *Evaluation of the effectiveness of the international drug control treaties: Supplement to the INCB Annual Report for 1994*. Retrieved June 16, 2014, from International Narcotics Control Board: [http://www.incb.org/documents/Publications/AnnualReports/Thematic\\_chapters/English/AR\\_1994\\_E\\_Chapter\\_I.pdf](http://www.incb.org/documents/Publications/AnnualReports/Thematic_chapters/English/AR_1994_E_Chapter_I.pdf)

case of non-compliance”<sup>101</sup>. On the other hand, the Declaration on the Guiding Principles takes into consideration two aspects of demand reduction, both the prevention and the reduction of the adverse consequences.

Steps forward in the improvement of the drug control machinery were made also with the adoption of two action plans. The first is the 1998 Action Plan on International Cooperation on the Eradication of Illicit Drug Crops and on Alternative Development, which focus, among its various objectives, also on the necessity of providing with alternative livelihoods the target communities and groups. The second is the so-called Action Plan against Illicit Manufacture, Trafficking and Abuse of Amphetamine-type Stimulants (ATS) and their Precursors. In conformity with the provisions of the 1988 UN Convention, other measures were taken by the international community, especially in the field of the judicial cooperation and of money laundering.

Nevertheless, one of the most important decisions taken in the field of the fight against the drug phenomenon is a UN General Assembly Resolution<sup>102</sup>, which envisaged a partial reform of the UN system. Among the various proposals made by the General Assembly, there was the merge of the two then-existing programmes, namely the United Nations International Drug Control Programme (UNDCP)<sup>103</sup>, and the Crime Prevention and Criminal Justice Division<sup>104</sup>. The former served as secretariat of both the CND and the INCB, while the second one serviced the Commission on Crime Prevention and Criminal Justice. On the basis of an increasing awareness that international organized crime and drug production and trafficking were interrelated

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<sup>101</sup> UNODC. (2009). *A century of international drug control*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

<sup>102</sup> A/51/950 of 1997

<sup>103</sup> Established by the General Assembly Resolution 45/179 of 1990

<sup>104</sup> Created by the General Assembly Resolution 46/152 in 1991

issues, the General Assembly decided to merge the two above-mentioned programmes in the so-called Office for Drug Control and Crime Prevention that will be later known with the name of United Nations Office on Drugs and Crime (UNODC).

### **3. THE UNITED NATIONS OFFICE ON DRUGS AND CRIME**

The United Nations Office on Drugs and Crime represents the outcome of a century of international drug control. It is an agency integrated in the UN Secretariat and it was established in 1997 by a UN General Assembly Resolution<sup>105</sup>, which merged the United Nations International Drug Control Program (UNDCP) and the Crime Prevention and Criminal Justice Division.

Actually, it has not the same legal status of the Specialized Agencies of the UN. In fact, it is not formally affiliated with the ECOSOC and the UN General Assembly through a special agreement. Even though it exercises specialized functions, it does not have a separate charter, budget and secretariat and it works under the supervision of the main UN organs. It might be then classified as an “office” of the UN Secretariat.

UNODC has been provided with a broad mandate and scope of action, since it deals not only with drug control, but also with crime prevention, corruption, frauds, money laundering, piracy, terrorism and so forth. It is for this reason that it has a complex organizational structure that relies on the main UN bodies, such as the UN General Assembly and the ECOSOC, but also on other commissions and boards, such as the INCB and the CND, established by the drug-related treaties.

This chapter has the aim to analyze the United Nations Office on Drugs and Crime from different points of view. First, it will be delineated its mandate and legal basis,

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<sup>105</sup> A/51/950 of 1997



highlighting that UNODC has a double function and that it operates on the basis of different kinds of treaties. Moreover, the legal nature of the employment relationship of the UNODC officials will be analyzed, with special reference to their independence and immunity and to the UN internal justice system. Secondly, it will be described its organizational structure, by presenting its different commissions, divisions and offices. Thirdly, it will be outlined its functioning, by enumerating the various tools that UNODC has at its disposal in order to comply with its broad mission. Finally, the UNODC budget will be taken into considerations, focusing our attention on the main strengths and weaknesses of the fundraising strategy.

The research phase has taken into consideration all UN and UNODC sites and open source documents, including resolutions, bulletins and informative materials. Nevertheless, a complete and exhaustive description of the mandate, structure and functioning of UNODC is difficult to find and it is for this reason that an attempt has been made to organize as precisely as possible all the research material.

## **The UNODC legal framework**

### **Mandate**

The United Nations Office on Drugs and Crime is an office of the UN Secretariat and the first issue to take into consideration is its mission. In fact, UNODC has been provided with a broad mandate: it is “a global front-runner in the efforts to counteract illicit drugs, crime, corruption and terrorism by promoting health, justice and

security”<sup>106</sup>. The reform of the United Nations that occurred in 1997 was an attempt to make the UN action more effective and efficient and the creation itself of UNODC should be read as an effort to more effectively meet the challenges of this new millennium. In fact, the 1997 Report of the Secretary-General, then enclosed in a UN General Assembly resolution<sup>107</sup> recites as follows: “Reform is not intrinsically an exercise in cutting costs or reducing staff. It is an exercise to assure the Organization’s relevance in a changing world and to make sure that those mandates that are given to it by its 185 Member States are performed effectively and efficiently within the resources that are appropriated for those ends”<sup>108</sup>. Moreover, in the 2000 Millennium Declaration<sup>109</sup>, the UN member States undertook to intensify their efforts to fight the world drug problem, the transnational organized crime at all levels and international terrorism, by taking concerted action. Within this framework, the UNODC mission is clear. It represents the willingness of States to counteract some phenomena that undermine international peace, security and the sustainable development of humanity.

The functions of UNODC might be classified within a three-pillar structure:

- “Field-based technical cooperation projects to enhance the capacity of member States to counteract illicit drugs, crime and terrorism;
- Research and analytical work to increase knowledge and understanding of drugs and crime issues and expand the evidence base for policy and operational decisions;

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<sup>106</sup> UNODC. (2012, May 7). *Fundraising Strategy 2012-2015*. Retrieved June 12, 2014, from United Nations Office on Drugs and Crime:

[http://www.unodc.org/documents/donors/Fundraising.Strategyv.final\\_print\\_version.5.Sep.2012.pdf](http://www.unodc.org/documents/donors/Fundraising.Strategyv.final_print_version.5.Sep.2012.pdf)

<sup>107</sup> A/51/950 of 1997

<sup>108</sup> *Ibidem*.

<sup>109</sup> A/Res/55/2 adopted by the UN General Assembly

- Normative work to assist States in the ratification and implementation of the relevant international treaties, the development of domestic legislation on drugs, crime and terrorism, and the provision of secretariat and substantive services to the treaty-based and governing bodies”<sup>110</sup>.

Thus, it is possible to infer that the work programme of UNODC can be further summarized into two main tasks. First, UNODC comes up as an office of the UN Secretariat and consequently, it focuses on those functions that derive from the treaties. This implies that the UNODC priorities are selected at a political level, namely by the UN General Assembly, whereas the concrete choice of the policies is attributed to the governing bodies. Secondly, it is also a technical services provider and as it will be later described, it analyzes and monitors both the global drug problem and the T.O.C. threat, by issuing many reports and surveys and by producing first-hand statistical data. The above-mentioned double nature of UNODC influences also its functioning and budget structure that will be thoroughly analyzed in the third and fourth paragraphs.

The duties and tasks performed by UNODC are better enumerated in the strategies that every four years, the ECOSOC approves through a resolution on the basis of a draft proposed by the UN Secretariat. In particular, according to the 2012-2015 Strategy<sup>111</sup>, UNODC should focus on these tasks: countering transnational organized crime, illicit trafficking and illicit drug trafficking; countering corruption; terrorism prevention; strengthening criminal justice systems; prevention, treatment and reintegration, and alternative development; research, trend analysis and forensics; policy support.

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<sup>110</sup> Retrieved from UNODC: <http://www.unodc.org/unodc/en/about-unodc/index.html>

<sup>111</sup> E/ES/2012/12 approved by ECOSOC on August 10, 2012

## **Legal basis**

As regards the UNODC legal basis, we should refer to all those treaties, conventions and their related protocols that underpin its operational work. UNODC can be defined as the guardian of those conventions, whose number is as wide as the mandate it has been attributed to it. In fact, these treaties are usually classified in three lists: drug-related treaties, crime-related treaties and terrorism-related treaties.

Much has been said about the first category and for this reason, it will be sufficient to say that UNODC grounds its work on three still-in-force conventions, the 1961 Single Convention, the 1971 Convention on Psychotropic Substances and the 1988 United Nations Conventions against the Illicit Traffic in Narcotic drugs and Psychotropic Substances.

Instead, the crime-related treaties are two. The first one is the United Nations Convention against Transnational Organized Crime and the Protocols Thereto. Its origin dates back to a resolution of the UN General Assembly<sup>112</sup>, which established a committee with the aim of drafting a convention against T.O.C. After the preparatory meetings, it was finally adopted by the UN General Assembly<sup>113</sup> in 2000 and it entered into force in 2003. Through the Convention, the States committed to enhance international cooperation in combating T.O.C. and thus, they recognized that this issue deserves international attention, since it undermines the foundations of all societies because of its pervading nature. The UN General Assembly itself recognized the importance of this convention, by claiming that it “will constitute an effective tool and

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<sup>112</sup> A/RES/53/111

<sup>113</sup> A/RES/55/25

the necessary legal framework for international cooperation”<sup>114</sup>. The 2000 Convention was supplemented by three further protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. They relatively entered into force in 2003, 2004 and 2005.

The second crime-related treaty is the United Nations Convention against Corruption. The UN General Assembly, after the signing of the UN Convention against Transnational Organized Crime, argued in a resolution<sup>115</sup> that a comprehensive and far-reaching legal instrument was necessary to fight against corruption. It is for this reason that in 2003, the United Nations Convention against Corruption was adopted by the UN General Assembly<sup>116</sup> and it entered into force in 2005. As regards the content of the convention, the latter is devoted to various aspects of corruption. First, the States have recognized the importance of prevention and for this reason, they have dedicated an entire chapter to it. International cooperation and the criminalization of many acts of corruption are the focal points of the provisions, together with the recognition of the principle of the asset-recovery, which might represent a source of development for those countries where corruption has caused the plunge of the national health, and in general for all less-developed countries.

Finally, UNODC is the custodian of many terrorism-related treaties. Even though they are numerous (see Table 2), we should at least explain the historical excursus of these

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<sup>114</sup> *United Nations Convention against Transnational Organized Crime*. (2000, November 15). Retrieved June 26, 2014, from United Nations Office on Drugs and Crime:

[http://www.unodc.org/pdf/crime/a\\_res\\_55/res5525e.pdf](http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf)

<sup>115</sup> A/RES/55/61 in December 2000

<sup>116</sup> Through A/RES/58/4 on October 2003

international legal instruments, which however have been always elaborated under the auspices of the United Nations. As of today, fourteen legal instruments and four amendments are in force. They have been signed and ratified during the last fifty years and during the last decade, many changes have been introduced. In fact, on the one hand, in 2005 one Amendment and two additional protocols were approved by the UN member States. On the other, in 2010 another Convention and another protocol were signed in order to deal with the unlawful seizure of aircrafts.

**Table 2 - Terrorism related conventions**

Year	Convention
1963	Convention on Offences and Certain Other Acts committed on Board Aircraft
1970	Convention for the Suppression of Unlawful Seizure of Aircraft
1971	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
1973	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons
1979	International Convention against the Taking of Hostages
1980	Convention on the Physical Protection of Nuclear Material
1988	Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention
1988	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
1988	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
1991	Convention on the Marking of plastic Explosives for the Purpose of Detection
1997	International Convention for the Suppression of Terrorist Bombings
1999	International Convention for the Suppression of the Financing of Terrorism
2005	International Convention for the Suppression of Acts of Nuclear Terrorism
2005	Amendments to the Convention on the Physical Protection of Nuclear Material

2005	Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
2005	Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
2010	Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation
2010	Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft

According to the United Nations website, “currently Member States are negotiating an additional international treaty, a draft comprehensive convention on international terrorism. This convention would complement the existing framework of international anti-terrorism instruments”<sup>117</sup>.

#### **The status of the UNODC officials**

UNODC is an office of the UN Secretariat and thus, its officials undergo the same rules and have the same rights and duties of the officials of the UN Secretariat. As regards their status, the main characteristic and guiding principle is that of “independence”. Art. 100 of the UN Charter establishes that the UN Secretary-General shall not be influenced by any government or external authority and he/she is responsible only to the Organization. This principle might be extended to all the UN Secretariat officials. The UN Secretariat is thus a neutral body with the aim of providing the UN system with administrative services. Nevertheless, the issue of the UN Secretariat neutrality has been questioned several times, especially in relation to the appointment of its officials. In theory, according to Art. 101 of the UN Charter, “the staff shall be appointed by the

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<sup>117</sup> United Nations. (n.d.). *United Nations Action to Counter Terrorism*. Retrieved June 26, 2014, from United Nations: <http://www.un.org/en/terrorism/instruments.shtml>

Secretary-General under regulations established by the General Assembly”<sup>118</sup>. The General Assembly has thus a general and abstract normative power that however should not affect the choices of the Secretary-General. Nevertheless, in the practice, during the last forty years the General Assembly has given rise to a customary rule, which envisages consultations with member States before the appointment of high-level officials.

Furthermore, UNODC officials enjoy the same immunities and privileges of the UN Secretariat officials. This topic is regulated by para. 2 of Art. 105 of the UN Charter that recites as follows: “Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization”<sup>119</sup>. However, pursuant to para. 3 of the same article, the General Assembly is required to propose to the member States the conclusion of specific conventions about the immunities and privileges of the UN officials.

As regards the immunities and privileges of the UNODC officials in Vienna, where its headquarters are located, we should refer to the “Agreement between the Republic of Austria and United Nations regarding the seat of the United Nations in Vienna”, concluded on November 29, 1995 and entered into force in 1998. Art. XII, Section 37 of the above-mentioned agreement establishes the immunities and privileges the UN officials enjoy in Vienna, among which the most important are four. First, they enjoy the immunity from legal process in respect of words spoken or written, and of acts performed by them, in their official capacity. Secondly, they enjoy immunity from

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<sup>118</sup> United Nations. (1945, June 26). *Charter of the United Nations*. Retrieved May 4, 2014, from United Nations: <http://www.un.org/en/documents/charter>

<sup>119</sup> *Ibidem*.



inspection and seizure of their personal and official baggage. Thirdly, they are exempted from paying taxes on salaries, pensions, indemnities, income and property. Finally, together with their spouses and dependent relatives, they are not subjected to immigration restrictions and alien registrations.

All these immunities and privileges are accorded with the aim of protecting the Organization and the peaceful attainment of its purposes. In fact, “the Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations”<sup>120</sup>.

A third aspect we should take into consideration is the protection assured to the officials of UNODC. Generally, the legal doctrine tends to recognize that the States and territories where an official operates on behalf of the United Nations have “a duty to protect UN officials in order to *protect the function*”<sup>121</sup>. This obligation falls on both UN member States and non-member States. On the other hand, it is questionable the duty to protect the official “as an individual”, because it is not possible to “set up an analogy between the relationship of citizenship and the relationship of mere service that links the official to the United Nations”<sup>122</sup>, but also because no customary norm has developed in this sense.

Finally, the UN has an internal justice system for all those issues that deal with the employment relationship between the UN and its officials, and thus also with UNODC officials. The system has been recently reformed in 2009. Prior to the reform, there

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<sup>120</sup> Section 20 of Art. V of the Convention on the Privileges and Immunities of the United Nations

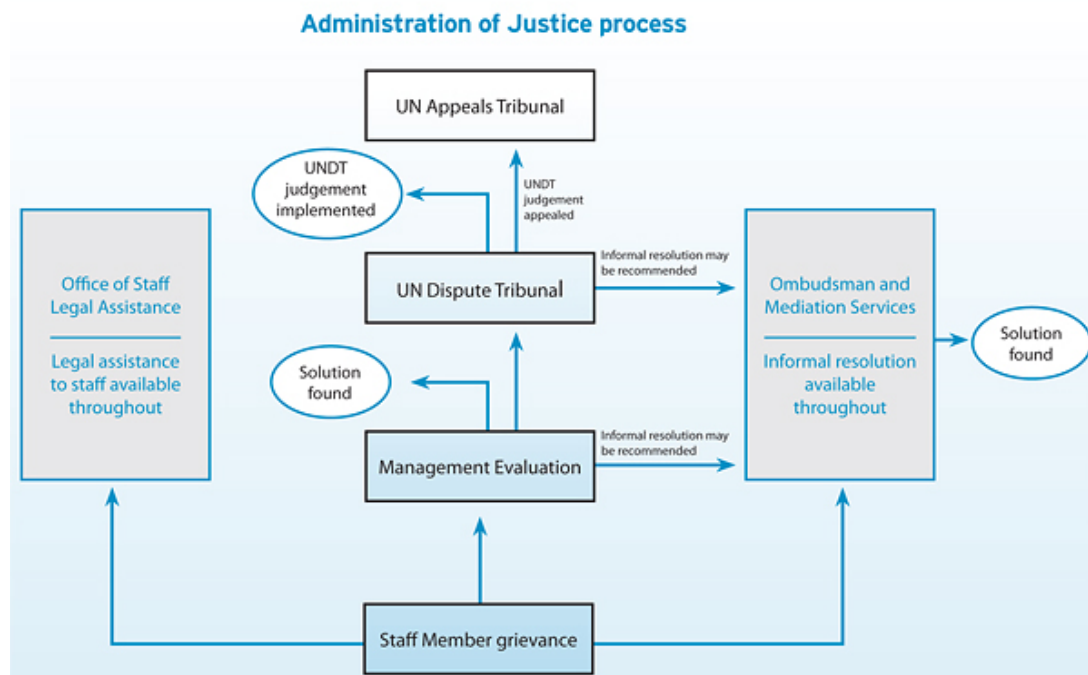
<sup>121</sup> Conforti, B. (2005). *The law and practice of the United Nations*. Leiden: Martinus Nijhoff Publishers.

<sup>122</sup> *Ibidem*.

existed the United Nations Administrative Tribunal<sup>123</sup> (UNAT<sup>a</sup>), an independent body of the UN, which was competent to hear cases on the employment relationship. It consisted of seven judges, all appointed by the General Assembly for a four-year term, renewable once. In 2007, on the basis of a proposal of the Secretary-General, the UN General Assembly decided to reform the internal justice system and in 2009, the UNAT<sup>a</sup> was finally abolished<sup>124</sup>.

In place of the UNAT<sup>a</sup>, a two-tier judicial system was created (Table 2). Consequently, there are two tribunals, the UN Dispute Tribunal (UNDT) and the UN Appeals Tribunal (UNAT<sup>b</sup>), whose decisions are binding.

**Table 3 - Administration of justice process**



Source 1 - Retrieved from United Nations: <http://www.un.org/en/aoj/unjs/overview.shtml>

<sup>123</sup> Established by the General Assembly in its resolution 351 A(IV) of 24 November 1949

<sup>124</sup> Resolutions 61/261 of 4 April 2007, 62/228 of 22 December 2007 and 63/253 of 24 December 2008

UN officials are strongly encouraged to have recourse to informal resolution systems to solve their dispute and only in case the latter fail, they might start the proceeding at the UN Dispute Tribunal, which is a first instance court. It is located in Geneva, Nairobi and New York and it is formed by five permanent judges. The UN Appeals Tribunal is instead an appellate court, based in New York and composed of seven judges.

From a general point of view, the new internal justice system has proven able to overcome some of the problems of the past. In fact, “judgments of both UNDT and UNAT<sup>b</sup> are being delivered relatively quickly and (there is) a considerable improvement on the previous situation”<sup>125</sup>. Moreover, both the UNDT and the UNAT<sup>b</sup> do not deal with many cases that originate from UNODC, “but this is not an indication that problems do not exist”<sup>126</sup>. On the contrary, an interpretation that might be given is that the employees do prefer not having recourse to the two tribunals, unless they are backed by a strong case. Furthermore, the latter condition is not always sufficient for having one’s own rights respected<sup>127</sup>.

## **The UNODC structure**

After the reform of the United Nations occurred in 1997, the same year the Secretary General issued a bulletin<sup>128</sup>, which dealt with the changes in the organization of the UN Secretariat. From a general point of view, the Secretary-General Kofi Annan highlighted the main characteristics of the Secretariat, its guiding principles and its organizational structure. However, “the mandate, functions and organization of each of

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<sup>125</sup> Joyce, M. (2010) From injustice to UN Justice?, *FOCUS on staff*, 2

<sup>126</sup> *Ibidem*.

<sup>127</sup> The case No. UNDT/GVA/2010/084 was striking. The case concerned an intern whose internship offer had been withdrawn and the UNDT argued that it was not competent to rule on an application submitted by a former intern, who thus was not considered staff member. Read the complete judgment at: [www.un.org/en/oaj/files/undt/judgments/undt-2010-145.pdf](http://www.un.org/en/oaj/files/undt/judgments/undt-2010-145.pdf)

<sup>128</sup> ST/SGB/1997/5

these units are prescribed in separate Secretary-General's bulletins"<sup>129</sup>. Consequently, the first description of the organizational structure of UNODC might be found in another Secretary-General's bulletin<sup>130</sup> of 1998.

At that time, the Office was still named as "United Nations Office for Drugs Control and Crime Prevention" (UNODCCP). The office consisted of the United Nations International Drug Control Programme (UNIDCP) and the United Nations Centre for International Crime Prevention (UNCICP), thus following the distinction that was previously operative between the two distinct programmes<sup>131</sup>, whose merger brought to the creation of the UNODCCP. The Office had been established in order to enhance the capacity of the Secretariat to face interrelated issues, such as drugs, T.O.C. and terrorism.

The first organizational structure revolved around the role of the Executive Director, who was the head of the Office, at the Under-Secretary-General level, and who was accountable to, and nominated by, the Secretary-General. At the same time, the Executive Director served also as the Director-General of the United Nations Office at Vienna (UNOV). For both these functions, there existed an Office of the Executive Director, which had to assist the Executive Director/Director-General in all his/her functions and responsibilities.

The Office was divided into numerous units. The primary distinction was between the units of the UNIDCP and those of the UNCICP. However, unusually, while the units of the former were enumerated and thoroughly described, those of the latter were even not

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<sup>129</sup> ST/SGB/1997/5

<sup>130</sup> ST/SGB/1998/17

<sup>131</sup> We refer to the above-mentioned United Nations International Drug Control Programme (UNDCP), and the Crime Prevention and Criminal Justice Division

nominated in the 1998 Secretary-General's bulletin<sup>132</sup>. Nevertheless, there were five organizational units: the Programme Support Service; the External Relations Unit; the Fund-Raising Unit; the Division for Treaty Affairs and Support to Drug Control Organs and finally, the Division for Operations and Analysis. This kind of structure confirms the general functions and responsibilities of UNODCCP both as provider of technical services and as custodian of the treaties under its competence.

As regards this organizational structure, in 2001, a review of the functioning of UNODCCP was carried out by the Office of Internal Oversight Services (OIOS). Even though the report praised the successes achieved by the Office, it highlighted also its weaknesses. In fact, the lack of transparency and exchanges of views in the decision-making process, the excessive concentration of authority in the hands of the Executive Director and the lack of checks and balances and of a monitoring system were the main reasons behind the OIOS' criticisms. In effect, despite the expert and talented staff, the clear mandates and the strong presence on field, "at the time of the inspection, staff morale in the Office was low. The staff believed that there was no transparency in management decisions, especially concerning personnel matters. [...] At the end of the inspection, OIOS made it clear to the Executive Director that the management situation at UNODCCP could not be allowed to continue. OIOS urged the Executive Director and his senior managers to institute drastic and immediate change"<sup>133</sup>.

After these harsh criticisms, UNODCCP compelled a structural revision of its structure and priorities. It is for this reason that in autumn 2002, the Office published its new

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<sup>132</sup> ST/SGB/1998/17

<sup>133</sup> OIOS. (2001, June 1). *Report on the inspection of programme management and administrative practices in the Office for Drug Control and Crime Prevention*. Retrieved June 29, 2014, from United Nations: [http://www.un.org/Depts/oios/reports/a56\\_83.htm](http://www.un.org/Depts/oios/reports/a56_83.htm)

“Operational priorities: guidelines for the medium term”. This represented the first step of a revolution, which owed much to the lessons of the past. In fact, the Office rethought its priorities on the basis of some triggers, such as the 2000 Millennium Declaration, the internationalization of crime and finally, the approval and ratification of new legal instruments like the 2000 UN Convention against Transnational Organized Crime and the Protocols Thereto. Through this document, the Office clarified its guiding principles, the enabling conditions for an efficient implementation of its objectives and the importance of accountability, credibility and transparency. Symbolically, on October 2002, even the name of the Office was changed to United Nations Office on Drugs and Crime (UNODC).

A broad discussion stemmed after the publication of the new “Operational priorities” and in a short period of time, a new structure was elaborated at the United Nations Headquarters in collaboration with the Office staff at large. UNODC was divided into four Divisions: the Division for Operations; the Division for Treaty Affairs; the Division for Research and Public Affairs and the Division for Management. “This 4-element foundation, further described below, simplifies and rationalizes the earlier structure, as well as slimming it down (one Director position is thus abolished)”<sup>134</sup>.

The new structure was then approved and implemented in 2004, with a new Secretary-General’s bulletin<sup>135</sup>, even if with some minor changes and it is the actual organization of the Office.

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<sup>134</sup> UNODC. (2003, June). *Commentary on UNODC’s new organizational structure*. Retrieved June 29, 2014, from United Nations Office on Drugs and Crime:

[http://www.unodc.org/pdf/unodc\\_commentary\\_org-structure.pdf](http://www.unodc.org/pdf/unodc_commentary_org-structure.pdf)

<sup>135</sup> ST/SGB/2004/6

UNODC is subjected to the supervision and governance of the UN General Assembly and the ECOSOC, through two treaty-based commissions, namely the Commission on Narcotic Drugs (CND) and the Commission on Crime Prevention and Criminal Justice (CCPCJ), respectively created by the ECOSOC in 1946<sup>136</sup> and in 1992<sup>137</sup> (upon request of the General Assembly<sup>138</sup>).

Initially, the CND had the primary aim of monitoring the implementation of the international drug-related conventions, but the General Assembly further enlarged its responsibilities. In fact, in 1991, it became also the governing body of UNODC and among its competences, there is also the approval of the budget of the Fund of the UN International Drug Control Programme. Thus, the CND has a multiple mandate. First, it is a functional commission of the ECOSOC and in this respect, it shall assist the latter in monitoring the implementation of the international drug-related conventions. Secondly, it has been attributed normative functions by the drug-related conventions as we have seen in the previous chapter. Thirdly, it is the governing body of UNODC and thus, it approves resolutions and takes decisions, which provide adequate policy guidance to it. Finally, it is competent in monitoring the political commitments on drug control. The CND is composed of 53 members, distributed among five regional groups: African States (11), Asian States (11), Latin America and Caribbean States (10), Eastern European States (6) and Western European and other States (14). The remaining seat shall be alternated among the Asian and the Latin American and Caribbean States.

The Commission on Crime Prevention and Criminal Justice (CCPCJ) followed the same path of the CND. It was created in 1992 as a functional commission of the ECOSOC

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<sup>136</sup> With Resolution 9(I)

<sup>137</sup> With resolution 1992/1

<sup>138</sup> Resolution 46/152 of 1991

and it deals with every aspect of crime prevention and criminal justice, including combating T.O.C., assuring efficient criminal justice systems all around the world and exchanging information and expertise<sup>139</sup>. Only in 2006, it became the second governing body of UNODC<sup>140</sup>. Despite UNODC has been always involved in both drug-related issues and crime prevention-related issues, it is odd that only recently the CCPCJ has started performing this role. However, like the CND, the Commission has a broad mandate. It is a functional commission of the ECOSOC and secondly, it is a governing body of UNODC and thus, it both approves the budget of the UN Crime Prevention and Criminal Fund and provides policy guidance to UNODC. Moreover, every five years, it organizes the UN Crime Congress, whose outcomes are the basis for its decisions and finally, it works in collaboration with the UN Crime Prevention and Criminal Justice Programme Network. The CCPCJ has 40 members, which represents all regional groups and remain in charge for a three-year term.

In order to provide a link between the two governing bodies of UNODC, the Secretariat to the Governing Bodies was created. Its main task is to support the CND and the CCPCJ on substantive and technical matters and its Chief performs also the role of Secretary of both commissions. Furthermore, “a Working Group was set up in 2009<sup>141</sup> jointly by CCPCJ and CND to explore ways of improving the governance and financial situation of UNODC”<sup>142</sup>. The Group monitors and evaluates both the governance and the financial situation of UNODC and for this reason, it issues recommendations to improve the efficiency of the Office.

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<sup>139</sup> ECOSOC attributed to the CCPCJ these new functions and responsibilities with resolution 1992/22

<sup>140</sup> With resolution 61/252 adopted by the UN General Assembly

<sup>141</sup> With resolution 2009/251 adopted by the ECOSOC

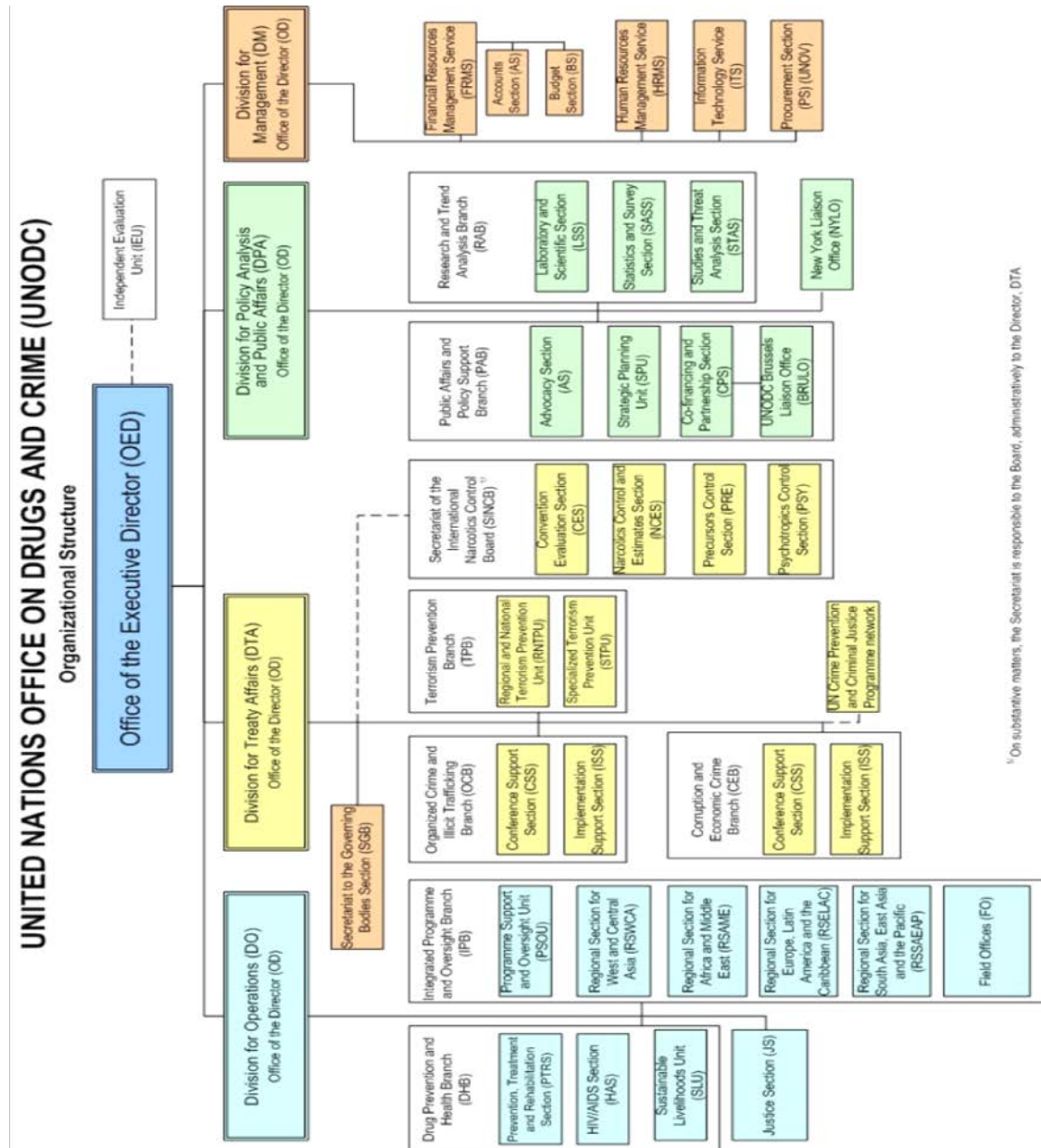
<sup>142</sup> UNODC. (2012, May 7). *Fundraising Strategy 2012-2015*. Retrieved June 12, 2014, from United Nations Office on Drugs and Crime:

[http://www.unodc.org/documents/donors/Fundrising.Strategyv.final\\_print\\_version.5\\_Sep.2012.pdf](http://www.unodc.org/documents/donors/Fundrising.Strategyv.final_print_version.5_Sep.2012.pdf)



The internal structure of UNODC follows the guidelines approved in 2004<sup>143</sup>.

**Table 4 - UNODC Organizational structure**



<sup>143</sup> On substantive matters, the Secretariat is responsible to the Board, administratively to the Director, DTA

<sup>143</sup> ST/SGB/2004/6

The Office is guided by the Executive Director, who serves also as Director General of UNOV and is responsible to and nominated by the UN Secretary-General. His/Her functions are those already provided for by the 1998 Secretary-General's bulletin<sup>144</sup>. Nevertheless, according to Section 3 of the 2004 bulletin "the Executive Director may designate a Director in the Office as Deputy Executive Director to assist [him/her] in the performance of his or her functions and to act as officer-in-charge during his or her absence"<sup>145</sup>. This provision is a clear reference to the weakness highlighted by the above-mentioned 2001 OIOS report and thus, it prevents the Office from paralyzing the decision-making process, in case the Executive Director is out of office.

The UNODC Executive Director/UNOV Director General is sustained in his/her functions by the Office of the Executive Director, whose core functions are three. First, it has to support the Executive Director in the direction of UNODC. Secondly, it shall assure the coordination among the various units and divisions that compose the Office. Finally, it plays a decisive role in implementing the decisions taken by the Executive Director. Substantially, it performs administrative and executive tasks and it is determinant for the enforcement of the UNODC decisions, both internally and externally. In fact, it also ensures that the UN interests and values are defended and it constantly cooperates with the Executive Office of the UN Secretary-General.

Furthermore, the Office rests on the four-pillar structure envisaged in 2003, even if the name and consequently, the functions of each division have been slightly modified. The units are the Division for Operations, the Division for Treaty Affairs, the Division for

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<sup>144</sup> ST/SGB/1998/17

<sup>145</sup> UN Secretary General. (2004, March 15). *Organization of the United Nations Office on Drugs and Crime*. Retrieved June 16, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/pdf/sgb\\_2004\\_6\\_unodc.pdf](http://www.unodc.org/pdf/sgb_2004_6_unodc.pdf)

Policy Analysis and Public Affairs and the Division for Management. Each Division is headed by a Director, who is directly accountable to the Executive Director. Their mandate is clearly determined in the 2004 Secretary-General's bulletin<sup>146</sup>.

The Division for Operations deals with the development, management, implementation and coordination of all the activities in the field of the Office in all the areas under its competence, namely drug control, crime prevention and criminal justice. Thus, it has all the necessary technical expertise, information and means to elaborate plans and strategies in order to counteract "uncivil" behaviours all around the world. Thus, the presence on field of UNODC is managed by this Division, which assures coordination and exchange of information among all the regional, country and liaison offices of UNODC.

The Division for Treaty Affairs has been attributed functions and responsibilities that derive from the main drug-control, crime-prevention and terrorism conventions and treaties. From a general point of view, it shall promote adherence to those treaties, assist and monitor member States in the implementation of the latter and of the relevant UN resolutions and provide assistance and advice on all questions that concern the above-mentioned treaties. Moreover, the Division for Treaty Affairs serves as secretariat of the main treaty-based bodies and commissions, such as the CND, the CCPCJ, the INCB and the Conferences of the Parties to the UN Convention against Transnational Organized Crime and to the UN Convention against Corruption.

The Division for Policy Analysis and Public Affairs is responsible for two kinds of issues. On the one hand, it shall manage all the external relations of the Office and thus

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<sup>146</sup> ST/SGB/2004/6

promote its image and develop the communication strategy. Moreover, it strengthens the cooperation with other agencies and international organizations, NGOs and the private sector and it mobilizes the necessary resources to pursue the Office's objectives. On the other hand, it handles first-hand statistical data and it spread them through publications and inter-agency exchanges.

Finally, the last unit of UNODC is the Division for Management. The main characteristic of this Division lies in the fact that its Director serves also as the Director of the UNOV Division for Management and acts both as Deputy Director-General of UNOV and as Deputy Executive Director of UNODC. The functions of the UNODC Division for Management are “to advise the Executive Director and senior officials on management and administrative issues and to provide direction and coordination of budget, accounts, human resources and information technology matters for the entities of the United Nations Secretariat at the Vienna International Centre”<sup>147</sup>.

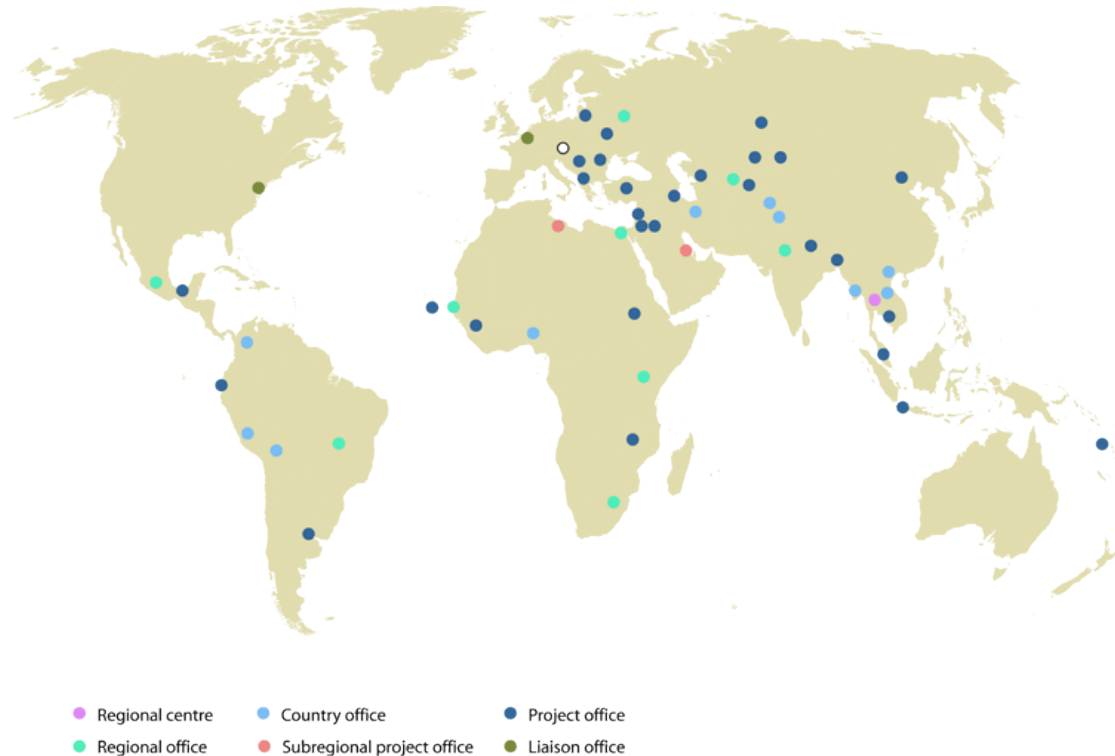
In conclusion, as previously said, UNODC has a strong presence on field, because it carries out projects all around the world. To support the ongoing strategies in over 150 countries<sup>148</sup>, it “operates [...] through one Regional Centre (East Asia and the Pacific), 10 regional offices (Asia 2; Africa & Middle East 4; Latin America 4) and various country and programmes offices.

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<sup>147</sup> UNOV. (n.d.). *Division for Management*. Retrieved July 2, 2014, from United Nations Office at Vienna: [http://www.unvienna.org/univ/en/div\\_management.html](http://www.unvienna.org/univ/en/div_management.html)

<sup>148</sup> Data retrieved from UNODC website in “Fundraising Strategy 2012-2015”:  
[http://www.unodc.org/documents/donors/Fundraising.Strategyv.final\\_print\\_version.5\\_Sep.2012.pdf](http://www.unodc.org/documents/donors/Fundraising.Strategyv.final_print_version.5_Sep.2012.pdf)

**Table 5 - UNODC field offices**



Source 3 - Retrieved from UNODC: <http://www.unodc.org/unodc/en/field-offices.html?ref=menutop>

Now, we might express some considerations regarding the organizational structure of UNODC. First, it should be acknowledged that UNODC structure has not been completely changed or revolutionized as compared with the organization envisaged in the 1998 Secretary-General's bulletin<sup>149</sup>. In fact, as regards the UNODC Executive Director, the 2004 bulletin<sup>150</sup> did not introduce significant changes except for a clause that allows the continuity of the decision-making process in case the Executive Director is out of office. Moreover, even if the units that compose the Office have been renamed and changed in their mandates, the division between the drug-related issues and the crime-related issues still exists, especially within the Division for Operations and the Division for Treaty Affairs. Nevertheless, this division might prove to be a weakness,

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<sup>149</sup> ST/SGB/1998/17

<sup>150</sup> ST/SGB/2004/6

which prevents the Office from being completely effective and efficient. For example, according to an OIOS report<sup>151</sup> filed in 2011, “the UNODC Administration should prepare a proposal for submission to the Open-ended Working Group on Improving the Governance and Financial Situation of UNODC on joint funding and management of common administrative and budgetary services to the Commission on Crime Prevention and Criminal Justice and the Commission on Narcotic Drugs. The proposal should identify the core administrative and budgetary services needed to service the Commissions, how to fund these services, and how the Commissions should govern them jointly”<sup>152</sup>. This recommendation stems from the fact that UNODC serves as secretariat both the CND and the CCPCJ, organizing administrative and financial resources separately. This inevitably provokes a fragmentation of the services provided and leaves space for inconsistencies. Nevertheless, UNODC did not accept this recommendation.

### **The UNODC tools and functioning**

“To facilitate the effective implementation of international drug control treaties and the United Nations Convention against Transnational Organized Crime and the Protocols Thereto, the United Nations office on Drugs and Crime has developed a variety of legal tools, which provide States and criminal justice practitioners with invaluable practical assistance and information”<sup>153</sup>.

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<sup>151</sup> Assignment no AE2010/360/01

<sup>152</sup> OIOS. (2011, February 15). *Audit Report: UNODC governance arrangements and funding mechanisms*. Retrieved June 29, 2014, from United States Mission to the United Nations: <http://www.usun.state.gov/documents/organization/165459.pdf>

<sup>153</sup> UNODC. (2010). *Legal Tools*. Retrieved June 02, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/treaties/organized\\_crime/Legaltools/10-52485\\_leaflet\\_Ebook.pdf](http://www.unodc.org/documents/treaties/organized_crime/Legaltools/10-52485_leaflet_Ebook.pdf)

UNODC has a number of means to achieve the core objectives of its mission. Especially as regards its normative and treaty-based functions, it has developed the above-mentioned legal tools, which have the primary aim of promoting adherence to the treaties and assisting member States in implementing the provisions therein contained.

The first of these legal tools is the Competent National Authorities (CNA) Directory. Thus, UNODC facilitates the practical implementation of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and of the UN Convention against Transnational Organized Crime. In fact, these conventions envisage a system of drug and crime control based on the early identification of the competent authorities in each Member State, which are authorized to receive requests for and to deal with extradition, trafficking in firearms and narcotics, human smuggling and so forth. Pursuant to the provisions of the above-mentioned conventions, which aim to foster the communication and cooperation among the signatories, the CNA Directory provides all the legal facilities in order to file complaints or requests, among which the national legal requirements that should be fulfilled in each State.

Another legal tool that has been envisaged to strengthen international cooperation is the Mutual Legal Assistance (MLA) Request Writer Tool. The variety and diversity of the legal systems around the world might represent an obstacle when dealing with crimes that are transnational in nature. It is for this reason that the MLA Request Writer Tool has been developed: it “helps to avoid incomplete requests for mutual legal assistance and therefore minimize the risk of delay or refusal and it is easily adjustable to any

country's substantive and procedural law”<sup>154</sup>. From an administrative point of view, it simplifies all those procedures that otherwise would take long time to be accomplished.

Finally, some international cooperation networks have been created by UNODC, while others were spontaneously envisaged by large groups of States, with the aim of facing specific crimes with a multilateral approach. This is the case of the Judicial Regional Platforms of Sahel and Indian Ocean Commission Countries, the Commonwealth Network of Contact Persons, the European Judicial Network, Eurojust and so forth. Few words should be dedicated to the latter. It was created in 2002 by the Council of the European Union<sup>155</sup> and all the EU member States are part of it. It is one of the most important regional bodies created with the specific aim of providing “safety within an area of freedom, security and justice”<sup>156</sup>. Moreover, “it stimulates and improves the coordination of investigations and prosecutions between the competent authorities in the member States [...] in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests”<sup>157</sup>.

Nevertheless, UNODC does not rely only on legal tools when it comes up with the actual implementation of its tasks and responsibilities. Through the conventions they had signed, the member States agreed to charge UNODC also with the task of providing first hand statistical data on drugs and crime. Thus, UNODC is responsible for publishing reports and surveys, which constitute the basis for the formulation of national and international policies and priorities. The main and best known is certainly

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<sup>154</sup> UNODC. (2010). *Legal Tools*. Retrieved June 02, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/treaties/organized\\_crime/Legaltools/10-52485\\_leaflet\\_Ebook.pdf](http://www.unodc.org/documents/treaties/organized_crime/Legaltools/10-52485_leaflet_Ebook.pdf)

<sup>155</sup> Council Decision 2002/187/JHA

<sup>156</sup> Data retrieved from UNODC: [www.unodc.org/unodc/en/legal-tools/international-cooperation-networks.html](http://www.unodc.org/unodc/en/legal-tools/international-cooperation-networks.html)

<sup>157</sup> *Ibidem*.



the yearly World Drug Report, which since 1997 has been the most complete and the most detailed instrument at the States' disposal. Information is primarily obtained by the member States themselves, which are required by the treaties to submit data on drugs to the Secretary General of the United Nations. UNODC deals also with transnational organized crime and consequently, it issues every year regional and thematic T.O.C. threat assessments.

Finally, as regards the scope of UNODC, a consideration should be done. In fact, since the primary aim of its mission is to oppose drug trafficking and abuse and crime at all levels, the connections with the NGOs and with the civil society at large seem at least indispensable. During the past decades, many steps forward have been taken to involve as much as possible the civil society and its organized representatives, namely the NGOs, into the decision-making process of the UN-world. All stemmed from an ECOSOC resolution<sup>158</sup>, which regulated the consultative relationships between the UN and the NGOs, in order to “facilitate, in the most effective manner possible, the contributions of non-governmental organizations to the work of the United Nations”<sup>159</sup>. UNODC is no less so. In fact, NGOs are periodically invited as observers in the meetings of the CND and of the CCPCJ and they actively participated to the drafting phase of the UN Convention against Transnational Organized Crime. Moreover, many of the activities and projects promoted by UNODC are concretely implemented by the NGOs all around the world, as in the case of the alternative development programmes.

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<sup>158</sup> ECOSOC RES 1996/31

<sup>159</sup> Retrieved from *UN System Engagement with NGOs, Civil Society, the Private Sector and Other Actors* published by UN Publications in 2005

## **Budget and financing**

Previously, it was highlighted the double function of UNODC, both as an office of the UN Secretariat and as a technical services provider. When dealing with the UNODC budget, the above-mentioned distinction is useful, because “the process by which resource requirements are identified and actual funding is provided also differs significantly”<sup>160</sup>. In fact, on the one hand, when it serves as office of the UN Secretariat, UNODC derives its budget from the regular and mandatory contributions that all member States give to the United Nations. On the other hand, the technical cooperation function is funded with voluntary contributions, which might be earmarked, un-earmarked or soft earmarked. Actually, the voluntary contributions amount to over 90% of the total budget<sup>161</sup> and this raises several questions about the efficiency of the fundraising strategy and of the policies carried out by UNODC itself.

What is at stake is the efficiency of UNODC action. In fact, by analyzing the strategy that every four years UNODC develops, it comes to light the variety of prearranged goals, which however are not backed by adequate financial resources, since they almost entirely depend on the voluntary contributions of member States. In 2007, the UN Joint Inspection Unit (JIU) issued a report<sup>162</sup> that highlighted “the negative impact on the sustainability of programme delivery because of the lack of predictability of voluntary funding. At the same time, it pointed to evidence that the conditions attached to voluntary non-core contributions reduced the flexibility of organizations to deliver their

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<sup>160</sup> UNODC. (2012, May 7). *Fundraising Strategy 2012-2015*. Retrieved June 12, 2014, from United Nations Office on Drugs and Crime:

<http://www.unodc.org/documents/donors/Fundraising.Strategyv.final.print.version.5.Sep.2012.pdf>

<sup>161</sup> Data retrieved from UNODC. (2012, May 7). *Fundraising Strategy 2012-2015*. Retrieved June 12, 2014, from United Nations Office on Drugs and Crime:

<http://www.unodc.org/documents/donors/Fundraising.Strategyv.final.print.version.5.Sep.2012.pdf>

<sup>162</sup> JIU/REP/2007/1,2 July 2007

mandated programmes”<sup>163</sup>. As of 2011, the situation has not changed and the “2011 OIOS report on the UNODC governance arrangements and funding mechanisms”<sup>164</sup> warned UNODC that “most donors earmarked their voluntary contributions to specific projects, leaving little operating flexibility to respond to complex programmatic and managerial challenges. This is also not in accordance with General Assembly resolution 59/250 (Triennial comprehensive policy review of operational activities for development of the United Nations system), which stated that supplementary contributions should not be “a substitute for core resources”<sup>165</sup>.

These concerns are due to several reasons. First, the extra-budgetary funding is growing at a faster rate than the regular one. If, on the one hand, this contributed to increase the financial resources at UNODC disposal, on the other hand, it brings with it the risk of the unpredictability of such resources. Secondly, the voluntary contributions (90% of the total budget) are divided into the special-purpose ones and the general-purpose ones. While the latter contribute to finance the Office’s general functions, and thus also its wage system, the former represents the willingness of States to provide financial resources to specific programmes. As Table 5 shows, the special-purpose contributions amount to the largest segment of the total voluntary contributions. In addition, it is possible to notice that the general-purpose financings have gradually and continuously fallen off during the last decade.

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<sup>163</sup> UNODC. (2012, May 7). *Fundraising Strategy 2012-2015*. Retrieved June 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/donors/Fundarisng.Strategyv.final\\_print\\_version.5\\_Sep.2012.pdf](http://www.unodc.org/documents/donors/Fundarisng.Strategyv.final_print_version.5_Sep.2012.pdf)

<sup>164</sup> Assignment No. AE2010/360/01

<sup>165</sup> OIOS. (2011, February 15). *Audit Report: UNODC governance arrangements and funding mechanisms*. Retrieved June 29, 2014, from United States Mission to the United Nations: <http://www.usun.state.gov/documents/organization/165459.pdf>

**Table 6 – Voluntary contributions (US\$ million)<sup>166</sup>**

	2004-2005	2006-2007	2008-2009	2010-2011
Special purpose	181.8	289.9	451.1	460.8
General purpose	31.0	29.1	24.4	26.4
Total voluntary contributions	212.8	319.0	475.5	487.2

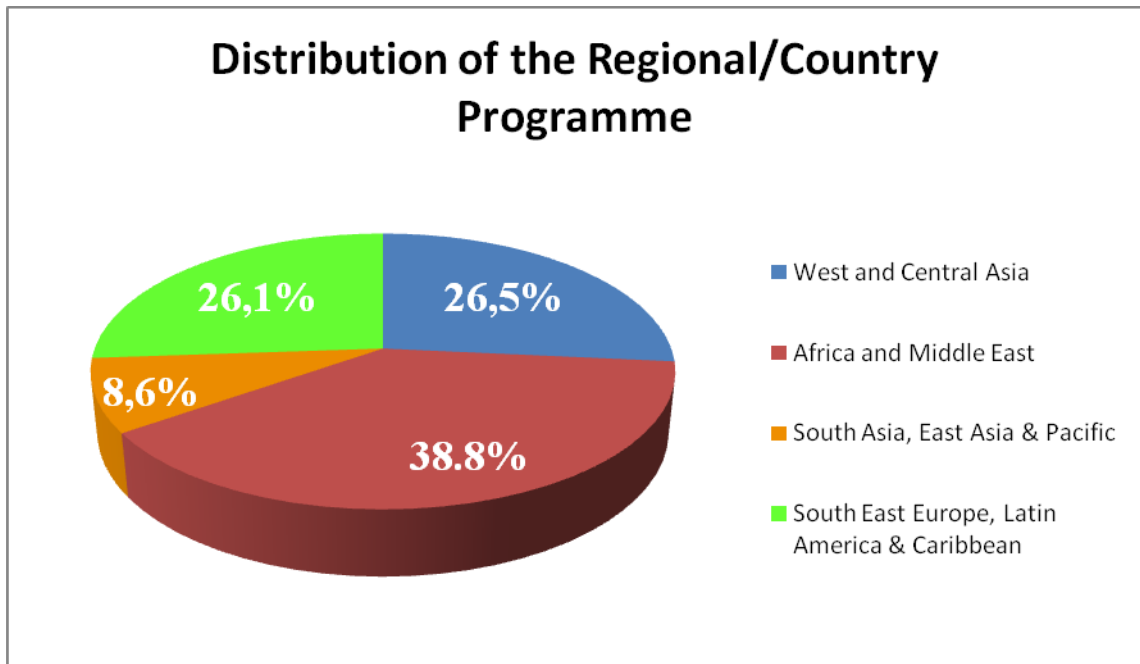
The immediate consequence is that UNODC has its leeway limited and it has not the possibility to autonomously decide its own priorities. In fact, since UNODC primarily relies on voluntary contributions (90% of the total budget) and in particular on the special purpose ones (90% of the voluntary contributions), it would be legitimate to think that member States are able to influence UNODC policies and priorities, by financing a programme rather than another. Thus, both major donors and “not-donors at all”, which represent the extremes of the financing system, have the concrete opportunity and power to orient the UNODC work.

This can be further demonstrated below by Table 6 that illustrates the distribution of the contributions among the Regional/Country Programmes.

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<sup>166</sup> Data retrieved from UNODC. (2012, May 7). *Fundraising Strategy 2012-2015*. Retrieved June 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/donors/Fundraising.Strategyv.final\\_print\\_version.5\\_Sep.2012.pdf](http://www.unodc.org/documents/donors/Fundraising.Strategyv.final_print_version.5_Sep.2012.pdf)

Table 7 – Distribution of the Regional/Country Programme<sup>167</sup>



The graph highlights the differences in the budget assigned to the different regional areas in which UNODC operates. In the case of earmarked contributions to specific programmes, the weight of the major donors is absolutely fundamental: States definitely make a region or a country contingent upon the others and thus, they might push on programmes according to their national needs and priorities rather than to the actual international agenda and to the real global necessities.

Furthermore, the UNODC medium-term strategies of the past two decades have been characterized by the absence of a detailed Gantt charter, which is a graph that precisely describes a project schedule, highlighting the deadlines of the ongoing projects and the resources needed to carry out them. Consequently, the 2011 OIOS report<sup>168</sup> argued that “Plans are required to demonstrate how and when the UNODC strategy and Results

<sup>167</sup> Data retrieved from UNODC. (2012, May 7). *Fundraising Strategy 2012-2015*. Retrieved June 12, 2014, from United Nations Office on Drugs and Crime:

[http://www.unodc.org/documents/donors/Fundraising.Strategyv.final\\_print\\_version.5\\_Sep.2012.pdf](http://www.unodc.org/documents/donors/Fundraising.Strategyv.final_print_version.5_Sep.2012.pdf)

<sup>168</sup> Assignment No. AE2010/360/01

Based Management will be implemented. [...] An overarching fund raising strategy is needed to identify the total amount of resources required to fund the strategy, mandates and resolutions and to ensure sufficient core capacity to support earmarked activities”<sup>169</sup>.

Moreover, all the previous attempts of orienting the voluntary contributions towards the core activities failed, because a consensus among the major donors has proven impossible to reach. Nevertheless, as a consequence of the 2011 OIOS report and its recommendations, UNODC introduced some changes in its fundraising strategy. “UNODC recently established an interdivisional task force with the objective to design a system of full programme cost recovery, including the indirect cost of its infrastructure needed to develop, implement, monitor and manage its technical assistance programmes”<sup>170</sup>. Actually, the main need of UNODC is to avoid the overreliance on the voluntary/extra-budgetary financings and hopefully, the creation of the above-mentioned interdivisional task force might prove a positive step forward.

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<sup>169</sup> OIOS. (2011, February 15). *Audit Report: UNODC governance arrangements and funding mechanisms*. Retrieved June 29, 2014, from United States Mission to the United Nations: <http://www.usun.state.gov/documents/organization/165459.pdf>

<sup>170</sup> *Ibidem*.

## **4. FROM THE LAW TO THE PRACTICE: THE UNODC ACTION IN AFGHANISTAN**

The shift from the law to the practice is neither easy nor predictable, as we would like to think. Often, the real situation offers a different overview compared to the abstract normative provisions that aim to regulate a certain phenomenon. It is for this reason that after a thorough analysis of the international legal framework and of the most supranational office that daily fights against drug trafficking and abuse, it is useful to present a case study.

Probably Afghanistan is the most exemplifying case the world offers. This country has passed through a tough history, with invasions, wars, civil wars and guerrillas. The troubled internal situation has provided fertile ground for crime to proliferate, which has conveyed a negative picture of the country. It is often linked and synonymous with transnational organized crime, drug trafficking, human smuggling and lawlessness. This country displays all the negative impacts that drug trafficking imposes on its society and the whole world. Consequently, Afghanistan represents the best case study and it would be both interesting and stimulating to investigate how the drug-related international conventions apply and how UNODC acts in this context.

This chapter is therefore divided into three main paragraphs. The first paragraph will offer an historical overview of the drug problem that has affected the country for over four decades and then, the actual situation will be presented. Secondly, the UNODC action will be taken into consideration, from different perspectives, like the normative

context, the operational context, the programmatic context and finally, the most exemplifying UNODC action on field, namely the Country Programme for Afghanistan. Thirdly, and finally, the last paragraph will deal with a qualitative and quantitative evaluation of the UNODC action, which will highlight the main strengths and weaknesses of the drug-control system in the practice.

### **The Afghan problem: an historical overview**

Some authors<sup>171</sup> pointed out that the opium production in Afghanistan dates back to centuries ago, because opium smoking represented an expression of the regional habits, and that the drug problem has started becoming compelling only since the end of the '70s because of internal and external factors. Others<sup>172</sup> argue that before the Soviet invasion, the opium consumption and abuse in Afghanistan were almost non-existing and that this phenomenon began only in order to finance the war against the invaders.

However, the truth is that during the last four decades, Afghanistan has faced an increasingly important problem and still today, the solution is far to be found. For this reason, this paragraph will focus on the period that goes from 1979 until today, highlighting the main events that brought the drug abuse and trafficking on the international agenda.

Afghanistan has been called a “drug economy”<sup>173</sup> or even a “narco-State”<sup>174</sup>, but certainly, the path that has led to the actual situation has been long and tortuous. The

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<sup>171</sup> Keefer, P., & Loayza, N. (2010). *Innocent bystanders. Developing countries and the war on drugs*. Washington: World Bank.

<sup>172</sup> Maas, C. D. (2011). *Afghanistan's Drug Career*. Berlin: Stiftung Wissenschaft und Politik. And also: Peters, G. (2009). *How Opium Profits the Taliban*. Washington: United States Institute of Peace.

<sup>173</sup> *Ibidem*

<sup>174</sup> Schweich, T. (2008, July 27). *Is Afghanistan a narco-State?* Retrieved February 12, 2014, from The New York Times: <http://www.nytimes.com/2008/07/27/magazine/27AFGHAN-t.html?pagewanted=all>



latter might be actually divided into four different phases<sup>175</sup> that transformed a mere war financing need into a drug economy.

During the Soviet invasion of Afghanistan, from 1979 to 1989, the profits gained through drug production were mainly used to finance the resistance against the invaders. This phase is crucial when approaching the Afghan drug problem, because it was in this period that took place the so-called “takeoff” of the Afghanistan’s drug career. The reasons behind such expansion are numerous and these might be both exogenous and endogenous. Among the former factors, we should first take into consideration a considerable production shift. Historically, two other regions had supremacy in the field of the opium poppy cultivation, namely Turkey and the Golden Triangle, which comprehended Burma, Laos and Thailand. During the 70’s, however, both regions lost their supremacy vis-à-vis the Golden Crescent, the region formed by Iran, Afghanistan and Pakistan, which filled the supply gap in the world market. This production shift was an unintended consequence of the efforts of the international community in curbing the opium production and trafficking<sup>176</sup>. Another failed attempt of this kind was the decision taken by the Iranian leader Khomeini, who banned the drug production and consumption in Iran and unconsciously, he induced the Afghan-Pakistani region to cultivate more opium poppy. Among the endogenous factors, instead, we should

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<sup>175</sup> The division here proposed was retrieved from: Maas, C. D. (2011). *Afghanistan's Drug Career*. Berlin: Stiftung Wissenschaft und Politik.

<sup>176</sup> The case of Turkey is exemplifying. “Turkey ratified the Single Convention in 1967, choosing not to apply for the transitional exemption extending until 1979 to phase out opium use and production. Instead, it was given the status of a “traditional opium producing country” having the right to continue production if it was managed under a state-controlled license system. [...] Washington exerted great pressure on its NATO ally, including threats to cut off aid, resulting in Turkey banning opium cultivation in 1972. [...] Sources supplying the illicit markets in Europe and the US then shifted to Pakistan and Burma (both countries having had applied for the transitional status) and Iran, later moving to Afghanistan where significant illicit production began and continued to expand ever since”. Retrieved from: Jelsma, M. (2011, January). *The development of international drug control: lessons learned and strategic challenges for the future*. Retrieved June 9, 2014, from Global Commission on Drug Policies: [http://www.globalcommissionondrugs.org/wp\\_content/themes/gcdp\\_v1/pdf/Global\\_Com\\_Martin\\_Jelsma.pdf](http://www.globalcommissionondrugs.org/wp_content/themes/gcdp_v1/pdf/Global_Com_Martin_Jelsma.pdf)

mention the mujahideen's jihad against the Soviet invaders. The opium cultivation and its manufacturing became a profitable and easy financing system, which for the entire duration of the war sustained the efforts of the so-called "freedom fighters". In fact, "the more completely the war destroyed the agricultural subsistence economy, the more mujahideen leaders and local commanders relied on the drug business to provide for their militias. As a result, drug production grew continuously from the beginning of the 1980s and Afghanistan became one of the world's leading opium exporters"<sup>177</sup>. Between 1984 and 1985, the opium poppy cultivation doubled, from 140 metric tons to 400 and the following two years, it doubled again, for an amount that represented 70% of the world's heroin production.<sup>178</sup>

The second phase is the so-called "Warlord period" (1989-1996), during which "the drug industry gradually developed into the most significant source of revenue"<sup>179</sup>. After the Soviet military withdrawal in 1989, the local commanders did not receive anymore the international funding, that, as of that date, had supported their cause. Consequently, for the mujahideen, the only possibility was to expand the drug industry, while also trafficking in commodities and receiving money through trans-regional religious networks and from UNOCAL (Union Oil Company of California), which began a negotiation with the Taliban government in 1998, in order to secure the construction of the so-called TAPI (Turkmenistan-Afghanistan-Pakistan-India) gas pipeline<sup>180</sup>. The international community was aware that the Soviet withdrawal would mean a steady increase in the opium production and that the consequences of a ten-year war against

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<sup>177</sup> Maas, C. D. (2011). *Afghanistan's Drug Career*. Berlin: Stiftung Wissenschaft und Politik.

<sup>178</sup> Data retrieved from: Peters, G. (2009). *How Opium Profits the Taliban*. Washington: United States Institute of Peace.

<sup>179</sup> Maas, C. D. (2011). *Afghanistan's Drug Career*. Berlin: Stiftung Wissenschaft und Politik.

<sup>180</sup> In: Madani, A., & Dottori, G. (2011). *Afghanistan. Crisi regionale, problema globale*. Bologna: CLUEB. And also in: Maas, C. D. (2011). *Afghanistan's Drug Career*. Berlin: Stiftung Wissenschaft und Politik.

the USSR had left no alternatives for the poor local farmers other than the opium poppy, a cheap and profitable plant, with high markups. Consequently, the UNDCP, the United Nations Drug Control Program, launched its first initiative in 1989, the “Afghanistan Drug Control and Rural Rehabilitation” project<sup>181</sup>. The latter had the aim of preventing the farmers who had abandoned their fields during the war from cultivating the opium poppy, once they returned home from the refugee camps. Nevertheless, the programme, which was meant to last until 1996, was doomed to fail, because of the so-called “poppy-clause”, namely the requirement according to which every village had to give its consent for the project to be started. The result was that between 1989 and 1994, the opium poppy production tripled.

From 1996 to 2002, during the “Taliban period”, the consolidation of the war economy took place and the Taliban established a quasi-governmental control over the country, informally legitimizing the drug cultivation and manufacturing. In this context, in 1997, another UNDCP programme was started, the Poppy Crop Reduction Project<sup>182</sup>, with a budget of US\$ 12,5 million for the period 1997-2001. Focused on the improvement of the Afghan infrastructures and on the substitution of the poppy with licit plantations, however, it did not overcome the limits imposed by the “poppy clause” and did not benefit from the trust of the local communities. In fact, given the “conditionality principle” of the 1997 project, UNDCP, represented by Giovanni Quaglia, entered into negotiations with the Taliban authorities. The latter showed interest in facing the opium threat and in 1997, it was approved a law that banned opium cultivation, manufacturing

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<sup>181</sup> AD/AFG/89/580

<sup>182</sup> AD/AFG/97/C28

and trafficking<sup>183</sup>. Nevertheless, Afghanistan's opium production continued increasing, especially in the areas controlled by the Taliban, who collected numerous taxes (10% ushr, 20% zakat<sup>184</sup>) at all stages of the opium poppy cultivation and manufacturing. For all these reasons, the project was concluded ahead of time in 2000, with US\$ 3 million already spent.

“The Taliban appeared desperate to gain international recognition for their regime, and wanted the UN sanctions lifted. In July 2000, the UN pressure appeared to pay off”<sup>185</sup>. The repeating appeals of the international community and of the then Executive Director of UNODCCP, Pino Arlacchi, together with the offer of US\$ 250 million over a decade for Alternative Development if they would fully cooperate in eliminating opium poppy cultivation”<sup>186</sup> induced the Taliban leadership under Mullah Omar to ban the cultivation of opium in 2000. Nevertheless, the increasing influence of Osama bin Laden and Al Qaeda, especially after the 9/11 terroristic attacks made the situation worsen. Moreover, the problem was also institutional: “it was to become the new Executive Director's (of UNODCCP) trademark to spread around promises without having secured any donor commitment, leaving a trail of failed promises and frustrated (non-)recipients”<sup>187</sup>. In fact, in September 2000, with the surprise (and anger) of the

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<sup>183</sup> “The Islamic State of Afghanistan informs all compatriots that as the use of heroin and hashish is not permitted in Islam, they are reminded once again that they should strictly refrain from growing, using and trading in hashish and heroin. Anyone who violates this order shall be meted out a punishment in line with the lofty Mohammad and Sharia law and thus shall not be entitled to launch a complaint”. Quotation from: Transnational Institute. (2001, December). *Afghanistan, drugs and terrorism: merging wars*. Retrieved July 25, 2014, from Transnational Institute: <http://www.tni.org/sites/www.tni.org/files/download/debate3.pdf>

<sup>184</sup> Data retrieved from: Peters, G. (2009). *How Opium Profits the Taliban*. Washington: United States Institute of Peace.

<sup>185</sup> *Ibidem*.

<sup>186</sup> Transnational Institute. (2001, December). *Afghanistan, drugs and terrorism: merging wars*. Retrieved July 25, 2014, from Transnational Institute:

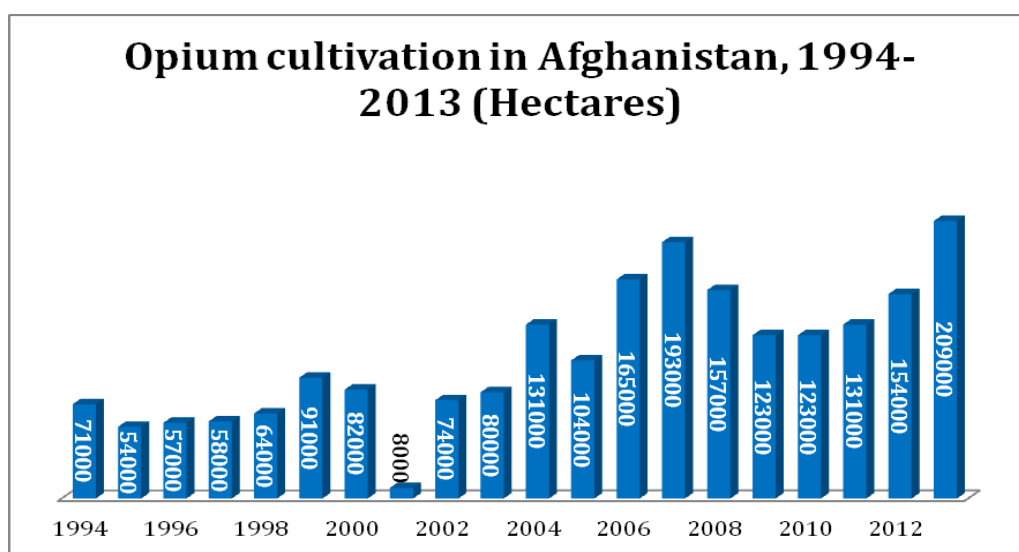
<http://www.tni.org/sites/www.tni.org/files/download/debate3.pdf>

<sup>187</sup> *Ibidem*.

Afghan leaders and of the UNODCCP staff itself, Pino Arlacchi announced that the project was closed down, because there were not sufficient funds to finance it.

Furthermore, the opium ban brought with it an ephemeral success: if in 2001 the poppy production was limited to a record amount of 8.000 harvested hectares, “in 2002, the total land area planted with poppy surged to 74.000 hectares, returning Afghanistan to its spot as the world’s leading opium producer”<sup>188</sup>. Since then, with the international community’s military involvement in Afghanistan, the opium cultivation has ceaselessly grown.

**Table 8 – Opium cultivation in Afghanistan, 1994-2013**



Source 4 - UNODC. (2013, December). *Afghanistan Opium Survey 2013*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

The next step of the UNODCCP action was the creation of another programme, named “Security Belt”, announced in October 2000, on the occasion of the Tashkent Conference. The project was supposed to reduce the flow of opium, by strengthening the neighbouring States’ capacity to control and secure their borders. The UNODCCP

<sup>188</sup> Peters, G. (2009). *How Opium Profits the Taliban*. Washington: United States Institute of Peace.

financing problem, however, undermined the project from the very beginning: the “Security Belt” was not backed by adequate funding and other projects took precedence.

Two things, however, are worth mentioning. The first is the “Six plus Two” Group, “a regular meeting to coordinate policies towards Afghanistan of representatives from six neighbouring countries (Iran Pakistan, Tajikistan, Uzbekistan, Turkmenistan and China) plus the United States and the Russian Federation”<sup>189</sup>. In a context of political instability and of lack of a decisive Western political will to counteract the drug threat, this Group represents a multilateral approach, which involves all those countries with a high interest in coping with this specific issue. The second is the above-mentioned 2000 Tashkent Conference, which highlighted for the first time the existing links between drug trafficking, terrorism and organized crime and the threat these crimes pose to the regional and international stability.

In the meanwhile, the ex-enemies of the Taliban leadership, belonging to the Northern Alliance, “mutated into allies of the United States [...], they appointed Hamid Karzai as Afghanistan’s new president<sup>190</sup> [...] and the former war entrepreneurs became the power brokers of “post-war” Afghanistan”<sup>191</sup>. Moreover, the Taliban keep on collecting levies both from the local farmers, who even pay up to 20% of the harvest<sup>192</sup> in order to obtain protection of the growing crops and their shipments and from all the mobile heroin labs that during the last decade have allowed the Taliban to produce heroin directly within the Afghan borders.

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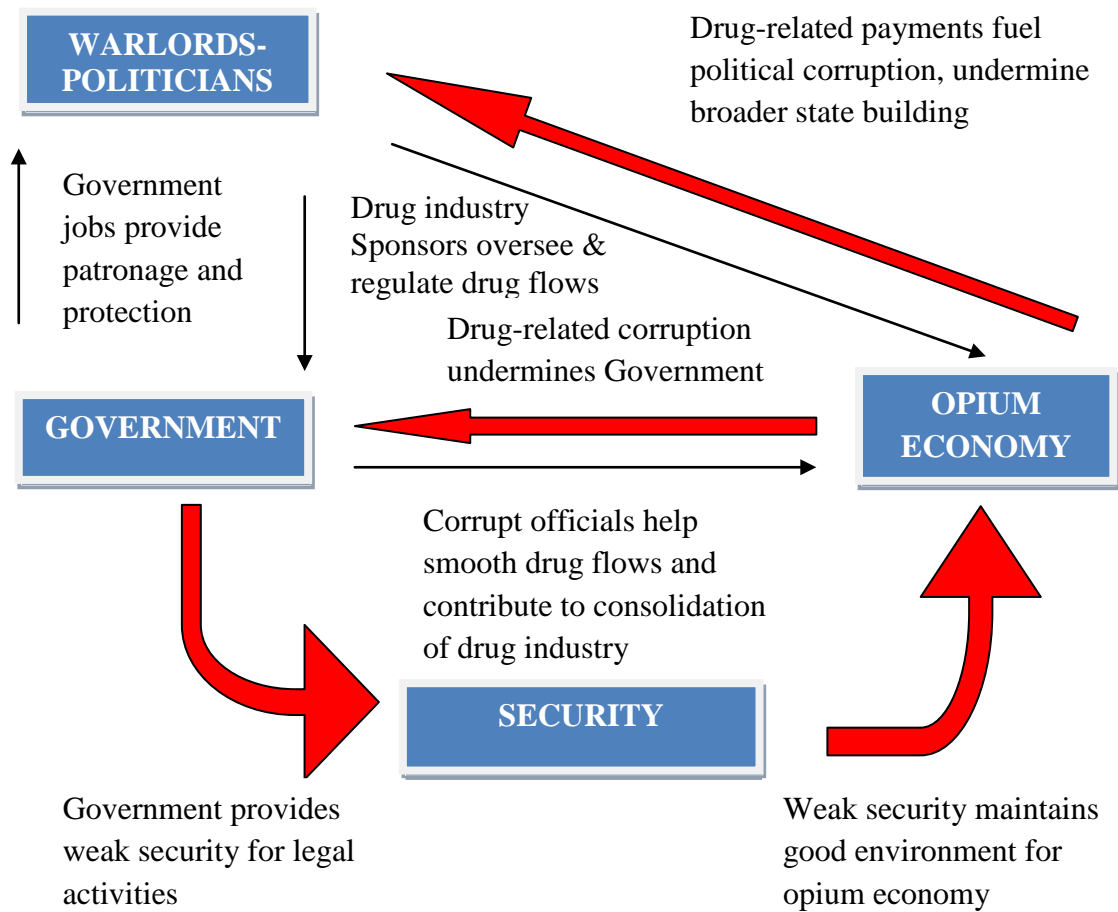
<sup>189</sup> Transnational Institute. (2001, December). *Afghanistan, drugs and terrorism: merging wars*. Retrieved July 25, 2014, from Transnational Institute: <http://www.tni.org/sites/www.tni.org/files/download/debate3.pdf>

<sup>190</sup> This occurred in 2001, after the Bonn Conference, during which the Northern Alliance obtained a large majority among the four Afghan delegations.

<sup>191</sup> Maas, C. D. (2011). *Afghanistan's Drug Career*. Berlin: Stiftung Wissenschaft und Politik.

<sup>192</sup> Data retrieved from: Peters, G. (2009). *How Opium Profits the Taliban*. Washington: United States Institute of Peace.

**Table 9 - Consolidation of the drug economy**



Source 5 - William A. Byrd, *Responding to Afghanistan's Opium Economy Challenge: Lessons and Policy Implications from a Development Perspective*, Washington, D.C.: World Bank, March 2008, p.15, <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-4545>

As Table 7 shows, the Afghan drug problem is deeply rooted in the institutional structures of the country and because of its linkages with other crimes, such as corruption and money laundering, and with other compelling issues, such as poverty and development, it is a phenomenon difficult to counteract. "Overall, this dynamic evolution of the drug industry constitutes a profound threat to Afghanistan's state-building and development agenda. And the fundamental equation between a weak state and thriving opium economy remains. Moreover, the expanding Taliban insurgency in

the South adds complexity of insecurity for the drug industry, further exacerbating the associated risks”<sup>193</sup>.

In consideration of all these factors, many authors have talked about “an Afghan opium economy”. All sectors of the society are involved. “The close relationships among drug traders, warlords-turned-politicians, and corrupt officials in government agencies that have been partly compromised by the drug industry are good examples of the strategic links associated with the drug industry. [...] The opium economy provides substantial incomes to segments of the rural population, stimulates aggregate demand, and supports the balance of payments. [...] The opium economy is also contributing to possible “Dutch disease” effects<sup>194</sup> in Afghanistan by providing an influx of money and driving up rural wages”<sup>195</sup>.

In sum, the opium problem in Afghanistan represents a major challenge of the modern world and it not only affects all segments of the Afghan society but it also undermines the regional and international stability. On the one hand, the local farmers are not incentivized to shift to legal activities and “the opium economy and the insurgency both thrive in an insecure environment with a weak and corruptible state that is not capable of imposing the rule of law”<sup>196</sup>. On the other hand, this context imposes negative impacts not only on the Afghan society, but also on the neighbouring States and to the

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<sup>193</sup> Byrd, W. A. (2008, March). *Responding to Afghanistan's Opium Economy Challenge: Lessons and Policy Implications from a Development Perspective*. Retrieved July 24, 2014, from World Bank: <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-4545>

<sup>194</sup> “Dutch disease is the negative impact on an economy of anything that gives rise to a sharp inflow of foreign currency, such as the discovery of large oil reserves. The currency inflows lead to currency appreciation, making the country’s other products less price competitive on the export market. It also leads to higher levels of cheap imports and can lead to deindustrialization as industries apart from resource exploitation are moved to cheaper locations” from Financial Times: <http://lexicon.ft.com/term?term=dutch-disease>

<sup>195</sup> Keefer, P., & Loayza, N. (2010). *Innocent bystanders. Developing countries and the war on drugs*. Washington: World Bank.

<sup>196</sup> *Ibidem*.



international community as a whole, given the transnational nature of all these criminal activities. For example, Russia is the outstanding case of a State hit by the drug trafficking that comes out from Afghanistan: since 2001, almost 1.500.000 people have died<sup>197</sup> because of the heroin addiction and the revenues of this traffic have been used to finance numerous conflicts, such as in Kosovo, Caucasus, Fergana Valley, Xinjiang and Kirghizstan<sup>198</sup>.

### **The UNODC action in Afghanistan**

From the very beginning, as we have seen, the United Nations has been always present and active in Afghanistan in order to counteract the drug phenomenon, first with the UNDCP and since 1997, with the UNODCCP, later renamed as UNODC. Then, it would be useful to deeply analyze the normative, the operational and the programmatic contexts in which UNDCP first, and UNODC later had to work.

### **The normative context**

First, we should focus on the Afghan counter narcotics legislation. Pursuant to Art. 7 of the Afghan Constitution, “the state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights. The state shall prevent all kinds of terrorist activities, cultivation and smuggling of narcotics, and production and use of intoxicants”<sup>199</sup>. Then, it would be useful to analyze the status of adherence of the main

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<sup>197</sup> Data retrieved from Vielmini, F. (2010, June 20). *Afghanistan: Mosca richiama l'attenzione sul narcotraffico*. Retrieved February 11, 2014, from Limes on-line:

<http://temi.repubblica.it/limes/afghanistan-mosca-richiama-lattenzione-sul-narcotraffico/13334?printpage=undefined>

<sup>198</sup> *Ibidem*.

<sup>199</sup> *Constitution of the Islamic Republic of Afghanistan*. (2004, January 26). Retrieved July 30, 2014, from The Embassy of Afghanistan - Washington D.C.: <http://www.embassyofafghanistan.org/page/constitution>

human rights-related, drug-related and crime-related treaties and in particular, the Afghanistan position.

When in 1948, the General Assembly voted for the adoption of the Universal Declaration on Human Rights, Afghanistan was in favour and expressed a positive vote. Notably, this country has signed and ratified the main human rights-related treaties, such as the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).

The Afghan status of adherence to the drug-related treaties presents a similar overview. As of today, the 1961 Single Convention, as amended by the 1972 Protocol, has been signed and ratified by 184 nations, but remarkably, Afghanistan signed the original text of the 1961 Convention, but not the 1972 Protocol. This is significant, because the Protocol introduced important changes aimed at strengthening the control system and the fight against the illegal drug trafficking. As regards the 1971 Vienna Convention on psychotropic substances, 183 States are parties to it, including Afghanistan, even if with a reservation. In fact, *“it does not consider itself bound to the provision of the second paragraph of article 31, since this paragraph calls for the submission to the ICJ upon the request of one of the Parties, of differences of opinion that may arise between two or several Parties to the Convention on its interpretation and implementation. The Democratic Republic of Afghanistan, therefore, declares in this connection that in the event of a conflict of opinion on such cases, the issue at conflict shall be submitted to*

*the ICJ not at the request of one of the sides, but upon the agreement of all the Parties concerned*<sup>200</sup>.

In addition, 189 States signed and ratified the 1988 UN Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, among which also Afghanistan.

Finally, as regards the crime-related treaties, Afghanistan signed and ratified the UN Convention against Transnational Organized Crime and the UN Convention against Corruption, respectively in 2003 and in 2008. We might conclude that Afghanistan is bound by all human rights-related, drug-related and crime-related conventions that today are still in force, with the remarkable exception of the 1972 Protocol amending the 1961 Single Convention.

By now, we have presented the Afghan status of adherence to the international treaties and conventions relevant for the purpose of this thesis. Nevertheless, we should also analyze in depth the Afghan national laws that are actually in force and that regulate the drug issue. In 2005, a law<sup>201</sup> was approved by the Afghan parliament and according to its art. 1, it was “enacted pursuant to Article 7 of the Constitution of Afghanistan in order to prevent the cultivation of opium poppy, cannabis plants, and coca bush, and the trafficking of narcotic drugs, and to control psychotropic substances, chemical precursors, and equipment used in manufacturing, producing, or processing of narcotic

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<sup>200</sup> United Nations. (n.d.). *Convention on Psychotropic Substances - Status of Adherence*. Retrieved July 26, 2014, from United Nations: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-16&chapter=6&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-16&chapter=6&lang=en#EndDec)

<sup>201</sup> Counter-Narcotics Law - Official Gazette No. 875, published 2006/02/04 (1384/11/15 A.P.) retrieved from <http://www.refworld.org/docid/4c1f343b2.html>

drugs and psychotropic substances”<sup>202</sup>. The 2005 Counter Narcotics Law consisted of fifty-eight articles under eight chapters. The law was in compliance with the international conventions, in particular as regards the license system, the creation of a national committee, the limitation to medical and scientific purposes the use of the regulated substances, the separate import/export certification system, the demand/supply balanced approach and the penal provisions, including the possibility of extradition. Nevertheless, no forms of international cooperation were envisaged and it was not established a truly State monopoly of the wholesale and international trade in the regulated substances.

In 2010, this law was superseded by the “Law against Intoxicating Drinks and Drugs and Their Control”, which consisted of five chapter and sixty-eight articles. It was very similar in its objectives to the 2005 law, but with significant innovations, such as the focus on the alternative livelihoods and the strengthening of the cooperation with the NGOs and the IGOs, especially with regards to the monitoring and evaluation of the implementation of the National Drug Control Strategy (NDCS). The latter, whose first version was issued in 2003, has the purpose to provide a strategic framework to inform and direct the allocation of resources in support of the Government’s Counter Narcotics effort. It is a comprehensive approach that covers a wide array of projects to counter the drugs cultivation, manufacture and trade. These include building government institutions and law enforcement capacity, targeted eradication programmes and the development of alternative livelihoods, information and education campaigns and engagement with countries in the region.

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<sup>202</sup> *Counter Narcotics Drug Law*. (2005, December 17). Retrieved July 30, 2014, from Refworld - UNHCR: <http://www.refworld.org/docid/4c1f343b2.html>

In sum, Afghanistan is bound by all the relevant and still-in-force international treaties and both its constitution and its national laws are in compliance with the international legal framework. At the State's disposal, there are many judicial and investigative means, which have the aim of facilitating the total eradication of the problem, but it appears evident that there are overlapping norms and bodies competent to this end.

### **The operational context**

All the norms and control systems envisaged in the above-mentioned international conventions apply to Afghanistan, which is therefore subject to the work of all the treaty-based bodies and commissions, such as the INCB, and to UNODC.

In fact, UNODC is the custodian of all these conventions and it has a strong presence on field. For these reasons, we should take into consideration the UNODC office structure in Afghanistan. From the very beginning, a field office was opened in the region in order to implement the policies in Afghanistan, even if, in a first phase, it was located in Peshawar (Pakistan). In particular, created in 1989, it was a project office, which since 1991 has worked in collaboration with the Office of the Representative, based in Kabul. In 1992, the latter was relocated to Islamabad (Pakistan) because of security concerns: in fact, during those years, the civil war broke out. The Taliban government fell in 2001, and in 2002, the country office was finally reopened in Kabul, once the Afghan Interim Administration (AIA) had been instituted with the signing of the Bonn Agreement<sup>203</sup>.

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<sup>203</sup> The Bonn Conference took place in November 2001 and it was the occasion for four different Afghan delegations to talk about the future of Afghanistan. It was created a 20-member interim administration and a UN peacekeeping force was organized. Hamid Karzai was nominated chairman of the interim administration (President). The peacekeeping operation was formally approved by the UN Security Council in December 2001 and it was named "International Security Assistance Force" (ISAF).

**Table 10 - UNODC regional offices in Afghanistan**



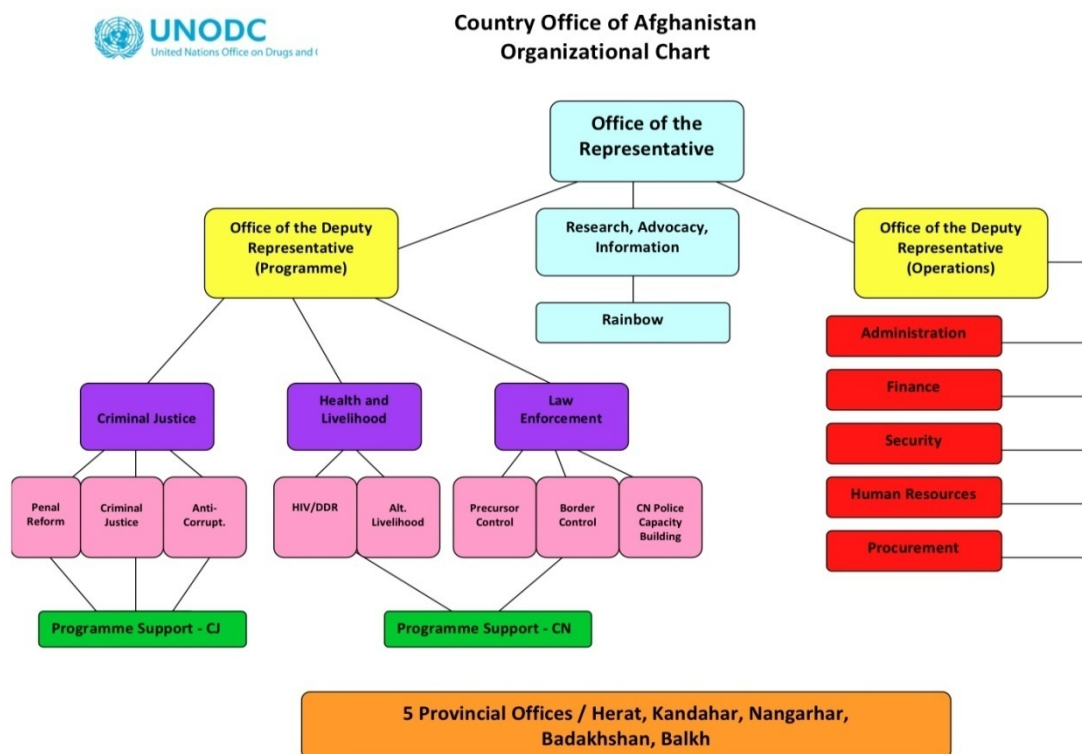
Source 6 - UNODC. (2012, May 12). *Country Programme for Afghanistan 2012-2014*. Retrieved February 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country Programme for Afghanistan 2012-2014 signed.pdf](http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country_Programme_for_Afghanistan_2012-2014_signed.pdf)

Today, the headquarters of the Country Office of Afghanistan (COAFG) are in Kabul, but five key provinces (Balkh, Badakhshan, Herat, Kandahar and Nangarhar) host as many provincial offices. The COAFG covers all the fields of interest of UNODC and presents an organizational structure (Table 10) that resembles that of the UNODC central duty station. In fact, it “has been designed to provide technical assistance to the country based on these (above-mentioned) legal instruments in order to strengthen its institutions in compliance with the international provisions”<sup>204</sup>. “UNODC is offering a

<sup>204</sup> UNODC. (2012, May 12). *Country Programme for Afghanistan 2012-2014*. Retrieved February 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country Programme for Afghanistan 2012-2014 signed.pdf](http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country_Programme_for_Afghanistan_2012-2014_signed.pdf)

strong coordination platform to enhance operational planning and facilitation, and is uniquely placed to provide that support”<sup>205</sup>.

**Table 11 - Country Office of Afghanistan Organizational Chart**



COAFG/RPT-AFG 18.06.10

Source 7 - [www.unodc.org/afghanistan/en/coafg-organizational-chart.html](http://www.unodc.org/afghanistan/en/coafg-organizational-chart.html)

In particular, “the Regional Representative of UNODC in Afghanistan leads the Country Office in Afghanistan, oversees the Regional Programme for Afghanistan and Neighbouring Countries and acts as Special Advisor to the Special Representative of the

<sup>205</sup> UNODC. (2012, May 12). *Country Programme for Afghanistan 2012-2014*. Retrieved February 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country\\_Programme\\_for\\_Afghanistan\\_2012-2014\\_signed.pdf](http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country_Programme_for_Afghanistan_2012-2014_signed.pdf)

Secretary-General and Head of UNAMA”<sup>206</sup>. In fact, as regards UNAMA, all UNODC projects are carried out in complete coordination with the latter. For the argument’s sake, UNAMA is a political mission created by the UN Security Council in 2002, with the aim of providing a civilian assistance in the efforts of creating and strengthening the State institutions and of guiding the country out of the transition. Once again, the promotion of the rule of law, of the human rights and of a sustainable development from an economic, social and political point of view is the cornerstone of the UN action.

From a financial point of view, the COAFG projects have received an ever-increasing amount of funds, from the annual delivery of US\$ 0.9 in 2002 up to the actual budget of US\$ 35-40 million per year. The reasons behind such incredible increase in the total budget probably reflect the increasing international awareness of the seriousness of the Afghan situation.

In Afghanistan, UNODC bases its work on six of guiding principles:

- “Ownership and sustainability;
- Subsidiarity;
- Exploiting internal and external synergies;
- Impact-oriented effective aid;
- Reaching out to vulnerable populations; and
- Promotion of human rights and gender sensitive actions”<sup>207</sup>.

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<sup>206</sup> UNODC. (2012, May 12). *Country Programme for Afghanistan 2012-2014*. Retrieved February 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country\\_Programme\\_for\\_Afghanistan\\_2012-2014\\_signed.pdf](http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country_Programme_for_Afghanistan_2012-2014_signed.pdf)

<sup>207</sup> *Ibidem*.



It would be interesting to examine in depth the principle of subsidiarity. In fact, the assistance that the COAFG provides to Afghanistan is a three-level one, at the local level, at the national level and at the regional level and the Office pursues a decentralization of the efforts, prioritizing the lowest level. Nevertheless, when the projects cannot be carried out effectively at the local level, the national and regional means are exploited in order to reach the desired impact. In particular, at the local and provincial level, UNODC practically implements the ongoing projects, mainly devoted to opium reduction and the establishment of the rule of law. At the national level, UNODC has always cooperated with the State institutions, providing normative and technical assistance services in the policy-making process. Finally, at the regional level, UNODC facilitates the relations among all the actors of the international arena, trying to resolve their differences by mediation.

Certainly, the regional dimension is fundamental, given the relevance and the transnational nature of the addressed phenomena. The neighbouring States, but not only, have a voice in the decision-making process about the policies to counter T.O.C., drug trafficking and terrorism, through different forums, among which the most important is the Paris Pact Initiative.

The Paris Pacts Initiative stemmed from the Ministerial Conference on Drug Routes from Central Asia to Europe held in Paris in 2003 and the final statement is commonly known as the Paris Pact. The Conference was organized following a French initiative and from the very beginning, UNODC actively participated. The 55 countries that participated agreed upon the principle of shared responsibility in relation to the traffic of opium and heroin produced in Afghanistan. “Ministers stressed that it was crucial to find a comprehensive, balanced and coordinated national and international response to

the threat that this scourge represents for all their societies”<sup>208</sup>. Nevertheless, the conference was broad in scope. In fact, it dealt not only with drug production and trafficking, but also with money laundering, the financing of terrorism and the cross-border spread of diseases. The output was the Paris Statement, through which the international community reconfirmed “its commitment in Afghanistan and in particular, provided its wholehearted support to the National Drugs Commission to implement the next National Strategic Plan against drugs and to encourage realistic action aimed at promoting sustainable alternative development”<sup>209</sup>. The “Paris process” continued at the Moscow Conference in 2006, known also as the “Paris II Conference”. Organized by the Russian government in cooperation with UNODC, the Conference focused on the main consequences and presuppositions of drug trafficking, namely the spread of diseases, money laundering and the financing of terrorism. To this end, Afghanistan was encouraged to strengthen its cooperation with the NGOs, the IGOs and the neighbouring States in a regional perspective, in order to make effective all the border control strategies. In this context, UNODC role in Afghanistan was recognized, together with the need of reinforcing it. “Thus, the Office should further seek to combine the “Paris Pact Process” with drug control efforts within Afghanistan and to avoid duplication of functions of various international organizations engaged in the counter narcotics efforts in this region”<sup>210</sup>. The final step of the Paris Pact Initiative is represented by the Vienna Conference, held in 2012. Still relying on the support of UNODC and on the effective implementation of the three international drug-related conventions, the Vienna Conference acknowledged that the opiate threat represents a global challenge, which

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<sup>208</sup> *Paris Statement*. (2003, May 22). Retrieved July 27, 2014, from Paris Pact Initiative: <http://www.paris-pact.net/uploadcecd9d323ae80a1fe398257ccb6ac4d5.pdf>

<sup>209</sup> *Ibidem*.

<sup>210</sup> *Moscow Declaration*. (2006, June 28). Retrieved July 27, 2014, from Paris Pact Initiative: <http://www.paris-pact.net/upload/7046a60f8f06037b49b312c3fa1e9e94.pdf>

needs a global response. “Efforts under the aegis of the Paris Pact initiative are aimed at the strengthening of international and regional cooperation with the Islamic Republic of Afghanistan [...], to address illicit traffic in opiates, recognizing the threat they pose to international peace and stability in different regions of the world and the important role played by UNODC in these efforts”<sup>211</sup>. In particular, the representatives of 55 States and of 23 international organizations focused on four different areas: regional initiatives, financial flows linked to illicit traffic in opiates, preventing the diversion of precursor chemicals and reducing drug abuse and dependence. Once again, the principle of shared responsibility and a multidisciplinary approach were the guidelines of the Paris Pact Initiative.

The Paris Pact Initiative and therefore, the regional approach have been put into practice by UNODC through two different projects: the Rainbow Strategy and the Regional Programme for Afghanistan and Neighbouring Countries.

Initiated primarily with the financial support of Canada, “the Rainbow Strategy acknowledges that a national problem demands a regional solution, and therefore engages both Afghanistan and surrounding countries”<sup>212</sup>. On the basis of the results and analysis of 15 expert roundtables held between 2003 and 2008, a plan was devised with the aim of reducing the opium cultivation, manufacture and traffic in Afghanistan and in the neighbouring countries. Like the colours of the rainbow, the strategy is made up of seven action plans, which engage “both Afghanistan and its neighbouring countries in border management, cross-border cooperation, development of intelligence capacities,

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<sup>211</sup> *Vienna Declaration*. (2012, February 16). Retrieved July 27, 2014, from Paris pact Initiative: <http://www.paris-pact.net/upload/e13c97754676467579005065facfce22.pdf>

<sup>212</sup> UNODC. (n.d.). *Rainbow Strategy - A regional solution to a national challenge*. Retrieved February 12, 2014, from United Nations Office on Drugs and Crimes: [http://www.unodc.org/documents/afghanistan/Rainbow\\_Strategy/Rainbow\\_Strategy.pdf](http://www.unodc.org/documents/afghanistan/Rainbow_Strategy/Rainbow_Strategy.pdf)

precursor chemical control, interdiction of drug-related financial flows, drug demand reduction and HIV/AIDS prevention”<sup>213</sup>.

The Regional Programme for Afghanistan and Neighbouring Countries (2011-2014), instead is a project aimed at strengthening the coordination between the various ongoing local, regional and global plans in order to ensure better results. In the context of the Paris Pact Initiative and of the Rainbow Strategy, this Regional Programme thus represents a complementary project, which by focusing on the regional dimension operates so as to avoid inconsistencies.

### **The programmatic context**

The most important plan that every three years, UNODC figures out is the Country Programme for Afghanistan. The latter is the perfect exemplification of the work of UNODC on field, which is characterized by three different dimensions. First, the international treaties represent the normative background, together with the Afghan national laws. Secondly, the regional approach and in particular, the subsidiarity principle are the operational background. Finally, the UN provides a useful programmatic context through a series of important guidelines, which represent the reference framework for the UNODC action. In fact, on the one hand, UNODC has maintained regular contacts with the Afghan institutions and government, and it has thus obtained valuable data and information for its policy-making process. On the other hand, the UNODC action and policies are bound by three main documents and

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<sup>213</sup> UNODC. (2012, May 12). *Country Programme for Afghanistan 2012-2014*. Retrieved February 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country\\_Programme\\_for\\_Afghanistan\\_2012-2014\\_signed.pdf](http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country_Programme_for_Afghanistan_2012-2014_signed.pdf)

approaches that set out the general programmatic background of the UN involvement in Afghanistan.

The first document is the United Nations Development Assistance Framework 2010-2013 (UNDAF). The latter is the outcome of the collaboration of the members of the UN Country Team, within the United Nations Development Group (UNDG). The UNDG was created in 1997 by the UN Secretary-General and it is made up of 32 funds, programmes, agencies, departments and offices that deal with all developmental aspects. Among the members, obviously, there is also UNODC, which together with all the other partners has elaborated a comprehensive document that represents the guidelines for the action of all these UN entities in Afghanistan. In particular, the UNDAF 2010-2013 focuses on three main policy areas: (a) governance, peace and stability, (b) sustainable livelihoods and (c) basic social services. All UN-agencies that have subscribed this document are therefore coordinated by a common reference framework and have a UN Common Fund of \$4 billion over the period 2010-2013. The UN, which has operated with all its agencies in the country for over 50 years, “strives to be an impartial partner, able to bring consensus and to steer international efforts towards coordinated support to the implementation of the Afghanistan National Development Strategy (ANDS)”<sup>214</sup>.

The second document is the United Nations Integrated Strategic Framework (ISF). The most important goal of the UN work in Afghanistan is to develop the capacity to “deliver as one”, namely to coordinate the mission of the numerous UN agencies on field on the basis of the Secretary General’s resolutions in order to attain the

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<sup>214</sup> UNDG. (2010). *United Nations Development Assistance Framework 2010-2013*. Retrieved August 2, 2014, from United Nations Development Group: <http://www.af.undp.org/content/dam/afghanistan/docs/UNDAF%20English.pdf>

Millennium Development Goals (MDGs). “The goal of the ISF is twofold: firstly to assist the United Nations presence in Afghanistan to function in a multidimensional, coherent and mutually supportive manner so as to improve the impact of its activities under the leadership of the Special Representative of the Secretary General; and, secondly, to act as an overarching planning tool that promotes closer coordination to leverage existing activities across the UN system in support of Afghanistan’s people and institutions”<sup>215</sup>.

Finally, as regards the programmatic context, we should mention the Kabul Process. The Kabul Process began with the 2001 Bonn Conference and since then, it has been carried out through many subsequent conferences<sup>216</sup>. It has been defined “by the United Nations as the gradual transition to Afghan ownership and leadership in security, development and governance coupled with the furtherance of an inclusive political process, as agreed with key stakeholders”<sup>217</sup>. One of the main policy outcomes of the Kabul Process is the so-called “Afghanistan Compact”. Envisaged by the Afghan government and the international community in 2006, under the aegis of NATO, the Afghanistan Compact identifies three main pillars of activity: (a) security, (b) governance, rule of law and human rights and (c) economic and social development. Interestingly, this document highlights that the international community commits itself to eliminate the narcotics industry, “which remains a formidable threat to the people and

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<sup>215</sup> UNDG. (2011). *UN Integrated Strategic Framework*. Retrieved August 3, 2014, from United Nations Development Group: <http://www.undg.org/docs/RCAR/2011/AFG/UN-Afghanistan-ISF---Final-as-of-10-July.docx>

<sup>216</sup> The subsequent conferences were: Berlin 2004, London 2006, Paris 2008, London 2010, Kabul 2010, Bonn 2011

<sup>217</sup> UNODC. (2012, May 12). *Country Programme for Afghanistan 2012-2014*. Retrieved February 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country\\_Programme\\_for\\_Afghanistan\\_2012-2014\\_signed.pdf](http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country_Programme_for_Afghanistan_2012-2014_signed.pdf)

state of Afghanistan, the region and beyond”<sup>218</sup>. In order to monitor the implementation of the Afghanistan Compact, in 2006, the Joint Coordination and Monitoring Board (JCMB) was created. However, its tasks and responsibilities were further enlarged since 2008 so as “to include the provision of strategic and policy guidance on the prioritized implementation of the ANDS as well as the political visions and priorities agreed upon between the Afghan government and the international community at subsequent international conferences on Afghanistan in The Hague (March 2009), London (January 2010), and Kabul (July 2010)”<sup>219</sup>.

### **The Country Programme for Afghanistan**

On the basis of this broad programmatic context, UNODC every three years formulates the “Country Programme for Afghanistan”, whose motto is “A world safer from the threats posed by organized crime, drug use and terrorism”. The actual situation in Afghanistan requires a multidisciplinary approach, because the problems that need a comprehensive response are numerous, such as the illicit drug economy, the weak governance, corruption and the lack of human health and security. “The United Nations Office on Drugs and Crime through this Country Programme aims to contribute to the stability and development of Afghanistan by strengthening the Criminal Justice system and Counter Narcotics efforts and capacity of the Government of the Islamic Republic of Afghanistan. [...] The United Nations Office on Drugs and Crime through this Country Programme aims to contribute to the stability and development of Afghanistan by strengthening the Criminal Justice system and Counter Narcotics efforts and capacity

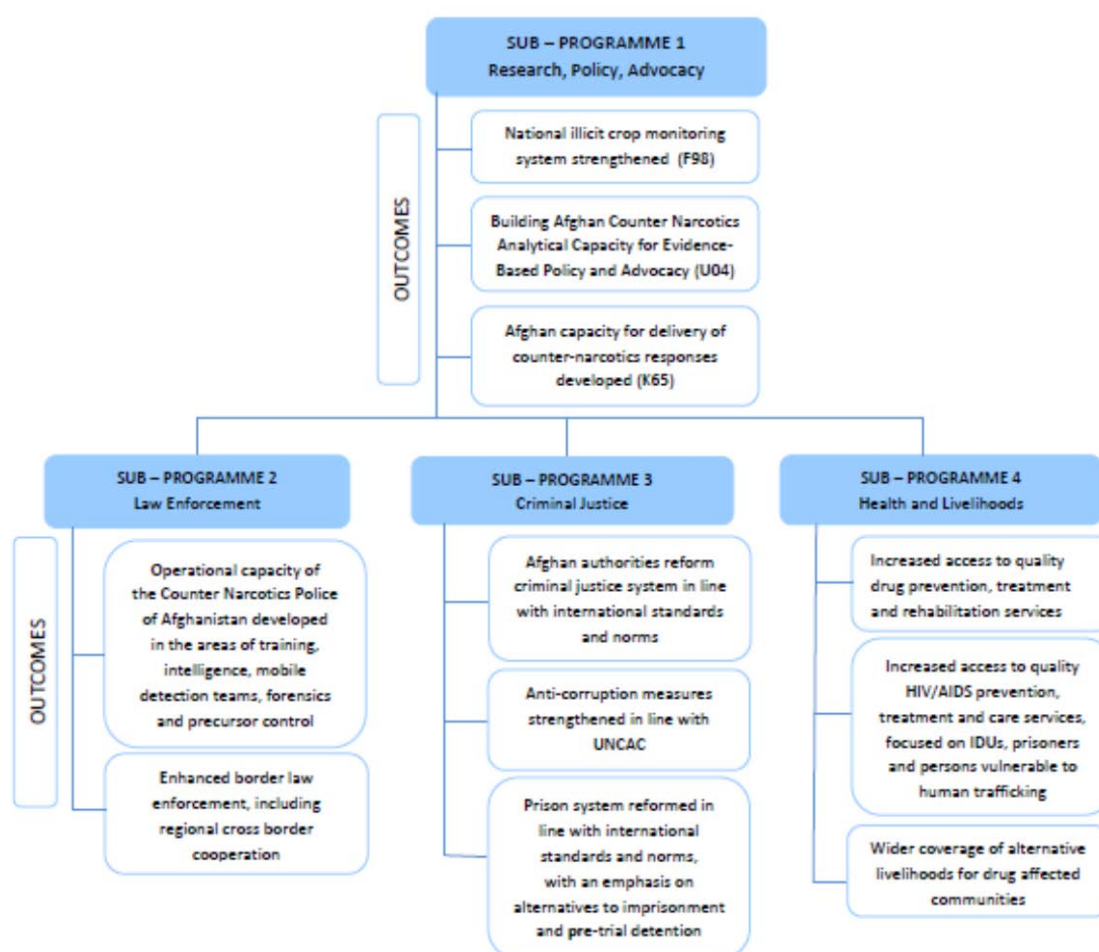
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<sup>218</sup> *The Afghanistan Compact*. (2006, February). Retrieved August 3, 2014, from NATO: [http://www.nato.int/isaf/docu/epub/pdf/afghanistan\\_compact.pdf](http://www.nato.int/isaf/docu/epub/pdf/afghanistan_compact.pdf)

<sup>219</sup> *Joint Coordination and Monitoring Board*. (2010, November 15). Retrieved August 3, 2014, from The Kabul Process: <http://www.thekabulprocess.gov.af/index.php/jcmb/background>

of the Government of the Islamic Republic of Afghanistan”<sup>220</sup>. The latest Country Programme for Afghanistan will be operative over the period 2012-2014 (Table 11), in collaboration with the Afghan government, whose efforts will be decisive in order to attain positive results. UNODC, thus, plays a guiding role in the policy-making process and provides the technical expertise needed to carry out the various ongoing projects.

**Table 12 - Broad scope of Country Programme for Afghanistan 2012-2014**



Source 8 - UNODC. (2012, May 12). *Country Programme for Afghanistan 2012-2014*. Retrieved February 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country\\_Programme\\_for\\_Afghanistan\\_2012-2014\\_signed.pdf](http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country_Programme_for_Afghanistan_2012-2014_signed.pdf)

<sup>220</sup> UNODC. (2012, May 12). *Country Programme for Afghanistan 2012-2014*. Retrieved February 12, 2014, from United Nations Office on Drugs and Crime: [http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country\\_Programme\\_for\\_Afghanistan\\_2012-2014\\_signed.pdf](http://www.unodc.org/documents/afghanistan/New%20Country%20Programme/Country_Programme_for_Afghanistan_2012-2014_signed.pdf)



The Country Programme for Afghanistan is articulated into four different sub-programmes, which correspond to four policy areas, that are research, policy and advocacy; law enforcement; criminal justice; health and livelihoods.

Nevertheless, it would be invaluable to analyze the practical implementation of the Country Programme and to see how UNODC functions in practice.

In particular, the programme is implemented by the COAFG, whose head is the UNODC Regional Representative who is responsible for all projects on the Afghan soil. Other important officers involved are the Deputy Representative, who monitors the programme, a Programme Officer in charge for Operations and as many senior experts as the foreseen policy areas of the programme. Two kinds of important committees are involved at all stages of the Country Programme and they are composed both by the Afghan members of the government and by the UNODC representatives as well as the donors. The first of these entities is the Programme Steering Committee, which is responsible for the strategic oversight and direction of the Country Programme. The Sub-Programme Technical Committees represent the second kind of entities entrusted with the aim of creating economies of scale and of monitoring the results of the Country Programme. In conclusion, two evaluations, a mid-term one and a final one will deliver strengths and weaknesses, advancements and failures of the collaboration between the Afghan government and UNODC.

### **A quantitative and qualitative evaluation**

This chapter has so far focused on the shift from the law to the practice. It is a shift neither easy nor predictable and the data we are going to present will demonstrate it. From a theoretical point of view, the above-mentioned international provisions, bodies,

offices and policies have solid foundations that lay their roots in decades of work on field and of surveys of the criminal phenomena we have presented. Nevertheless, the testing ground is represented by the first hand data at our disposal that tell us if the phenomenon at issue has been contained or rather if the latter has prevailed over the efforts of the international community.

For all these reasons, the final paragraph of this chapter will deal with the quantitative analysis of the drug-related crimes, like drug cultivation, manufacture and trafficking. On the other hand, it would be a mistake not to consider the positive contributions that the qualitative analysis might bring to an empirical research. In fact, the qualitative analysis upon the results of the UNODC action in Afghanistan will rather reveal further outcomes and details that the quantitative analysis does not deliver.

### **The quantitative analysis**

The quantitative analysis is based upon the first-hand data collected by UNODC and published in its various reports. The latter have been yearly written since UNODC creation, but only the most recent ones have been taken into consideration for the purpose of this thesis, because the phenomenon at issue is unpredictable and changeable and it is rather preferable to have data as updated as possible.

As the drug phenomenon is concerned, it appears evident that throughout the world, the opium cultivation has reached its peak since 1998, with 296,720 hectares cultivated. In particular, in Afghanistan, the opium poppy cultivation has increased 36% compared to the 2012 estimates and today, it represents 80% of the world opium market.

**Table 13 - Net cultivation of opium poppy in selected countries, 1998 - 2013 (Hectares)**

Net cultivation of opium poppy in selected countries, 1998-2013 (Hectares)															
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>SOUTH-WEST ASIA</b>															
Afghanistan	90,583	82,171	7,606	74,100	80,000	131,000	104,000	165,000	193,000	157,000	123,000	123,000	131,000	154,000	209,000
Pakistan	284	260	213	622	2,500	1,500	2,438	1,545	1,701	1,909	1,779	1,721	362	382	382
Subtotal	90,867	82,431	7,819	74,722	82,500	132,500	106,438	166,545	194,701	158,909	124,779	124,721	131,362	154,382	209,382
<b>SOUTH-EAST ASIA</b>															
Lao People's Democratic Republic <sup>a</sup>	22,543	19,052	17,255	14,000	12,000	6,600	1,800	2,500	1,500	1,600	1,900	3,000	4,100	6,800	3,900
Myanmar <sup>a</sup>	89,500	108,700	105,000	81,400	62,200	44,200	32,800	21,500	27,700	28,500	31,700	38,100	43,600	51,000	57,800
Thailand <sup>b</sup>	702	890	820	750											
Viet Nam <sup>b</sup>	442														
Subtotal	113,187	128,642	123,075	96,150	74,200	50,800	34,600	24,000	29,200	30,100	33,600	41,100	47,700	57,800	61,700
<b>LATIN AMERICA</b>															
Colombia	6,500	6,500	4,300	4,153	4,026	3,950	1,950	1,023	715	394	356	341	338	313	
Mexico <sup>c</sup>	3,600	1,900	4,400	2,700	4,800	3,500	3,300	5,000	6,900	15,000	19,500	14,000	12,000		
Subtotal	10,100	8,400	8,700	6,853	8,826	7,450	5,250	6,023	7,615	15,394	19,856	14,341	12,338	12,338	12,338
<b>OTHER</b>															
Other countries <sup>d</sup>	2,050	2,479	2500	2500	3,074	5,190	5,212	4,432	4,184	8,600	7,700	10,500	16,100	11,900	13,300
<b>TOTAL</b>	<b>216,204</b>	<b>221,952</b>	<b>142,094</b>	<b>180,225</b>	<b>168,600</b>	<b>195,940</b>	<b>151,500</b>	<b>201,000</b>	<b>235,700</b>	<b>213,003</b>	<b>185,935</b>	<b>190,662</b>	<b>207,500</b>	<b>236,420</b>	<b>296,720</b>

Source 9 - UNODC. (2014, June). *2014 World Drug Report*. Retrieved August 8, 2014, from United Nations Office on Drugs and Crime: [https://www.unodc.org/documents/wdr2014/World Drug Report 2014 web.pdf](https://www.unodc.org/documents/wdr2014/World_Drug_Report_2014_web.pdf)

A preliminary conclusion that might be taken is that despite the combined efforts of UNODC and the Afghan government, the policies implemented have not been as effective as they were thought to be. Let us then examine the reasons behind such results.

First, in 2012, the opium prices were 12% higher than the 2013 ones. This disparity might have provoked the 2013 great increase in the opium poppy production, even if a human factor should be borne in mind, too. In fact, “it may have also been driven by speculation due to the withdrawal of international troops and the forthcoming elections

in 2014, which led farmers to try to hedge against the country’s uncertain political future”,<sup>221</sup>.

Secondly, most of the opium poppy is cultivated in the southern and western provinces, which are the most insecure of the country and are dominated by insurgents and organized criminal groups. This confirms the link between insecurity and the illicit cultivation of controlled substances.

**Table 14 - Fact sheet**

	2012	Change from 2012	2013
Net opium poppy cultivation (after eradication) in hectares (ha)	154,000 ha (125,000–189,000)	36%	209,000 ha (173,000–238,000)
Number of poppy free provinces <sup>2</sup>	17	-2	15
Number of provinces affected by poppy cultivation	17	+2	19
Eradication	9,672	-24%	7,348
Average opium yield (weighted by cultivation)	23.7 kg/ha	11%	26.3 kg/ha
Potential production of opium	3,700 (2,800 – 4,200 tons)	49%	5,500 (4,500 - 6,500 tons)
Average farm-gate price (weighted by production) of fresh opium at harvest time	US\$ 163/kg	-12%	US\$ 143/kg
Average farm-gate price (weighted by production) of dry opium at harvest time	US\$ 196/kg	-12%	US\$ 172/kg
Current GDP <sup>3</sup>	US\$ 18.95 billion	11%	US\$ 21.04 billion
Total farm-gate value of opium production	US\$ 0.7 billion	31%	US\$ 0.95 billion
In % of GDP	4%		4%
Gross income from opium per ha	US\$ 4,600	-2%	US\$ 4,500

Source 10 - UNODC. (2013, December). *Afghanistan Opium Survey 2013*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

Thirdly, a province is considered “poppy-free” when the total cultivation amounts for less than 100 hectares. On the one hand, this means that despite the “poppy-free” denomination, probably, a province continues cultivating and manufacturing opium and

<sup>221</sup> UNODC. (2014, June). *2014 World Drug Report*. Retrieved August 8, 2014, from United Nations Office on Drugs and Crime: [https://www.unodc.org/documents/wdr2014/World\\_Drug\\_Report\\_2014\\_web.pdf](https://www.unodc.org/documents/wdr2014/World_Drug_Report_2014_web.pdf)

not only. On the other hand, the number of poppy-free provinces decreased by two between 2012 and 2013, remarkably in the northern region, which has historically been less problematic than the southern one.

The negative trend in the eradication policies started in 2006 and since then, it has ceaselessly worsened. It has four main causes. First, the eradication campaigns mainly concentrated on one province, namely that of Badakhshan, over an area of 2374 hectares, whereas the efforts in the other regions were negligible in comparison to the total net opium cultivation. Secondly, in comparison to the previous years, the number of security incidents, injuries and fatalities during the eradication campaigns increased, thus making more difficult the action of the experts on field. Thirdly, differently from the previous years, the eradication campaigns began in March and not in February, thus taking precious time away from this work. Finally, there is a human factor to be taken into consideration. In fact, the local farmers involved in the opium poppy cultivation have an economic reason to continue the opium production: the high sale price, the improving living conditions and the provision of basic food and shelter for their families are the most cited reasons by the farmers during the UNODC-led survey.

On the other hand, the little successes achieved during the biennium 2012-2013 in the eradication campaigns are mainly due to religious beliefs<sup>222</sup>, the government ban and the fear of plant diseases<sup>223</sup>.

### **The qualitative analysis**

From a qualitative point of view, other considerations should be made.

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<sup>222</sup> Opium cultivation is forbidden (*Harām*) by Islam.

<sup>223</sup> All data are retrieved from UNODC. (2013, December). *Afghanistan Opium Survey 2013*. Retrieved February 10, 2014, from United Nations Office on Drugs and Crime: <http://www.unodc.org/unodc/en/publications-by-date.html>

As we have previously demonstrated, the drug trafficking issue is about not only internal security, but also regional and global security. This phenomenon has its roots in multiple factors, both internal and external, whose effects however spread well beyond the Afghan borders. It is for this reason that the international joint efforts in countering it should be focused more on its root causes rather than seeking quick fixes.

Consequently, policy-making becomes the pivotal moment around which successes or failures might be determined. By analysing the measures taken during the last years, it comes to light that the international community did not implement a coordinated strategy, because of the overcrowded framework of the means and the bodies at its disposal. Rather, despite the multiple regional and international forums that have tried to address such a multifaceted issue, the practical implementation lacked coordination and efficacy.

A preliminary reason behind these inconsistencies might be traced back to the misleading measures of successes adopted by UNODC.

A phenomenon should be inevitably reduced to numbers when it comes to analyse it, in order to simplify it and to make it more comprehensible. Nevertheless, an excessive simplification risks to take the distances from the reality and to offer a forged picture of the actual situation. In general, a province is considered poppy free when the cultivated land does not exceed the amount of 100 hectares. However, this measure might prove to be unrealistic for various reasons. First, the local farmers might diversify the cultivated products. Since the mid 2000s, in fact, Afghanistan has become not only the major exporter of opium and heroin, but also of cannabis. The data collected by UNODC do not take into consideration this aspect, because a poppy free province might be however

destined to cannabis cultivation. Consequently, a poppy-free province might not be however a drug-free one. Furthermore, an “agrarian” factor should be borne in mind. The opium poppy is an annual plant that consequently might be easily moved from one province to another every year. This makes unreliable any measure of success based on the number of provinces rendered poppy-free.

For decades, eradication has been considered the most suitable solution, but the root causes that brought local farmers to rely on opium cultivation for their sustenance, like poverty, war, insecurity, corruption and lack of good governance, have not been adequately faced. “Unless they are addressed, significant and sustainable reduction of opium cultivation in Afghanistan is highly unlikely”,<sup>224</sup>. It is then useless forcing eradication, without a serious livelihood alternative for the local farmers. Moreover, the problem of corruption must be on the international agenda as well. From the Afghan point of view, corruption fuels the criminal channels through which opium is cultivated and marketed. Oddly, those who have been attributed the responsibility to counteract this phenomenon within the Afghan commissions and even the Afghan Ministry of Counter Narcotics sometimes prove to be exactly the same people they are working against. Cases of corruption and involvement in drug trafficking and related criminal activities involved high-level officials and even some members of the government. On the other hand, from the international point of view, the consumption problem should be addressed in the West. “Similarly, reducing or eradicating Afghanistan’s opium cultivation will not make the world’s opiates market disappear. Failing to accept these

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<sup>224</sup> Jelsma, M., & Kramer, T. (2009). *Redefining targets. Towards a realistic Afghan drug control strategy*. Amsterdam: Transnational Institute.

realities will produce unrealistic and ineffective drugs control policies”<sup>225</sup>.

Finally, a last point should be addressed among the qualitative observations. The structure of UNODC and the characteristics of the international involvement in Afghanistan are highly susceptible to the political interests. This is true not only with regards to the policy targets and objectives decided within UNODC. In fact, “ostentatious talk about tackling corruption and trafficking is meaningless as long as it only leads to targeting ‘bad guys’ selectively. [...] The international community is part of the cause of the culture of impunity that has become so much more entrenched since the military intervention. Not only by empowering and protecting controversial warlords, but by allowing corruptive schemes to flourish around the aid flows (such as overpaid sub-contracting and consultancy schemes, and shadowy practices of private security companies)”<sup>226</sup>. There exist at least two examples of this “laissez-faire” attitude. First, UNODC has been blamed because its international donors have repeatedly tolerated the scandals around the Afghan President Karzai, whose staff and family include people with alleged drug involvement<sup>227</sup>. Secondly, the international forces in Afghanistan rely on local allies and commanders involved in the drug industry in order to obtain military backing and a network of local informers<sup>228</sup>.

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<sup>225</sup> Jelsma, M., & Kramer, T. (2009). *Redefining targets. Towards a realistic Afghan drug control strategy*. Amsterdam: Transnational Institute.

<sup>226</sup> *Ibidem*.

<sup>227</sup> Data retrieved from Maas, C. D. (2011). *Afghanistan's Drug Career*. Berlin: Stiftung Wissenschaft und Politik.

<sup>228</sup> *Ibidem*.



## CONCLUSIONS

The present thesis had the objective of analyzing from a juridical point of view the drug trafficking issue and it originated from one question in particular. Despite an overcrowded international legal framework, the situation in Afghanistan is often presented as precarious. Why then are not there improvements and rather it is considered the first opium exporter of the world?

In order to draw the conclusions, it would be useful to recall the load-bearing questions from which the structure and the reasoning of the thesis stemmed. First, what is drug trafficking from a juridical point of view and could it be considered a threat to the regional and international peace and security? Secondly, what does the international legal framework provide for in the fight against drug trafficking and how did it evolve? Thirdly, what is the main supranational entity entrusted with the aim of counteracting drug trafficking and how does it function? Fourthly and finally, are these norms and bodies effective or is there a discrepancy between the theory and the practice?

The answers to the above-mentioned questions were deduced through a critical analysis of each chapter that composes this dissertation. Consequently, now every part will be individually discussed in order to bring to light the *fil rouge* that passes through the entire work.

The first chapter had the aim to establish if drug trafficking might be considered a threat to international peace and security. For this reason, I first defined the word security, analyzing its long evolution from a mere military acceptance to the present wider

interpretation. Nowadays, security comprehends a wide array of concepts that deal with all relevant aspects of human life. Individuals in the last century have become the focal point of discussion when dealing with security and the fundamental actors of the international community together with States, IGOs and NGOs. Individual rights and fundamental freedoms have formed the base for the so-called Human Security, which together with the Sustainable Security, the Collective Security and the Defensive Security have become the paradigms around which the contemporary debate revolves and that most of the countries and IGOs of the international community follow through a combination of hard and soft power. In sum, security today is a broader concept than it was a century ago.

The dissertation then takes into consideration the meaning of the word threat, which assumes a particular relevance within the UN system. In fact, it is the precondition for the invocation of Chapter VII of the UN Charter. The possible implications of such an assessment are quite clear: if drug trafficking was considered a threat to peace and security, the authorization to Member States of the use of force would be an option, according to some authors. Nevertheless, a thorough analysis of the meaning of the word “threat”, of the practice of the Security Council and of the UN Charter clearly demonstrates how only peacekeeping operations have a legal basis and are a legally viable option for the international community. In fact, the authorization of the use of force is neither legally prescribed nor the most effective one. Under the current practice of the Security Council, drug trafficking might be considered in the future a threat to international peace and security, as it is a case-by-case assessment and in the third and final paragraph I demonstrated the reasons why such a wording might be accorded to this crime.

Drug trafficking imposes great challenges and the latter can be classified by their target: society, public health, economy and governance. All those impacts range from poverty to money laundering, from the spread of communicable diseases to the financing of terrorism and transnational organized crime, and they can be matched with the norms of the most important international treaties, such as the UN Charter, the UDHR, the ICESCR and the ICCPR. This theoretical study is extremely useful in order to understand how the negative impacts of drug trafficking infringe those norms and consequently represent a violation of the individual fundamental rights and freedoms. More treaties could have been analyzed, but the above-mentioned ones are certainly expression of the widest consensus possible. Nevertheless, it is necessary to bear in mind that besides the ones taken into consideration for the purposes of this dissertation, the international treaties, conventions and covenants that deal with such issues are numerous.

When dealing with the effects of drug trafficking on society, it is necessary to talk about its links with the financing of terrorism. The latter has been repeatedly addressed by the work of the UN Security Council and the General Assembly as a threat to international peace and security and they have considered all those crimes that make its existence and spread possible. For this reason, both UN institutions have approved resolutions and statements with the explicit commitment towards the fight against drug trafficking.

Finally, we should consider that most of the above-mentioned crimes have a transnational nature and have the capacity to impose their effects well beyond national borders, thus posing at risk both regional and international stability. Drug trafficking effects in particular can be classified also by their extension. Nationally, drug trafficking provokes an increase in crime, violence, corruption and so forth; regionally, because of

its transnational nature, it destabilizes entire regions; internationally, because of its links with the financing of terrorism and of transnational organized crime, it is a fundamental factor when considering international peace and security.

Thanks to the analysis of all the available sources, it is then possible to infer that since it violates all those fundamental rights and international norms, drug trafficking constitutes a threat to international peace and security and it must be addressed by the responsible institutions, even if a formal recognition through a resolution or an equivalent document has not been done yet.

The second chapter aimed at describing the evolution of the international legal framework with regard to the fight against drugs cultivation, trafficking and abuse and at analyzing in depth the still-in-force conventions and treaties.

The long evolution of the drug-related international legal framework has been tortuous, but still it has brought some positive achievements. In the first half of the XX century, there were laid the foundations of the multilateral cooperation with regard to the fight against production, trafficking and abuse of drugs, but this led to the unintended consequence of overlapping provisions and in general of a chaotic legal environment.

Since the creation of the United Nations, efforts were devoted to the simplification and the effectiveness of the drug control machinery. It was for this reason that from its very first session, the newly born ECOSOC called for the consolidation of all the existing treaties. The 1961 Single Convention is the outcome of those efforts and at least for few years, it succeeded in providing the international community with a clear legislation on the matter. Nevertheless, we should remind that from the beginning it was not the only convention in force, since the 1936 Convention was not superseded. Moreover, in the

attempt to reach a compromise between the various international stakeholders and to fill the voids left, two more conventions were signed and ratified. All together, these three international treaties represent the legal core of the drug issue, but if in 1961, the aim was that of simplifying the organizational and legal structure of the control mechanisms, then it is correct to argue that this goal has not been reached at all. Especially after the 1988 UN Convention, additional actions plans and political declarations have been approved, increasing the difficulty in managing all these provisions.

From a general perspective, however, the provisions envisaged in these three conventions, and in particular in the 1988 UN Convention, have proved to be effective means in counteracting drug production, trafficking and abuse, by creating *ex novo* new systems of control, with an impressive international support and consensus. Nonetheless, these legal instruments are not free from criticisms, because they present a series of inconsistencies that might undermine their practical implementation and that might provide illicit traffickers and producers with loopholes. Consequently, a further consolidation of all the existing treaties and a partial revision of the norms therein contained would be suitable in the attempt of providing the international legal framework with a coherent legislation.

Following the path opened by the second chapter, the third one deals with the United Nations Office on Drugs and Crime from a juridical point of view, since it represents one of the most important bodies entrusted with the task of fighting drug trafficking and abuse.

Created in 1997, the Office resembles a Specialized Agency, but it does not have the same legal status, since it does not have a separate charter, budget and secretariat.

Nevertheless, it exercises specialized functions under a broad mandate attributed by the UN member States. In particular, its tasks are two-fold: it works as an office of the UN Secretariat and thus, it performs the functions attributed by all relevant treaties but this Office is also a technical services provider. The UNODC legal basis is represented by all the drug-related treaties thoroughly examined in the second chapter, together with the UN Convention against Transnational Organized Crime, the UN Convention against Corruption and all the terrorism-related conventions.

Besides the issue of the status of the UNODC officials, which is exactly the same of the UN Secretariat officials, the most important considerations that should be drawn after the analysis of this Office are two.

First, the structure of UNODC represents a critical element for its functioning. It has evolved during the last 15 years, but it has not been completely changed or revolutionized as compared with the initial organizational structure envisaged in 1998. The only relevant innovation is the 2004 clause that allows the continuity of the decision-making process in case the Executive Director is out of office. As outlined in the third chapter, in the first years the excessive concentration of decisional power in the hands of the Executive Director had caused the impossibility of carrying out the projects with a certain continuity and induced the Office of Internal Oversight Services (OIOS) to issue a negative report, which blamed the lack of transparency and of a check and balances system. Certainly, the 2004 clause represents a step further in the improvement of the organizational structure, but it did not alone eliminated all the existing problems. In fact, another critical issue is the sectoral division between the drug-related units and the crime-related ones. This might prove to be in the future a serious weakness, able to undermine the efficiency and effectiveness of the entire Office. This is particularly

evident in the fact that UNODC serves as secretariat both the Commission on Narcotics Drugs and the Commission on Crime Prevention and Criminal Justice, without however a common administrative and financial organization. Consequently, what is at stake is the unity and coherence of the Office, leaving space instead for a considerable fragmentation and for inconsistencies.

Secondly, if the tools and functioning alone have not proven to be a problem for the correct functioning of UNODC, the budget did it. In fact, there exist two different methods of financing. On the one hand, when it serves as an office of the UN Secretariat, UNODC derives its financial resources from the regular and mandatory contributions that every UN member State is obliged to pay in favour of the organization. On the other hand, for the technical cooperation function, the Office is funded through voluntary contributions, which might be earmarked, un-earmarked or soft-earmarked. Since the voluntary contributions constitute 90% of the UNODC total budget, it is clear that the efficiency of the UNODC action is at stake. In fact, it is not possible to carry out long-term projects, because of the lack of the predictability of such resources in the long run. Furthermore, the Office suffers of a lack of flexibility due to the consistent amount of earmarked voluntary contributions. This provokes a situation in which UNODC has its leeway limited and it has not the possibility to autonomously decide its own priorities, leaving the possibility to the States to influence the UNODC policies, by financing a programme rather than another. Both major donors and “not-donors” have the concrete opportunity and power to orient UNODC work and as demonstrated in the third chapter, they make a region or a specific country contingent upon the other, possible according to the national needs rather than to the real global necessities. Finally, despite the continuing pressure by the OIOS, UNODC still lack a

detailed Gantt charter, which is a graph that precisely describes a projects schedule. Highlighting the deadlines and the resources needed for the ongoing projects, thus leaving doubts on the transparency of the fundraising strategy and the effective use of the financial resources collected.

Finally, the fourth chapter dealt with the case study and focused on Afghanistan. The choice of this country is backed by a consideration based on social, political and economic factors. In fact, this country represents a harsh background for the international organizations that have to work there on field and displays all the presuppositions and the negative impacts of drug trafficking. In fact, from the historical analysis it was possible to infer that the opium problem in Afghanistan not only affects all the segments of the Afghan society but it also undermines the regional and international stability. Some authors even talked about “an Afghan opium economy”. The seriousness of this phenomenon was clear from the very beginning and for this reason, the UNDCP first and the UNODC later were present and active on field.

Nevertheless, some considerations are essential in order to comprehend this multifaceted case. First, from a normative point of view, the internal Afghan legislation is not perfectly in compliance with the international conventions and treaties earlier analyzed. On the one hand, the Afghan Constitution in its art. 7 provides for the ban of the cultivation and trafficking of narcotic drugs and in this respect, the 2005 Counter Narcotics Law constitutes the first implementation of such ban, through the institution of the licence system, the creation of a national committee, the penal provisions and so forth. Nevertheless, neither the 2005 Law nor the 2010 one that supersede the former, created a truly State monopoly of the wholesale and international trade in the regulated substances.



Secondly, thanks to the action of UNODC, some devices were envisaged, like the regional approach and in particular the subsidiarity principle, which gave rise to a series of initiatives aimed at strengthening the regional cooperation between Afghanistan and the neighbouring States, like the Paris Pact Initiative, the Rainbow Strategy and the Regional Programme for Afghanistan and Neighbouring States. Nevertheless, a concrete difficulty in implementing the programmatic documents hinders the efficiency of the UNODC programmes and in particular, the most problematic element is the Country Programme for Afghanistan. In fact, despite the multidisciplinary approach it envisages and the joint efforts of the international community and of the Afghan government, the corruption problem undermines the strategy. Those who have been attributed the responsibility to counteract the drug trafficking phenomenon within the Afghan commissions and even the Ministry of Counter Narcotics sometimes prove to be exactly the same people they are working against. Cases of corruption and collusion with these criminal activities involved high-level officials, members of the government and even members of the family of the Afghan President Karzai.

Thirdly and finally, the quantitative and qualitative evaluation of the UNODC action in Afghanistan highlighted critical elements that should be addressed with the greatest urgency. In fact, from a quantitative point of view, despite the million dollars spent during the last 15 years and despite a massive intervention of the major international organizations in this country, the policies implemented have not been as effective as they were thought to be. The link between insecurity and the illicit drug cultivation is the most important reason behind the incessant growth in the opium poppy cultivation. In fact, the most affected provinces are the southern and western ones, where the power is still in the hands of insurgents and of organized criminal groups. Furthermore, there is

a lack of comprehension of the market-driven factors, such as the growth in the opium prices, which between 2012 and 2013 obviously led the local farmers to increase the amount of the hectares cultivated. Finally, it is impossible to reach the prearranged goals without providing the local population with an alternative livelihood.

From a qualitative point of view, instead, it should be noted that an excessive numerical simplification of the drug trafficking phenomenon risks to take the distances from the reality and to offer a forged picture of the actual situation. In fact, UNODC created some methods to assess the results of its action, but the province-based “poppy-free” assessment is misleading for two main reasons. First, in order to attribute a province the “poppy-free status”, the cultivated land should not exceed the amount of 100 hectares. Nevertheless, this status does not take into consideration the concrete possibility that the local farmers might diversify the cultivated products, by shifting from the opium poppy to cannabis. Thus, a poppy-free province might not be however a drug-free one. Secondly, since the opium poppy is an annual plant, it can be easily moved from one province to another every year, making then unreliable any measure of success based on the number of provinces rendered “poppy-free”. A last qualitative evaluation deals with the so-called “laissez-faire” attitude of the international community towards the Afghan situation. The action of UNODC is susceptible to the various national interests and in many cases, this has led the IGOs and the States to protect and empower the Afghan warlords and to allow corruptive schemes to flourish in the name of alleged vital political and military interests.

In conclusion, this thesis tried to explore the legal nature of the drug trafficking phenomenon and the international legal framework that tries to counteract it. Moreover, an effort has been made to understand the presuppositions that allow it to flourish and

its effects on the national, regional and international peace and security. It is clear from all this analysis that drug trafficking constitutes a threat from many different points of view and in the light of these considerations, the international community has tried hard in the last decades to forge an international legal environment able to hinder and stop this criminal activity. However, the shift from the law to the practice is neither easy nor predictable and even perfect norms might lead to unexpected or counter-productive outcomes. The case of Afghanistan showed that it is not sufficient to back the concrete action with an overcrowded legal framework, but it is still necessary to convey the commitments and the interests of the whole international community towards a common goal.

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