

Afghan Opium, the Global Consensus and Regional Collaboration

State Interests and Organisational Responses

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1. Introduction

This paper describes the legal sub-component of a larger, decade-long project aimed at strengthening regional cooperation against the trafficking of Afghan opium and heroin. The project was financed by the European Union (EU) and implemented by the German national development cooperation agency GIZ and the German Federal Criminal Investigation Service (BKA) on behalf of the German Federal Ministry of the Interior,

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in collaboration with the regional Economic Cooperation Organization (ECO) whose member states include Iran, Pakistan and Afghanistan whose national drug control, customs and police agencies were the primary beneficiaries of the technical and material support.

Design and funding of the project started from one key assumption, namely the fundamental congruence of interest between the main consumer, transit and producer states involved in the global illicit trade in opium and its derivatives. This key assumption has informed the global counter-narcotics consensus for more than a century, epitomised in the stated desire of achieving a 'drug-free world' and expressed in the proscriptive standard of three key international conventions discussed below.

Beyond this presumed congruence of interests, the project was founded on two auxiliary assumptions about the nature of international cooperation. First, that states are both able and willing to effectively implement this global proscriptive consensus, and, second, that it is possible to achieve inter-state cooperation in those functional areas where common interests exists, despite the continuation of competition or hostility in other functional areas. This paper does not question the feasibility of the international proscriptive consensus as such, but highlights considerable problems with the latter two auxiliary assumptions, namely the effectiveness of state organs and the viability of cooperative gains in an isolated technical field amidst political antagonism in others.

The overall project started from the assumption that there exists a confluence of interests between the member states of the EU as the main recipients of the global illicit trade in Afghan opium and heroin, and the three countries most directly affected at the epicentre of this trade: Afghanistan as the world's biggest producer, as well as Pakistan and Iran as the chief transit countries. Set up shortly after the millennium, the project sought to circumvent European political reservations of dealing directly with the Islamic Republic of Iran - recently subjected to an ever tightening sanctions regime over its nuclear policies - by using the regional organisation ECO and the United Nations Office on Drugs and Crime (UNODC) as intermediaries and conduits for the technical and material assistance.

This paper is the outcome of technical legal assistance given to ECO as part of one of four components in the overall project, aimed respectively at strengthening the political and organisational abilities of ECO; central inter-agency communication systems and information clearing with INTERPOL; border control cooperation and material support to customs inspection units; and the establishment of forensic laboratories throughout the region. The concrete task of the legal technical assistance informing this paper was

to advise the Drug and Organised Crime Coordination Unit (DOCCU) within ECO, in order to strengthen its function as a regional information platform that is utilized by ECO member states in the pursuit of deeper cooperation in the fight against organised crime, especially narcotics trafficking. The aim of the sub-component was to evaluate the existing international, regional, and national legal landscape and advise DOCCU about possible legal initiatives furthering the above stated aim.

This legal assistance was premised on the assumption that the relatively modest degree of cooperation between the law enforcement and counter-narcotics agencies of the region was caused by a plethora of legal obstacles in the respective national penal and administrative codes, as well as an insufficient legal basis for regional collaboration. Consequently, it was believed that the harmonisation of national legal regimes, including the conclusion of a regional counter-narcotics convention, would remove these obstacles and thus lead to more intensive and more effective regional collaboration.

Alas, these premises could not be validated on the ground. The experts and stakeholders consulted unanimously agreed that the legal framework in the three countries most affected by the trafficking of opium - Afghanistan as the main producer, and Iran and Pakistan as the main transit corridors - is adequate and no legal obstacles to cooperation were identified. Rather, all collocutors agreed that the generally low level of trust that characterises relations between some member states, as well as entrenched corporate cultures inimical to the sharing of information and operational practices were the main reasons regional counter-narcotic cooperation remains anaemic. Work on legal harmonisation was, therefore, deemed at best a relatively superfluous effort with little marginal impact, and at worst seen as a potentially ultra vires act by the organisation in contravention of its member states' sovereign prerogatives. This paper therefore opens with an analysis of the socio-political context, to then analyse the existing legal and institutional framework, to conclude that legal harmonisation is currently both unlikely and unnecessary.

2. Situational Analysis: Defining Context and Problem

Few problems have proven to be as intractable as the production, trade and consumption of narcotics. The longevity of the issue on the international agenda has led to the development of a fairly rigid legal and conceptional framework which drastically moulds the manner in which the issue is perceived, both nationally and internationally, by elites and publics alike. In an extremely heterodox world, even a casual observer cannot help but be impressed by the completeness with which the international legal

and conceptional consensus on narcotic and psychotropic drugs has been accepted by virtually all states across ideological, religious, developmental, and cultural divides. This long-standing and virtually unanimous official agreement on the proper way to deal with the prevalence of drug production, trade and use, however, is based on three faulty assumptions. First, that the contours of the problem are known; second, that effective strategies to tackle it are known; and, thirdly, that the tools to implement that strategy are known and available. The reliance on these simplifying assumptions has tended to obscure the complexity and intractability of the drug issue, complexities which are briefly laid out in the following chapter.

First, there are a variety of reasons drugs are consumed, not all of which are problematic. In other words, there will always be a legitimate, even necessary market for –especially narcotic– drugs. While this aspect is explicitly recognised in the international consensus and special provisions have been devised for the regulation of that licit market for medical (especially as pain medication) and scientific needs, other uses continue to be dismissed. As will be shown, such dismissal has been partially motivated by ideological convictions; beliefs that are increasingly challenged on normative and procedural grounds in a number of domestic jurisdictions.²

Second, irrespective of one's assessment of the coherence and desirability of the prohibitionist ethic underpinning the international narcotics consensus, there remain considerable doubts as to the feasibility of the proposed strategies meant to bring it about. Carried out virtually unchanged over the span of several decades, these strategies have proven to be ineffective and, more importantly, have generally failed to address the considerable problem of negative externalities or unintended consequences.

Finally, the international narcotics consensus has been negotiated between states, laid down in international conventions, and their implementation entrusted to national state agencies and international organisations. The entire system, thus, is centred around the state through its organs as the primary actor. These tools, however, have proven to be inadequate even in stable, well-established societies where drug abuse and the criminality associated with it have remained extraordinarily resilient. But in societies where the reach of the state is much more tenuous, most of the legal obligations ensuing from the ratification of the international consensus remain unenforceable. The enduring instability in Afghanistan has therefore not only served as the primary cause of its exploding drug economy, it has likewise meant that virtually all policy prescriptions,

2. See more broadly Global Commission on Drug Policy, "Taking Control: Pathways to Drug Policies that Work" (September 2014).

be they aimed at curbing production, trade, or consumption of narcotics face inadequate or inexistent instrument at the disposal of the sovereign authorities. In other words, contrary to the underlying simplistic assumptions, the tools to implement national and international drug policies are largely unavailable as institutional capacity continues to be elusive.

It is against this background of a fundamental mismatch between rhetoric and reality, between ambition and ability in the international counter-narcotics field, that a better understanding of the genesis of the current international consensus is necessary. Because this consensus has historically treated counter-narcotics primarily as a technical field of criminal law and law enforcement, it has consistently downplayed its inherent political aspect of competing organised interests and largely unable to acknowledge, let alone address the problem of negative externalities and perverse incentive structures.³

More than a century of unusually concerted international action centred around the prohibition of narcotic and psychotropic drugs has been unable to achieve the stated goal of achieving a “drug-free world.” While certainly controversial, it is possible to draw up “a positive balance sheet” of this century of international efforts, as done for instance by UNODC in its centennial report:

“For those who doubt the effectiveness of drug control, consider this. In 1906, 25 million people were using opium in the world (1.5% of the world population) compared with 16.5 opiate users today (0.25% of the world population). In 1906/07, the world produced around 41,000 tons of opium - five times the global level of illicit opium production in 2008. While opium used to be produced in a huge belt, stretching from China to Indochina, Burma, India, Persia, Turkey and the Balkan countries, the illegal production of opium is now concentrated in Afghanistan (92%).

Same for coca. Its leaves used to be cultivated not only in the Andean region but also in several Asian countries including Java (Indonesia), Formosa (Taiwan) and Ceylon (Sri Lanka). Today coca leaf production is concentrated in three Andean countries: Colombia, Peru and Bolivia. International drug control can take some of the credit.”⁴

3. Some of these problems have indeed been finally acknowledged in the 1998 UN General Assembly Special Session reviewing the experience with the consolidated UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

4. UNODC, A Century of International Drug Control, United Nations Office on Drugs and Crime, Vienna (2008), available at: http://www.unodc.org/documents/data-and-analysis/Studies/100_Years_of_Drug_Control.pdf.

Whether one subscribes to this positive assessment of the international counter-narcotics regime depends largely on one's appraisal of the counter-factual argumentation implicit in this balance-sheet, namely that the situation would have been worse without the workings of the regime. Be this as it may, there is very little doubt indeed that the current situation is bad, and further, that the situation is anything but even. Incidence rate of addiction, the negative effects of the organised criminal traffic in narcotics, and the insidious effects this trade has on state institutions and society tend to be geographically concentrated in certain regions where they have assumed existential magnitudes, while their effect is relatively muted in others. In other words, the remarkable global agreement on the complete suppression of narcotics produces costs which are borne disproportionately by some states, while the primary proponents, if not beneficiaries of this regime pay a relatively muted share.⁵

The destabilising logic of the international narcotics trade is fairly straight-forward and uncontroversial, irrespective of the feasibility of policy alternatives to prohibition.⁶ Apart from their unquestionably negative impact on individual⁷ and public health⁸, narcotics pose a societal challenge because (a) there appear to be a fairly resilient demand for drugs under certain conditions; (b) illegality endows this sought-after commodity with an inflated value; (c) the thus possible exorbitant profit margins inevitably attract determined actors; who (d) have both the financial means, the determination, and the incentives to organise efficiently; and (e) the power to subvert countervailing governmental obstacles through corruption and/or violence.

Political instability is not an unmitigated evil for everyone; rather, it offers distinct socio-economic advantages to those organised to benefit from the possibilities of a

5. As expressed by the former presidents of Colombia, Brazil and Mexico: "Over the last 30 years, Colombia implemented all conceivable measures to fight the drug trade in a massive effort where the benefits were not proportional to the resources invested." Fernando Henrique Cardoso, Cesar Gaviria, and Ernesto Zedillo, "The War on Drugs is a Failure. We should focus instead on reducing harm to users and on tackling organized crime.," Wall Street Journal, (23 February 2009).

See also more generally Nigel Inkster and Virginia Comolli, *Drugs, Insecurity and Failed States: The Problems of Prohibition* (London: Routledge / International Institute of Strategic Studies, 2012).

6. Alfred W. McCoy, "The Stimulus of Prohibition: A Critical History of the Global Narcotics Trade," in: *Dangerous Harvest: Drug Plants and the Transformation of Indigenous Landscapes*, ed. by Michael K. Steinberg, Joseph John Hobbs, and Kent Mathewson (Oxford: Oxford University Press, 2004) pp. 24-114.

7. Neil Hunt, Mike Trace, and Dave Bewley-Taylor, *Reducing Drug Related Harms to Health: An Overview of the Global Evidence*, Report Five, The Beckley Foundation Drug Policy Programme, London (2011), available at: <http://reformdrugpolicy.com/wp-content/uploads/2011/09/reportfive1.pdf>.

8. Global Commission on Drug Policy, *The Negative Impact of the War on Drugs on Public Health: The Hidden Hepatitis C Epidemic*, GCDP, Rio de Janeiro (May 2013), available at: http://www.globalcommissionondrugs.org/hepatitis/gcdp_hepatitis_english.pdf.

'war economy.'⁹ Thus, certain criminal elements thrive on the instability engendered by violent conflict, leading to their perpetuation and intensification by providing the material resources for the continuation of conflict. These criminal interests acquire vested interests in undermining governmental authority, as their wealth and power relies on continued regulatory incapacity.¹⁰ The relationship to the state is here more complex than generally acknowledged, as both criminal elements capture elements of the state but also state organs begin to engage in criminal extraction:

"Often these situations cannot be reduced to a simple, binary opposition between legitimate state organisations and illegitimate criminal organisations. Such an analysis is particularly problematic where a state exists in name only, is fragile or engages in behaviour which calls its own legitimacy into question at the international or local level. In many cases it may even be hard to distinguish on the ground between what is legal and what is criminal. Many state-backed criminal law norms will lack popular legitimacy in areas affected by conflict ... And in many conflict situations, government entities and criminal organisations come to resemble each other, providing similar services -especially protection- financed by similar rents and taxation arrangements."¹¹

This dual element of state-capture, namely that state and criminal opposition come to resemble each other, remains under-acknowledged and runs counter to the official counter-narcotics narrative. In an interesting study on the impact of natural resources on prolonging conflict and their impact in undermining state authority, Ross established that narcotics, unlike certain other valuable resources worth fighting over (such as oil, gas or deep-pit minerals), tend to favour rebels as opposed to government forces, tend to benefit local and poor populations involved in their extraction, tend to extend the duration of conflict, and undermine army/official discipline.¹² Thus through their very

9. Mark Duffield, "The Political Economy of Internal War: Asset Transfer and the Internationalisation of Public Welfare in the Horn of Africa," in: *War and Hunger: Rethinking International Responses to Complex Emergencies*, ed. by Joanna Macrae and Anthony Zwi (London: Zed Books, 1994); Philippe Le Billon, "The Political Economy of War: An Annotated Bibliography", Humanitarian Policy Group Report No 1, Overseas Development Institute, London (2000), available at: <http://www.odi.org.uk/hpg/papers/hpgreport0.pdf>, accessed on: 17 December 2008.

10. Paul Collier and Anke Hoeffler, "On Economic Causes of Civil War," *Oxford Economic Papers*, Vol. 50(4), No. 4 (1998) pp. 563-73.

11. James Cockayne and Daniel Pfister, *Peace Operations and Organised Crime*, Geneva Papers No 2 (Geneva: Geneva Centre for Security Policy (GCSP), 2008), pp. 13-14/, quoted in /Inkster and Comolli, 2012, #83066@33.

12. Michael L. Ross, "Oil, Drugs, and Diamonds: The Varying Roles of Natural Resources in Civil War," in: The

nature as loatable, difficult to obstruct, and illegal products, narcotics thus contribute to the kind of hybrid landscape outlined above, where the state and criminal elements become intertwined. The former presidents of Brazil, Colombia, and Mexico noted with respect to their own societies:

“the revision of US-inspired drug policies is urgent in light of the rising tide of violence and corruption associated with narcotics. The alarming power of the drug cartels is leading to the criminalisation of politics and a politicisation of crime. And the corruption of the judicial and political system is undermining the foundations of democracy in several Latin American states.”¹³

These very observations apply, in varying degrees of urgency, of course also to the three states under consideration in this report.¹⁴

a) Conceptual: Historical Development of the Proscriptive Consensus

One of the most striking characteristics of the phenomenon of narcotic and psychotropic drugs is the completeness with which virtually the entire international community, divided as it is on pretty much any other issue, has formally subscribed to one conceptual model: prohibition and suppression through criminal law and physical interdiction. This consensus is striking in light of the extreme diversity of views on most other issues and the plethora of cultural, economic, ideological, and social fault-lines that otherwise characterise international life.¹⁵ Given this diversity, division, and discord that characterises international life, the surprising unanimity of the international community with respect to the legal treatment of drugs would lead us to believe that the ensuing regime has been unusually effective, the very efficiency of which precludes any reasonable disagreement about its content or debate about possible alternatives. Alas, this is not the case. The objective of abolishing any use of narcotic and psychotropic

Political Economy of Armed Conflict, ed. by Karen Ballentine and Jake Sherman (London: Lynne Rienner Publishers, 2003) pp. 47-70.

13. Cardoso, Gaviria, and Zedillo, “The War on Drugs is a Failure. We should focus instead on reducing harm to users and on tackling organized crime.”

14. D. Suba Chandran, “Drug Trafficking and the Security of the State: A Case Study of Pakistan,” *Strategic Analysis*, Vol. 22(6), No. 6 (1998) pp. 903-22; Feisal Khan, “Corruption and the Decline of the State in Pakistan,” *Asian Journal of Political Science*, Vol. 15(2), No. 2 (2007) pp. 219-47; Thomas Schweich, “Is Afghanistan a Narco-State?,” *New York Times*, (27 July 2008); John Calabrese, *Iran’s War on Drugs: Holding the Line?*, The Middle East Institute Policy Brief, (December 2007), available at: http://www.mei.edu/sites/default/files/publications/JC_PB.pdf.

15. For a good examination of the role of law in managing this diversity, see Antonio Cassese, *International Law in a Divided World* (Oxford: Clarendon, 1994).

drugs beyond the strict confines of the medially or scientifically necessary, remains elusive:

“It seems clear that the objective of a ‘drug free world’ – or at least a significantly reduced illegal market in plant based drugs such as cocaine, heroin and cannabis, and synthetically produced drugs such as ecstasy, amphetamines, and LSD – is as far away as ever.”¹⁶

The remarkable resilience of the international consensus despite its apparent ineffectiveness is discussed in greater detail in the following section. Logically prior, however, is to inquire how this peculiar consensus came about, the enormous diversity of international life notwithstanding, and despite very powerful countervailing interests. Realizing just how radical a change from previous practice was proposed when the international drug control regime was initiated at the turn of the 20th century opens the mental space necessary to reassess its effectiveness and possible alternatives after hundred years of operation. Prior to that momentous change in international attitudes, narcotic drugs in both their naturally occurring and in more potent synthesized form¹⁷ were freely available and openly traded commodities with very considerable economic importance.¹⁸

Discussed at some length with the national focal points during a seminar held in conjunction with this project,¹⁹ it is here only necessary to briefly sketch the outlines of the political economy of drugs prior to the creation of the international proscriptive consensus. Naturally occurring stimulants in cannabis, opiates, and coca leaves had been used for thousands of years for both medical and religious purposes, as well as to some limited extent for recreational purposes. From the 18th century onwards European colonial powers encouraged the production and trade in these narcotics as cash crops, and began to control a highly lucrative international trade in these commodities. The narcotics trade offered colonial powers a number of distinct economic and political

16. Mike Trace, *Drug Policy – Lessons Learnt, and Options for the Future*, Global Commission on Drug Policy, no location given (2011), available at: http://reformdrugpolicy.com/wp-content/uploads/2011/09/Global_Com_Mike_Trace.pdf, p. 2.

17. Diacetylmorphine was first synthesised by the British researcher Charles Romley Alder Wright in 1874 from morphine, a naturally occurring alkaloid of the opium poppy (*Papaver somniferum*). It was developed into a commercial product by Felix Hoffmann in 1895 for the German Bayer Cooperation which marketed it under the trademark Heroin until the 1970s.

18. For a more comprehensive account, see Julia Buxton, “The Historical Foundations of the Narcotic Drug Control Regime,” in: *Innocent Bystanders: Developing Countries and the War on Drugs*, ed. by Philip Keefer and Norman Loayza (London / Washington D.C.: Palgrave Macmillan / World Bank, 2010) pp. 61-94.

19. International Obligations, National Standards & Regional Collaboration on Counter-Narcotics, Tehran, 24-25 September 2014, held at ECO Headquarters, Kamraniye Janubi, Tehran.

advantages, allowing them to extract revenue from largely cash-less agricultural economies, improve terms of trade with the recipients of industrial goods (mainly with respect to China), and, certainly not least, facilitating colonial administration by creating not only a steady revenue stream but pacifying social relations through addiction.²⁰

This commercialisation of narcotic cash crops led to a drastic transformation of traditional consumption patterns, hitherto quite limited in number and largely confined to elites (with the important exception of China).²¹ The advances in chemical sciences led throughout the 19th century to the isolation, and eventually synthesising of the active ingredients contained in narcotic plants, leading eventually to far more potent pharmaceutical products. This development has been rendered in exemplary fashion by Buxton and it shall suffice here to restate that at the end of the 19th century most European colonial powers maintained drug monopolies that supplied large percentages of addicts among the native population with narcotics, contributing very considerably to the financing of colonial administration, in addition to a very considerable transnational trade in pharmaceutically produced narcotics. In short, narcotics were a normal, highly lucrative commodity, involving both colonial and industrial interests.

b) Legal: International Standards and National Implementation

Keeping in mind the economic importance of this trade, the complete lack of moral opprobrium associated with either addiction or trade, and the geographical spread of the trade networks helps us put in perspective the enormity of the change brought about by concerted diplomatic action initiated by the United States and leading eventually to the existing international legal consensus:

“When the United States convened the first opium conference at the turn of the 20th century, opium cultivation and consumption were at an all-time high. Production levels were around 41,624 mt [metric tons] per year, the bulk of which was produced in China in Yunnan and Szechwan provinces. The Persian and Ottoman Empires had emerged as significant cultivator countries, having stepped up opium poppy cultivation and opium production in the second half of the 19th century to meet rising global demand. National governments, commercial trading houses, and the pharmaceutical sector all had significant interests in the opium trade. The colonial powers, the United

20. For a fuller account, see Carl A. Trocki, *Opium, Empire and the Global Political Economy: A Study of the Asian Opium Trade, 1750-1950* (London: Routledge, 1999).

21. See also Michael K. Steinberg, Joseph John Hobbs, and Kent Mathewson (eds.), *Dangerous Harvest: Drug Plants and the Transformation of Indigenous Landscapes* (Oxford: Oxford University Press, 2004).

Kingdom, Spain, and the Netherlands had operated opium retail monopolies across Southeast Asia for more than 150 years, and those monopolies contributed to meeting the administrative costs of the colonial enterprise. In Java, Indonesia, the Dutch administered 1,065 opium retail outlets, which covered 15 percent of administrative costs, while in the British colony of Malaya (Malaysia), opium sales contributed 53 percent.

Further developing the picture of a large global market and commercial interest in narcotic drugs, coca cultivation had expanded out of native areas in South America, such as the Yungas in Bolivia and Huanuco, Libertad, and Cuzco in Peru. British and Dutch pharmaceutical companies and commercial interests transplanted coca leaf cultivation to British Guyana, India, Indonesia, Jamaica, Malaysia, and Sri Lanka, to reduce shipping times and to meet rising demand for cocaine. The Dutch had set up cocaine manufacturing facilities in Indonesia following the introduction of the coca leaf to Java in 1900, and by the turn of the century, the Dutch were the world's leading cocaine producer. As with opium production, national governments in coca cultivation areas also invested heavily in their new comparative advantage; the Peruvian government, for example, devised a strategy for national development based on the promotion of the coca paste export sector."²²

To be sure, there had for several decades been vocal detractors of the international trade in narcotics among both morally motivated, mainly Christian groups and nationally motivated indigenous that had denounced this 'trade in misery.'²³ The United States remained marginal to these debates mainly for three reasons: first, domestically, alcohol rather than drugs was the main target of abolitionist groups; second, the constitutional separation of powers between the federation and the states left the federal government powerless to regulate narcotics; and thirdly, without overseas colonial territories, it played only a marginal role in Asian trade and thus the issue played only a limited role in domestic political discourse: "As a result, the United States was divorced from the broader debate on the morality of the opium trade and the operations of the market more

22. Buxton, "The Historical Foundations of the Narcotic Drug Control Regime," pp. 67-68/, references omitted/.

23. For an earlier, ultimately successful campaign waged on moral grounds against strong economic and political interests, see Chaim D. Kaufmann and Robert A. Pape, "Explaining Costly International Moral Action: Britain's Sixty-Year Campaign Against the Atlantic Slave Trade," *International Organization*, Vol. 53(4), No. 4 (2003) pp. 631-68.

generally. It was alcohol rather than drugs that preoccupied the moral conscience of white, Christian U.S. society."²⁴

The acquisition of the Philippines after its victory in the Spanish–American War of 1898 suddenly raised the question of what to do with the opium monopoly the Spanish colonial government had operated and thus brought the issue onto the agenda of the US federal government. Bowing to strong, morally motivated Christian opposition to its continuation, the US government thus belatedly entered the international diplomatic discourse on the managing the drug trade. As a country with few vested interests in the trade, it assumed a maximalist posture that sought the complete elimination of the trade, a position that “required little sacrifice from Americans while demanding fundamental social and institutional change from others.”²⁵

What is interesting from an institutional point of view is the manner in which the idea of prohibition took hold on the international stage against these very considerable countervailing interests by powerful actors. Convened at the instigation of the United States, the 1909 Shanghai Opium Commission was one of the first attempts to deal with a global problem through common diplomatic action. Given the very large financial interests involved in the opium trade, it is not surprising that the Shanghai Commission did not produce a binding agreement. Rather, it is remarkable that within a very short time the 1912 International Opium Convention of The Hague²⁶ was signed and ratified by 1915, this firmly establishing the principle of international control of the production and trade of narcotic substances.

It is not necessary to retrace here in depth every step leading to the emergence of the international drug control consensus; reference is made instead to the excellent, exhaustive, and freely available centennial report prepared by UNODC.²⁷ It shall suffice to briefly lay out the framework of the existing international legal and institutional framework and its underlying logic.

The importance that came to be attached to the new area of drug control is reflected in the fact that Article 295 of the 1919 Versailles Peace Treaty²⁸ required all signatories to ratify the earlier 1912 International Opium Convention. Overseeing said opium

24. Buxton, “The Historical Foundations of the Narcotic Drug Control Regime,” pp. 69–70.

25. William B. McAllister, *Drug Diplomacy in the Twentieth Century: An International History* (London: Routledge, 2000), pp. 66/, discussed in /Buxton, 2010, #84775@68.

26. International Opium Convention, 23 January 1912, 8 L.N.T.S. 187

27. UNODC, *A Century of International Drug Control*, pp. 29–57.

28. Treaty of Peace between the Allied and Associated Powers and Germany, 28 June 1919, 225 C.T.S. 188

control regime was thus entrusted to the newly founded League of Nations²⁹ and its specialised bodies, especially its Advisory Committee on the Traffic in Opium and Other Dangerous Drugs. Despite the multitude of institutional and organisational changes that have occurred in the intervening years, the basis structure of the international drug control regime established now has proven remarkably resilient: universally ratified drug control conventions, member states that were obliged “for this purpose to enact the necessary legislation without delay”³⁰ which in effect meant the domestic criminalisation of most drug-related activities, and supranational monitoring and coordination through an international secretariat, first located in the League of Nations and then the United Nations.

In the four decades that followed, the system set in motion with the 1912 Hague International Opium Convention was steadily extended substantively and controls strengthened: the 1925 Geneva International Opium Convention³¹, and the Agreement Concerning the Manufacture of, Trade in, and Use of Prepared Opium of the same year³² sought to reign in the flourishing trade in commercially produced, openly traded and widely self-administered pharmaceuticals by establishing the basic principle still underlining the international drug regime: namely that beyond tightly controlled licit market regulated by import certification and export authorisations issued by governments and policed by an international body, the Permanent Central Opium Board (PNCB), all other trade and production was deemed to be illicit and such activities to be criminally proscribed. The system proved, however, largely ineffective and was, thus, supplemented by the 1931 Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs³³ which introduced the second major principle still in force today, namely that supply reduction was the key to reducing dependency. The final of the major inter-war agreements, the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs³⁴ strengthened the idea that any recreational or other use beyond the strictly medically or scientifically mandated was deemed illegal,

29. Art. 23 (c) Covenant of the League of Nations, 28 June 1919, in which its members “entrust the League with the general supervision over the execution of agreements with regard to ... the traffic in opium and other dangerous drugs.”

30. Art. 295 Versailles Peace Treaty

31. International Opium Convention, 19 February 1925, 81 L.N.T.S.

32. Agreement Concerning the Manufacture of, Trade in, and Use of Prepared Opium, 11 February 1925, 51 L.N.T.S. 317.

33. Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 13 July 1931, 139 L.N.T.S. 301.

34. Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 26 June 1936, 198 L.N.T.S. 299.

reflected in its Article 2 that stipulated that domestic ratification had to be accompanied by severe criminal penalties for production, trade and consumption, as well as specifying in detail in its Articles 7–10 rules for the extradition of offenders.

These administration of these instruments was transferred to the newly created United Nations by the 1946 Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs (Protocol of Lake Success).³⁵ The Economic and Social Council (ECOSOC) of the UN created in its first session the still extant Commission on Narcotic Drugs (CND), replacing the earlier Opium Advisory Committee. The increasing spread of new 'designer' drugs hitherto not covered by the earlier instruments led to the adoption of the 1948 Paris Protocol to the 1931 Convention which through its Article 1(1) sought to bring under the existing regime new substances.³⁶ The conceptional model of controlling supply through tight licencing schemes did not prevent large quantities of drugs seeping from licit, licenced production into the illegal market, not least through the manufacture of heroin from opium diverted from medically–destined opium production.³⁷ This led to the adoption of a new 1953 Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium³⁸ which limited licit production to only seven countries³⁹ operating under strict quotas set by the Commission on Narcotic Drugs.

The complexity of the resulting landscape of overlapping and inter–related international instruments and the changes necessitated by scientific progress in the

35. Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925, and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936 (Protocol of Lake Success), 11 December 1946, 12 U.N.T.S. 179.

36. Protocol Bringing under International Control Drugs outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946, 19 November 1948, 44 U.N.T.S. 56.

37. Through the so-called French Connection, where Turkish opium produced under licence for medical purposes was diverted by French and Italian organised crime, and refined into heroin for the US market. See Inkster and Comolli, *Drugs, Insecurity and Failed States: The Problems of Prohibition*, p. 47.

38. Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, 23 June 1953, 456 U.N.T.S. 56.

Due to considerable opposition to its intrusive verification measures, ratification of the Protocol had been very slow. It only garnered the necessary number of ratification and thus entered into force in July 1963 but was superseded by the entry into force of the 1961 Single Convention in December 1964; the Protocol was thus in reality only in force for a year and a half. See the discussion in UNODC, *A Century of International Drug Control*, p. 60.

39. Bulgaria, India, Iran, Greece, the Soviet Union, Turkey and Yugoslavia. This numerical restriction has been lifted again by Article 21 bis of the 1961 Single Convention which imposes strict licencing requirements and quotas under the control of the International Narcotics Control Board.

manufacturing of new drugs, led to the desire to consolidate these measures into a more manageable single document. Given the complexity of the issue and the countervailing interests at stake between the negotiating states,⁴⁰ it is not surprising that the process of negotiating a consolidated compromise took from 1948–1961, culminating in the 1961 Single Convention on Narcotic Drugs⁴¹, which superseded and terminated the earlier mentioned international agreements.⁴²

The main objective of the Single Convention has been to bring the stipulations of the previous agreements, especially the 1931 Paris Convention up to date, in particular to take account of the enormous developments in chemical science and thus to extend the proscriptive regime to the large group of synthetic opioids that had been invented during the preceding thirty years. Where the earlier conventions were limited in their application to naturally occurring opium, coca, and their derivatives such as morphine, heroin, and cocaine, the consolidated Single Convention covers also cannabis and other drugs with comparable effects. Most importantly, in light of the necessarily cumbersome and lengthy process of international treaty-making, the Single Convention creates a nimble mechanism to adapt its four schedules of controlled substances to changing socio-political and scientific developments by permitting, through its Article 2, the Commission on Narcotic Drugs and the World Health Organization to easily add to, remove from, or reposition drugs within the schedules.

In institutional terms, the Single Convention streamlines the bureaucratic control structure: in its Articles 5–9, and 45, it transfers the task of administering the system of estimates and statistical returns submitted annually by state parties from the Permanent Central Opium Board (PNCB) established under the 1925 Geneva Opium Convention

40. There were five broad groupings during the UN Conference on Narcotic Drugs that hammered out the compromise text that resulted in the Single Convention, these groupings were based on divergent normative visions and socio-economic interests: (1) the states that produce the organic raw material and where traditional drug use was common, and that thus had an economic interest in limiting the stringency of prohibition and the economic impact of control measures; (2) the mainly Western industrialised nations with strong pharmaceutical producers and little cultural affinity for drug use, this group advocated strict supranational control over production of raw materials and illicit trade, but resisted restrictions on medical and scientific research and pharmaceutical production; (3) states with no raw material production and no manufacturing interests and with a strong cultural objections to drug use, thus advocating for strict supranational control and willing to forego a degree of national sovereignty in pursuance of this aim; (4) states with limited manufacturing interests and little to no domestic abuse problems who resisted the intrusion into sovereign prerogatives, seeing drug control as primarily a domestic issue; (5) states without a strong preference beyond ensuring an adequate supply of medical narcotics, and thus neutral in their posture.

For further details, see McAllister, *Drug Diplomacy in the Twentieth Century: An International History*.

41. Single Convention on Narcotic Drugs, 30 March 1961, 520 U.N.T.S. 151.

42. Through its Article 44.

to the already existing Commission on Narcotic Drugs (established under ECOSOC) and the newly created International Narcotics Control Board (INCB) with its own secretariat.⁴³ The latter is tasked with carrying out the licencing, statistical review of national reports for licit drug demand, and sanctioning.

As mentioned, the convention represents a compromise negotiated between a large number of states with strong countervailing economic interests, cultural norms, and bureaucratic capabilities. As with other multilateral negotiations and agreements, the negotiating parties varied enormously in their relative power,⁴⁴ the diplomatic skill of their representatives,⁴⁵ and, not least, in their dependency on a negotiated outcome.⁴⁶ The Single Convention represents therefore, not surprisingly, the particular distribution of forces that had prevailed (and continued to prevail) for most of the 20th century, leading to the consolidation of the prohibitionist ethos already embedded in the instruments which this new convention superseded. The burden of prohibition, however, fell disproportionately on the developing states that were the primary producers of the organic raw material, not the producers of manufactured drugs: "The traditional calculus remained intact western industrialized states focused control efforts toward producing countries and primary agricultural products. Developing nations, hoping that manufacturing states might finally get their comeuppance, again settled for the short end of the stick."⁴⁷

The central operative provision of the convention is contained in its Article 4 (c) which carries further the prohibitionist approach laid down in earlier instruments and mandating national criminal legislation to give effect to them: "the Parties shall take such legislative and administrative measures ... to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs." One of the substantial novelties is the abolition of exceptions that

43 .For more information, see www.incb.org.

44.Alexander L. George, *Forceful Persuasion: Coercive Diplomacy as an Alternative to War* (Washington, D.C.: US Institute of Peace Press, 1991).

45. The importance of personalities in explaining the particular shape of the international drug consensus is ably described in McAllister's highly readable account of the negotiating history. McAllister, *Drug Diplomacy in the Twentieth Century: An International History*.

46. In negotiation theory this often referred to the Best Alternative To a Negotiated Agreement (BATNA); the importance of the concept is less as a safety net but a lever to be used in the negotiation. Milner describes this idea in her discussion of the 'reversion point' in a negotiation when no accommodation occurs: "The player who has the best alternative to an agreement may be the most powerful." Helen V. Milner, *Interests, Institutions, and Information: Domestic Politics and International Relations* (Princeton, N.J.: Princeton University Press, 1997), pp. 260-61.

47.McAllister, *Drug Diplomacy in the Twentieth Century: An International History*, p. 238, emphasis added

were still permitted under earlier instruments.⁴⁸ That means that under Articles 23 and 24 producing countries had to establish national monopolies that were to centralise the cultivation of coca plants and opium poppies, with the ultimate aim of phasing out all non-medical use of these substances. Any licit production, trade, and distribution was to be subject to a strict licencing scheme under Article 29–31.

The 1961 Single Convention concludes the early conceptional phase of constructing the international counter-narcotics consensus,⁴⁹ in the sense that it is almost exclusively focussed on supply reduction in production countries, advocates a 'zero-tolerance' policy with respect to any drug use outside the strictly medically-mandated, and requires member states to criminalise any production, trade, use, or possession. The problem is, of course, that this exclusively prohibitionist approach clashed with social realities that largely remain unresolved, despite the institutional changes undertaken at the end of the decade:

"The drug control universe underwent changes of cosmic proportions during the 1960s. Driven by skyrocketing demand, illicit use of old and new substances flourished. Many rejected the ethos that informed the system restricting access to drugs appeared as simply another manifestation of bankrupt "establishment" values. Others, recognizing the danger of unregulated availability, nevertheless questioned the assumptions underpinning the control regime. By the early 1970s, most observers, experts, and policymakers no longer supported an exclusive emphasis on supply control. For the first time, governments devoted at least some attention, money, and organizational resources to fundamental investigations about the nature of addiction, treatment programs, rehabilitation schemes, and preventive education efforts. The new sensibility manifested itself at the international level; both the 1971 Psychotropic Convention and the 1972 Protocol Amending the Single Convention included language encouraging states to address the demand side of the equation."⁵⁰

The decision to amend the Single Convention was intended to strengthen the international control regime by going beyond the exclusive prohibitionist approach applied previously, not least by introducing provisions on technical and financial

48. Adolf Lande, *Commentary on the Single Convention on Narcotic Drugs of 1961*, UN Sales No E73X11 (New York: United Nations, 1973), pp. 110-11.

49. As McAllister puts it, "the 1961–72 period represented, to borrow Churchill's phrase, the 'end of the beginning.'" McAllister, *Drug Diplomacy in the Twentieth Century: An International History*, p. 239.

50. *Ibid.*, p. 238.

assistance,⁵¹ the creation of regional research and education centres to address the problem of drug abuse,⁵² but, perhaps most importantly, by the modification of the penal provisions to replicate the extradition provisions already contained in the 1936 Convention. Member states are under an obligation to penalise under domestic law criminal offences defined in connection with drug production, trafficking, use, or possession which the (Article 36(1)(a) and (2)(a)). It should also be mentioned that the Convention, as a nod to the building criticism against the exclusively punitive approach taken so far, stipulates that "Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration" (Article 36(1)(b)).

Recognising the transnational nature of the phenomenon, the Convention now recognises that foreign convictions should be taken into account for the purposes of assessing recidivism (Article 36(2)(a)(iii)); and, most importantly, provides for the automatic inclusion of these offenses into existing extradition treaties, or in the absence of such a treaty, permits the Convention itself to serve as the legal basis for an extradition (Article 36(2)(b)).

If the Single Convention represented the "the end of the beginning",⁵³ namely the completion of the exclusively prohibitionist international approach targeting the producers of the organic raw material, then the adoption of the 1971 Convention on Psychotropic Substances⁵⁴ is the - very, very tentative - beginning of a change in attitude. It is based on the premise that scientific and technical progress in the manufacture of synthetic drugs - a commodity for which an explosive demand had developed during the 'counter-culture' of the 1960s - had led to an unregulated global market for these substances every bit as dangerous as that of naturally occurring narcotics at the beginning of the century that had prompted international efforts for control. After it had been determined that the Single Convention did not cover this class of mind-altering substances, the Commission of Narcotic Drugs was called upon to draft a new international instrument that would extend the existing international regime to this relatively new group of substances, an effort that duly resulted in the 1971 Convention.

Very similar in structure and purpose to the Single Convention, the 1971 extends

51. Article 14bis of the amended Single Convention. Single Convention on Narcotic Drugs 1961, as amended by the Protocol Amending the Single Convention on Narcotic Drugs, 8 August 1972, 976 U.N.T.S. 105.

52. Article 38bis of the amended Single Convention.

53. *Ibid.*, p. 239.

54. Convention on Psychotropic Substances, 21 February 1971, 1019 U.N.T.S. 175.

similar albeit somewhat weaker control mechanism to psychotropic substances,⁵⁵ based on the same underlying philosophy that any manufacture, trade, and use of these substances must be limited to medical and scientific purposes. This convention represents a certain departure from the previous international consensus on supply reduction -which, we recall, was successful in shifting the vast majority of the costs of prohibition to the relatively poor and underdeveloped producers of organic raw material- by acknowledging that a comprehensive approach to drug dependency had to include measures dealing with demand reduction. This long-term, glacial change in attitudes is aptly summed up by McAllister:

“In 1912 the Hague Opium Treaty had created a new set of expectations concerning the international trade in drugs. Although it took two decades to implement those proscriptions, by the early 1930s manufacturing states and pharmaceutical firms had come to terms with the new covenant. They acquiesced permanently in a certain level of restriction over the trade in narcotics, although the regulatory burdens landed disproportionately on producing states. By agreeing to the 1971 Psychotropic Convention, manufacturing states again conceded an essential point at least some non-narcotic substances were liable to abuse and should be treated accordingly. In subsequent years those advocating substantive international controls over psychotropics edged slowly toward their goal. Moreover, the events of the 1960s engendered a permanent challenge to the long-dominant supply-control paradigm. Slowly and unevenly, demand reduction came to play a role in the calculations of those formulating policy and allocating money. In the subsequent years, the differences between those competing visions came into sharp relief as control authorities and their critics faced a variety of challenges, new and old.”⁵⁶

Both conventions thus follow the same basic underlying logic: a strict separation into a licit market tightly controlled by national and international authorities through the means of government monopolies, licencing, statistical need assessments, and the like on the one hand, and a illicit market for whose eradication national authorities are

55 .The relatively weaker control mechanism can be explained by the much stronger interests and better negotiating and lobbying prowess of the pharmaceutical industry with respect to this class of drugs as opposed to the earlier conventions. Martin Jelsma, “The Current State of Drug Policy Debate. Trends in the Last Decade in the European Union and United Nations”, Support text for the First Meeting of the Latin American Commission on Drugs and Democracy, Transnational Institute, Amsterdam, Rio de Janeiro (30 April 2008), available at: http://reformdrugpolicy.com/wp-content/uploads/2011/09/martin_jelsma_english.pdf, p. 14.

56. McAllister, *Drug Diplomacy in the Twentieth Century: An International History*, p. 239, emphasis added

required to use the full force of their criminal justice systems, aided by trans-boundary collaboration and international organisations to facilitate that task.

The first element of this strategy has worked well, although there continue to be considerable problems, mainly in the developing world, concerning the availability of analgesics and related palliative care due to undue national legal restrictions emanating obligated by adherence to these international conventions.⁵⁷ Still, the main problem has been the explicit aim of the international consensus to stamp out the illicit market, the failure of which had become overwhelmingly apparent by the mid 1980s characterised by an explosive rise in global drug abuse and, more worryingly, increasingly powerful and violent organised criminal groups, a perhaps unsurprising unintended consequence of this very logic, quickly realised at the time:

“Regardless of what we think we are trying to do, if we make it illegal to traffic in commodities for which there is an inelastic demand, the actual effect is to secure a kind of monopoly profit to the entrepreneur who is willing to break the law.”⁵⁸

Despite its success with regulating and limiting licit production, the international regime proved less effective in reducing, let alone eliminating illicit production outside the quota system. The concerns with the organised crime associated with the illicit trade in narcotic and psychotropic substances thus led to the third, and provisionally final, large convention that completes the contemporary international legal regime. The 1988 United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances⁵⁹ was prepared by the Commission on Narcotic Drugs at the request of the General Assembly and its main contribution to the regime is its extension of international controls along the entire value chain, that is from precursor chemicals needed to produce the illicit substances itself (Article 12), to anti-money laundering measures to address the profits derived from the criminal enterprise (Article 5). Overall, the thrust of this convention lies very much on improving international collaboration with respect to law enforcement and strengthening penal provisions,⁶⁰ including provisions against money laundering and the diversion of precursors chemicals. It further reinforces international

57. Ronald Piana, “Dying Without Morphine,” *New York Times*, (1 October 2014), p. A27.

58. Herbert L. Packer, quoted in P. Bean, *The Social Control of Drugs* (New York: Halstead Press, 1974), p. 91.

59. United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 19 December 1988, 28 I.L.M. 497.

60. While the previous conventions had required member states to proscribe activities related to the production, trade, use, or possession of illicit narcotic and psychotropic substances as “punishable offences”, the 1988 Convention obliges member states now to make these “criminal offenses” under domestic law.

judicial cooperation on the extradition of drug traffickers, controlled deliveries and transfer of proceedings.

Article 3 exemplifies the basic logic at the heart of the 1988 Convention, namely that an effective international control regime requires enhanced criminal justice cooperation which in turn is premised on improving the efficacy of domestic criminal justice systems, both with respect to the municipal penal provisions which the Convention mandates signatories to augment, as well as with respect to the institutional capability of law enforcement and judicial agencies, addressed in Article 9 as well as international financial and technical assistance specifically to developing transit nations which is addressed in Article 10.

A particularly salient innovation introduced by the 1988 Convention is the definition in Article 3(1)(b) of drug-related money-laundering as a criminal offence; responding to the inherently trans-national character of organised drug crime, the Convention thus clarifies jurisdictional matters in Article 4, and, very importantly, obligates member states to adopt measures to deprive criminals from the proceeds of drug-related crime through confiscating assets and depriving them of the benefits of bank secrecy in Article 5. As already established in earlier instruments, extradition is regulated extensively in Article 6 which, again, permits the Convention itself serve as the legal basis for an extradition if no specific treaty basis exists. Completing the picture, very detailed rules for mutual legal assistance are laid down in Article 7, as well as the possibility for the transfer of legal proceedings from one jurisdiction to another that is regulated in Article 8.

Combined, the amended 1961, the 1971, and the 1988 Conventions jointly make up the international counter-narcotic consensus and, as the oblige member states to incorporate their provisions into national law, provide for a very high degree of legal conformity across borders. The three countries under consideration in this report - Afghanistan, Pakistan, and Iran- have all ratified these conventions and incorporated them into national law. All collocutors unanimously stressed to this author that the legal provisions currently existing in the three countries adequately reflect the international standard and provide a suitable basis for national and regional counter-narcotics efforts. Problems that are apparent in the day to day operations are generally not due to insufficient legal norms, but insufficient institutional capacity and political will, an issue to which this report will return to.

c) Political: Interests, Rhetoric, and Threat Perception

It is in fact this very conformity that has been the subject of very sustained criticism. Whatever its successes in creating and regulating the market for licit narcotics, it is unquestionable that the other major objective of the international drug consensus, namely the complete eradication of non-medical drug use, has been a problematic preference. Not only has this goal proven to be unobtainable, the enormous negative consequences of striving towards this goal have become readily apparent for decades.

These negative externalities have been acknowledged explicitly in the ten-year review prompted by the 1998 United Nations General Assembly Special Session on Drugs (UNGASS),⁶¹ which was convened under the catchy slogan “A drug free world—we can do it” and reiterated in its final Political Declaration the goal of total elimination of all non-medically mandated drugs from the world, however unreasonable and contrary to the evidence this goal might have been.⁶² The follow-up UNGASS of 2009, likewise, reiterated the successes that the international control system had achieved in the eyes of its key proponents, while recognising in somewhat stronger terms that the unintended consequences of proscription might necessitate a somewhat greater focus on demand and harm reduction,⁶³ as well as acknowledging that the criminalisation of non-violent drug users might ultimately be counter-productive.⁶⁴

In the years since, however, very vocal criticism not only by a host of NGOs and private academics,⁶⁵ but notably by current and former leaders of mainly Latin American producing countries has set in motion an unprecedented degree of pressure to rethink the positive ‘spin’ characterising the official assessment of the workings of the international drug regime.⁶⁶ Some criticism, notably from NGO circles, is motivated by libertarian concerns for constitutional rights about whether governments should at all

61. UNGAR A/RES/S-20/2, 21 October 1998, S-20/2. Political Declaration

62. For a strident critique of this goal, see Martin Jelsma, “The Unwritten History of the 1998 United Nations General Assembly Special Session on Drugs,” *International Journal of Drug Policy*, Vol. 14 (2003) pp. 181-95.

63. UNODC, “From Coercion to Cohesion. Treating Drug Dependence Through Health Care, Not Punishment”, Discussion paper based on a scientific workshop UNODC, Vienna, October 28-30, 2009, United Nations Office on Drugs and Crime, Vienna (2010), available at: http://reformdrugpolicy.com/wp-content/uploads/2011/09/Coercion_Ebook.pdf.

64. Commission of Narcotic Drugs, “Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem”, United Nations, Vienna (2009), available at: <http://www.unodc.org/documents/ungass2016/V0984963-English.pdf>.

65. See in particular the groups supported by the Open Society Foundation, the Senlis Foundation, and the Transnational Institute.

66. By far the most pertinent criticism has emanated from the Global Commission on Drug Policy, “Taking Control: Pathways to Drug Policies that Work.”

be in the business of protecting individuals from engaging in self-damaging behaviour, or whether the measures taken are commensurable with the potential harm prevented.⁶⁷ More pertinent, however, have been critiques that focus on the uncomfortable evidence after a century of drug control that clearly points that (a) the abolition of drug demand has proven to be unachievable, whatever the reasons people chose to use drugs for; (b) that the artificial inflation of value of these commodities has attracted very determined criminal organisations with nefarious consequences for states and societies far in excess of the harm caused by drug use itself; and thus (c) that the 'war on drugs' has not only been a failure but directly led to the destabilisation of already precarious state structures, causing, prolonging, and intensifying violent conflicts, especially in the Global South.⁶⁸ Whatever the saliency of libertarian arguments, it is unlikely that the removal of drug control as such is a feasible, if desirable, policy option. Still, it the evidence from both academic⁶⁹ and official inquiry,⁷⁰ as well as changing state practice⁷¹ points towards the need for more modest goals to be set, based less on maximalist ideological posture than on practicability:

"The option with the most scope is increased effort at diverting arrested drug users out of criminal justice systems. No prevention, treatment or enforcement strategies have demonstrated an ability to substantially affect the extent of drug use and addiction. The best that government interventions can do is to reduce the damaging consequences of drug use and drug control. More attention should be given to reductions in the intensity of drug enforcement, which has many unintended adverse consequences and yields few of the claimed gains."⁷²

67. Dave Bewley-Taylor, Tom Blickman, and Martin Jelsma, "The Rise and Decline of Cannabis Prohibition: The History of Cannabis in the UN Drug Control System and Options For Reform, Transnational Institute / Global Drug Policy Observatory, Amsterdam / Swansea (March 2014), available at: http://druglawreform.info/images/stories/documents/Rise_and_Decline_Web.pdf, accessed on: 15 November 2014, pp. 59, 69.

68. Elegantly argues inter alia in Global Commission on Drug Policy, War on Drugs. Report of the Global Commission on Drug Policy, GCDP, Rio de Janeiro (June 2011), available at: <http://www.globalcommissionondrugs.org>.

69. Peter Reuter, "Ten Years After the United Nations General Assembly Special Session (UNGASS): Assessing Drug Problems, Policies and Reform Proposals," *Addiction*, Vol. 104(4), No. 4 (April 2009) pp. 510-17.

70. Pierre Claude Nolin and Colin Kenny, "Cannabis: Our Position for a Canadian Public Policy. Report of the Senate Special Committee on Illegal Drugs", Volume III: Part IV and Conclusions, Senate, Government Printing Office, Ottawa (2002), available at: <http://publications.gc.ca/site/eng/398108/publication.html>.

71. Bijan Nissaramanesh, Mike Trace, and Marcus Roberts, The Rise of Harm Reduction in the Islamic Republic of Iran, The Beckley Foundation Drug Policy Programme, London (July 2005), available at: http://reformdrugpolicy.com/wp-content/uploads/2011/10/paper_08.pdf.

72. Reuter, "Ten Years After the United Nations General Assembly Special Session (UNGASS): Assessing Drug

It is understandable that those tasked with maintaining the current prohibitionist system, if for no other reason than bureaucratic self-preservation,⁷³ present a rather glowing balance sheet of its outcome.⁷⁴ Whether one accepts this counter-factual narrative or not - namely that without the international control regime, drug abuse would be much more prevalent -,⁷⁵ it is quite clear that the system not only has been unable to achieve its stated aim of total eradication but that it also has produced very severe negative political, social, and health effects, the evidence for which appears incontrovertible, as discussed in a recent article by medical professionals in *The Lancet*:

"Beyond being ineffective, increasing expenditures on drug-law enforcement have also been associated with severe unintended harms. ... chief among the public health concerns is the transmission of HIV among injection drug users. ... Clearly, the preponderance of evidence shows that the UN drug-control framework has not only been ineffective but has resulted in a range of severe unintended harms. If the UN system fails to acknowledge this reality and open up to more evidence-based approaches during its upcoming review process, it will tarnish the reputation of the entire UN system. It will also help perpetuate the needless human suffering and enormous social costs that have emerged under the existing global drug-

Problems, Policies and Reform Proposals," p. 510, emphasis added

73. Cindy S.J. Fazey, "The Commission on Narcotic Drugs and the United Nations International Drug Control Programme: Politics, Policies and Prospect for Change," *International Journal of Drug Policy*, Vol. 14 (2003) pp. 155-69. For a more general exploration, see Max Weber, "Bureaucracy," in: *From Max Weber: Essays in Sociology*, ed. by H. H. Gerth and C. Wright Mills (Oxford: Oxford University Press, 1958).

74. See for instance the opening address by the Head of the UNODC, Mr. Antonio Maria Costa: "For those who doubt the effectiveness of drug control, consider this. In 1906, 25 million people were using opium in the world (1.5% of the world population) compared with 16.5 opiate users today (0.25% of the world population). In 1906/07, the world produced around 41,000 tons of opium – five times the global level of illicit opium production in 2008. While opium used to be produced in a huge belt, stretching from China to Indochina, Burma, India, Persia, Turkey and the Balkan countries, the illegal production of opium is now concentrated in Afghanistan (92%). Same for coca. Its leaves used to be cultivated not only in the Andean region but also in several Asian countries including Java (Indonesia), Formosa (Taiwan) and Ceylon (Sri Lanka). Today coca leaf production is concentrated in three Andean countries: Colombia, Peru and Bolivia. International drug control can take some of the credit." UNODC, *A Century of International Drug Control*, p. 3, emphasis added

75. There is obviously also the problem of over-reporting with respect to the data used to support this counter-factual claim; as criticised for instance by a former UNDCP official: "Meanwhile, what the CND claims as success in implementing various UN action plans is often more the result of countries reporting process, not necessarily progress. This impression of successful action masks a global policy failure that is itself fuelling pressure for change." Fazey, "The Commission on Narcotic Drugs and the United Nations International Drug Control Programme: Politics, Policies and Prospect for Change," p. 155.

control regime.”⁷⁶

The human suffering and the social cost of the international counter-narcotics regime are not really in dispute, even among proponents of the regime. What is important to highlight, however, quite irrespective of one's position with respect to the counter-factual argument -that the costs are worth paying for without the regime even higher costs would ensue-, is the generally ignored fact that these costs are distributed extremely unevenly.

Domestically, the effects of addiction and criminal punishment affect different groups very unequally even if drug usage is proportionally similar, perhaps best epitomised in the extremely high incarceration rates of black citizens in the United States.⁷⁷ Internationally, and more pertinent for the purpose of this study, the costs are likewise very unevenly distributed between the various nations implicated in the global narcotics network. Hidden behind the apparent international consensus embodied in the three major conventions are very substantial divergences in economic interests, strategic threat assessments, cultural norms, and socio-medical impact. These differences had, of course, been apparent throughout the past century during which the international regime was negotiated, built, and enforced.⁷⁸ But just as with any other international agreement, the outcome of the negotiations and the actual form the ensuing regime takes is a function of economic and military power, diplomatic skill, and how invested in the issue a particular actor is.⁷⁹ With respect to the international drug control regime, the influence of moral motivations and religious pressure groups has been well acknowledged in the initial creation of the system.⁸⁰ But the persistence of moralistic, maximalist rhetoric is nevertheless surprising, given the ineffectiveness of the system in achieving its stated goals.⁸¹

The moralising tone pervading much international drug discourse, and the refusal to countenance evidence-based alternatives that take into account the reality, pleasant or not, that drug use has been and continues to be prevalent among certain segments of society pretty much across the globe, can ultimately be explained only by the fact

76. Evan Wood et al., “The War on Drugs: A Devastating Public-Policy Disaster,” *The Lancet*, Vol. 373(9668), No. 9668 (21 March 2009) pp. 989-90, pp. 989-90.

77. Targeting Blacks. Drug Law Enforcement and Race in the United States, Human Rights Watch, Washington, D.C. (5 May 2008), available at: <http://www.hrw.org/en/node/62236/section/1>.

78. See for instance above fn. 39.

79. See generally Stephen D. Krasner (ed.), *International Regimes* (Ithaca: Cornell University Press, 1983).

80. Buxton, “The Historical Foundations of the Narcotic Drug Control Regime,” pp. 68-71.

81. For a comprehensive, critical account, see Global Commission on Drug Policy, War on Drugs. Report of the Global Commission on Drug Policy.

that the major proponents of that systems do not bear the brunt of its unintended costs. While these insights are anything but new, the dynamics of domestic and international policy-making place an insurmountable burden for politicians and officials interested in changing the status quo:

“The political alternative - that of questioning the ‘tough on drugs’ orthodoxy, of promoting policies that are more tolerant of drug use, or that reduce enforcement or punishment - represents a high risk strategy for any politician. As the former Prime Minister of Luxembourg [and current President of the European Commission], Jean-Claude Juncker, has succinctly put it: ‘We know what to do, but we don’t know how to get re-elected once we have done it’. Drug policy is often referred to as a ‘third rail’ issue - a railway metaphor that loosely means that if you touch it, you are going to be electrocuted. In the bear pit of local and national politics, any leader who questions traditional policies, or promotes alternatives, is easily caricatured by media and political opponents as ‘soft on drugs’, weak on law and order, or in favour of greater drug use. It is perhaps therefore not surprising that a large number of policy makers at all levels privately hold views on the best direction for drug policies and strategies that they are unwilling to express in the public arena.”⁸²

The social and political costs associated with maximalist abolitionist demands are generally borne by domestic social groups underrepresented in political and judicial decision-making, as well as internationally in producer and transit states characterised by weak domestic state structures and weak international ‘clout.’ But it is precisely this dynamic that continues to bedevil the international counter-narcotics regime, namely that its maximalist, ideologically-driven logic is a ‘luxury’ that can be relatively easily afforded by rich, stable consumer countries but not by poor, unstable producing and transit countries that bear the brunt of the costs of this prohibitionist regime. The inflated value that narcotic drugs acquire as a direct result of their proscribed nature attracts powerful organised criminal interests and forces addicts into crime. Few would argue that drug consumption is a healthful activity that should be left entirely unregulated. So, the 2010 World Drug Report issued by UNODC is quite accurate in its categorical denouncement of heroin use, arguably the most dangerous of illicit drugs:

82. Trace, *Drug Policy – Lessons Learnt, and Options for the Future*, p. 9. It is thus not surprising that the prominent and far-sighted Global Commission on Drug Policy is composed entirely of retired, albeit extremely high-ranking politicians.

“More users die each year from problems related to heroin use, and more are forced to seek treatment for addiction, than for any other illicit drug. Among illicit narcotics, opiates are also the most costly in terms of treatment, medical care and, arguably, drug-related violence. In addition, heroin is the drug most associated with injection, which brings about a host of acute and chronic health problems, including the transmission of blood-borne diseases such as HIV/AIDS and Hepatitis C. ... Beyond its health impact, the illicit opiate industry also has a detrimental effect on stability and security in a number of places, including through the funding it provides for insurgents in production areas, particularly in Afghanistan.”⁸³

What the report fails to highlight, however, is these negative effects are largely the result of the drug being illegal, whatever its inherent potential for damage as a chemical substance.⁸⁴ The persistence of a maximalist, prohibitionist rhetoric thus needs to be distinguished from the actual threat assessment made by decision-makers in different jurisdictions. Despite the rhetoric of a ‘war on drugs’, most policymakers, at least in the rich consumer countries, “seem unsure at what point [the phenomenon of transnational organised crime] ceases to be just a nuisance -an unavoidable tax on globalisation- and becomes a strategic threat in its own right.”⁸⁵

Whatever position one takes on the morality of consuming drugs and the feasibility of proscription, it is evident that the implementation of the existing international counter-narcotics consensus places a disproportionate burden on poorer producing and transit states with far more tenuous state capabilities, where organised criminal groups are indeed a strategic threat to the coherence of state and society. This situation is directly applicable to the countries examined in this report: Afghanistan⁸⁶ and, to a lesser

83. UNODC, World Drug Report 2010, Sales No E10XI13, United Nations, New York (2010), available at: http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf, p. 37.

84. Inkster and Comolli, *Drugs, Insecurity and Failed States: The Problems of Prohibition*, p. 12.

See here the highly instructive chart showing an inverse correlation between regulation and social harm along the drug policy spectrum in Global Commission on Drug Policy, “Taking Control: Pathways to Drug Policies that Work,” p. 27.

85. Inkster and Comolli, *Drugs, Insecurity and Failed States: The Problems of Prohibition*, pp. 12, 133.

86. William A. Byrd, “Responding to Afghanistan’s Opium Economy Challenge: Lessons and Policy Implications from a Development Perspective, Policy Research Working Paper 4545 (Washington, D.C.: World Bank, March 2008), available at: <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-4545>; Richard P. Kaufman, *America’s Opium War: How the Wrong Approach to Counternarcotics is Undermining State-building in Afghanistan*, (Washington, D.C.: Johns Hopkins School of Advanced International Studies, Spring 2009), available at: <http://reformdrugpolicy.com/wp-content/uploads/2011/09/Americas-Opium-War.pdf>.

extent, to both Iran⁸⁷ and Pakistan.⁸⁸ It would be callous to describe the drug epidemic ravaging all three countries as merely a 'nuisance,' given the extremely high prevalence of addiction and the massive impact on state cohesion organised criminal groups have achieved.⁸⁹

d) Organisational: Mandates, Cooperation and Competition

The institutions created by and charged with managing this international prohibitionist consensus do not question the resilience of the drug problem and have themselves been careful to make the statistical case that the situation remains tense, not least in the annual *World Drug Reports* published by UNODC.⁹⁰ Quite understandable from the point of view of bureaucratic politics, the institutions charged with upholding the international regime for controlling narcotics contrast the somewhat unflattering empirical resume of a century of largely failed efforts with an essentially improvable counterfactual, namely that without this regime the harm done by drugs would have been significantly worse. This case is being made at considerable length in the *World Drug Report* of 2008 that explicitly revisited the historical evolution of the regime:

“The containment of illicit drug use to less than 5% of the world population aged 15 to 64 (based on annual prevalence estimates) is a considerable achievement, documented historically in the pages of this report. The achievement is manifest on the two scales of time considered here: the century since the beginnings of the international drug control system; or the decade since UNGASS in 1998.”⁹¹

In the decade following the mentioned UN General Assembly Special Session, a far greater realisation of the shortcomings of the prevailing consensus has developed also within official circles. While defending the maintenance of existing strictures

87. Calabrese, *Iran's War on Drugs: Holding the Line?*, pp. 5-7; A. William Samii, “Drug Abuse: Iran's Thorniest Problem,” *Brown Journal of World Affairs*, Vol. 9(2), No. 2 (2002-2003) pp. 283-302.

88. Chandran, “Drug Trafficking and the Security of the State: A Case Study of Pakistan”; Khan, “Corruption and the Decline of the State in Pakistan.”

89. Chandran, “Drug Trafficking and the Security of the State: A Case Study of Pakistan”; Schweich, “Is Afghanistan a Narco-State?”; Calabrese, *Iran's War on Drugs: Holding the Line?*

90. “On the basis of comprehensive information on supply, as well as the relatively limited new information on demand, it can be concluded that overall the global situation with regard to the prevalence of illicit drug use and problem drug use is generally stable, with the total global number of drug users increasingly commensurate with the growth of the world population.” *World Drug Report 2014*, Sales No E14XI7 (New York: United Nations, June 2014), pp. ix/, emphasis added, footnote omitted/.

91. UNODC, *World Drug Report 2008*, United Nations, New York (June 2008), available at: http://www.unodc.org/documents/wdr/WDR_2008/WDR_2008_eng_web.pdf, pp. 7/, internal references omitted/.

(and, implicitly, the bureaucratic interests that are attached to them), the authors of the centennial UNODC report do acknowledge that demand-oriented measures need to complement the hitherto exclusive focus on supply-reduction:

“Illicit drug use (mostly on an occasional basis) has been contained to around 5 percent of the adult population or 3.2% of the world’s total population - a much lower prevalence than less regulated drugs like alcohol and tobacco. Deaths due to drugs are limited to perhaps 200,000 a year which is one tenth of those killed by alcohol and twenty times less than those killed by tobacco.

It makes no sense to unravel this achievement, that has been a century in the making, by loosening controls on drug use. Yet this progress can only be maintained by coming to terms with the unintended consequences of drug control, especially the massive criminal black market in drug trafficking.

It is therefore essential to reduce the vulnerability of people to drugs (through health and social services for prevention and treatment), the vulnerability of farmers (through development), and the vulnerability of societies to drugs and crime (by promoting economic growth and the rule of law, and by fighting crime and corruption).⁹²

Whether this is an adequate assessment of the evidence in light of possible alternatives will be discussed in the next section. What is important to realise at this point, however, is the realisation that a well-entrenched network of international agencies has been created in the past century of concerted international drug efforts, an organisational network that is characterised by strong bureaucratic interests, sophisticated standard operating procedures, and onerous legal obligations imposed on member states. The conventions in which this consensus has been laid down allow, of course, individual member states acting alone or jointly to take additional measures going beyond the minimum mandated, but there is a binding legal obligation to adhere in good faith to the structures jointly established at the international level.⁹³

3. Institutional Analysis: Prospects for Harmonization

This means that national and regional organisations must ensure that their efforts remain

92. Idem, *A Century of International Drug Control*, p. 3.

93. The relative inertia that these international bureaucracies display and the pressure for conventional thinking (in the literal sense of the word) that they exert has been, after all, one of the main criticisms of the current international consensus. See for instance, the demand by the GCDP in its Recommendation No. 6: “Allow and encourage diverse experiments in legally regulating markets in currently illicit drugs, beginning with but not limited to cannabis, coca leaf and certain novel psychoactive substances.” Global Commission on Drug Policy, “Taking Control: Pathways to Drug Policies that Work,” p. 31.

within well within the overall legal framework agreed and laid down in the conventions. Perhaps more important still from a pragmatic point of view, due regard should be had for the institutional capacities that have been created at the international level, having benefitted from considerable and concerted investments into the human capital of the international civil servants and the organisational structures of those organisations tasked with monitoring and enforcing the existing counter-narcotic consensus. In other words, careful attention should be had not to try to emulate or replicate tasks which are already carried out successfully at the international level, if for no other reason than economy of means and governmental self-interest.⁹⁴ So, while it is often the case that states create more than one international organisation and that the resulting mandates of these institutions will overlap, it is important to identify the comparative advantage of any given institution in carrying out a task for which more than one organisation could be considered.⁹⁵

a) Hierarchies: Sovereignty, Subsidiarity and Competing Visions of Integration

As elaborated at some length in the previous section, the international consensus with respect to counter-narcotics that has developed in the past hundred years has produced a comprehensive, fairly coherent, and binding legal framework. Whatever the political pressures and diplomatic manoeuvrings that led to the actual shape of the international regime in question, international rules do not exist in a simple hierarchical, top-down relationship with municipal norms. International law, whether it concerns counter-narcotics or any other area, always exist first and foremost because sovereign states have found it to be in their interest to create such norms as to solve common problems. International organisations, likewise, certainly enjoy independent legal personality and are separate institutional actors, but they have to carefully take into account the interests of their member states and the mandate these have bestowed upon them.

This is particularly relevant if one looks at the interplay between international and regional organisations, which often are tasked with functionally similar mandates and thus will have to negotiate overlapping areas of responsibility.⁹⁶ These situations create an additional layer of complexity between these two levels of international integration,

94. Kenneth W. Abbott, "Why States Act through Formal International Organizations," *Journal of Conflict Resolution*, Vol. 42(1), No. 1 (1998) pp. 3-32.

95. See more generally, Jan Klabbers, *An Introduction to International Institutional Law*, 2nd ed. (Cambridge: Cambridge University Press, 2009).

96. For a general discussion of this dynamic, see Fred L. Morrison, "The Role of Regional Organizations in the Enforcement of International Law," in: *Allocation of Law Enforcement Authority in the International System*, ed. by Jost Delbrück (Berlin: 1995) pp. 39-56.

but the basic challenge of the nature of international law remains the same: unlike municipal legal systems where there is a clear hierarchy of authority and a relatively simple 'chain of command' exists between the legislator and lower-level state organs, international law is by its very nature the product of sovereign equals which by and large only submit to international rules that they have created themselves to further their self-interest.⁹⁷ In other words, an international organisation will only rarely be in a position to order its member states to act in a particular fashion, unless these same had previously explicitly agreed to restrict some of their sovereign prerogatives by delegating them to the regional or international organisation.⁹⁸

Such 'pooling of sovereignty' has occurred in certain regional organisation tasked with economic integration and defence, most notably the European Union and the North Atlantic Treaty Organisation, but this, it bears restating, has remained very much the exception. States generally guard their sovereign prerogatives jealously, and nowhere as fiercely as with respect to their law-making power. The Economic Cooperation Organisation (ECO) most definitely has not been endowed by its member states in their instruments of accession with the kind of supranational mandate that would allow it to set law or even to issue binding directives setting out the parameters within which its member states would have to arrange their domestic legal systems. This model of supranational integration, achieved most completely in the European Union, offers certainly many advantages but it represents a degree of transfer of sovereignty from national to regional levels that ECO's member states have clearly *not* intended.⁹⁹

It is therefore necessary to remember that any action to be taken by the ECO Secretariat must remain in line with the express desires of its member states, as defined in the mandate of the organisation. It goes without saying that member states have been and continue to be concerned about the drug problematic whose global epicentre encompasses virtually its entire membership.¹⁰⁰ This concern has found its expression among others in the

97. See more generally the chapter "International Law and Municipal Law" in Malcolm N. Shaw, *International Law*, 6th ed. (Cambridge: Cambridge University Press, 2008), pp. 129-94.

98. For a classical exposition of this problem, see David Mitrany, "The Prospect of Integration: Federal or Functional?," *Journal of Common Market Studies*, Vol. 1(4), No. 4 (1965-1966) pp. 119-49.

99. As many of ECO's member states have emerged from the collapse of the Soviet Union, their strong insistence on sovereign prerogatives with respect to that entities 'successor', the Commonwealth of Independent States (CIS) is instructive. While having agreed on some level of international cooperation and institutional integration, it was explicitly stated in the instruments of creation that no supranational powers would be created. The same holds certainly true, mutatis mutandis, for the, if anything, even looser union of ECO. See Shaw, *International Law*, pp. 240, 1291.

100. For a general discussion of these concerns and joint efforts, see Svante E. Cornell, "Stemming the Contagion - Regional Efforts to Curb Afghan Heroin's Impact," *Georgetown Journal of International Affairs*,

'Istanbul Declaration' adopted by the ECO Council of Ministers adopted in its special meeting held on 5–7 June 1993; the Plan of Action on Drug Control approved by it on 11 May 1996, in pursuance of which a dedicated Drug Control Coordination Unit (DCCU) was established in 1999. The continued importance attached to the issue is reflected in the Unit's full integration into the general Secretariat of the Organisation in 2006 and the expansion of its mandate by the Council of Ministers on 9 March 2009 resulting in its re-designation as the Drug and Organised Crime Coordination Unit (DOCCU).

But these shared concerns about narcotic trafficking have not led the member states to relinquish sovereign prerogatives for the benefit of more forceful regional action. It must also be stressed that all ECO member states are already bound to incorporate into national law the stringent requirements contained in the three major counter-narcotics conventions. As described at length in the previous section, there already exists at the international level a very sophisticated, well-endowed, and politically supported international bureaucracy in the form of the UNODC, the INCB, and the CND tasked with overseeing such national implementation. The interviews with

b) Implementation: Law, Political Will, and Organisational Capabilities

With respect to the harmonisation of the region's counter-narcotics laws, therefore, two distinct but related understandings have become abundantly clear. First, the existing counter-narcotics consensus that exists at the international level has found expression in three binding international conventions whose substantive proscriptive content signatories have obliged themselves to transform into national criminal and administrative law. An international civil service has been specifically created for this purpose and is tasked with overseeing and assisting such national implementation. The many interlocutors at both headquarter level and in each of the three country offices of UNODC have unanimously confirmed that the present state of legal harmonisation is satisfactory. Second, law-making is first and foremost a national sovereign prerogative and can be assumed at the regional and international level only in so far as member states have endowed the respective international organisations with an explicit mandate to do so. Such mandates were for instance given to the CND in the past to prepare the drafts for the 1971 and 1988 Conventions, but no such mandate exists for ECO with respect to regional treaty arrangements that go beyond what is already bindingly agreed at the international level.

To elaborate on both points: as the previous section laid out in some length, the

international counter-narcotics regime as manifested in its three basic conventions and international institutional structure, mainly UNODC, CND, and INCB, enjoys a very high level of confidence from member states which have bound themselves to comply with its legal strictures and act loyally within its organisational structures.¹⁰¹ It bears restating that the level of synchronisation between national legal, operational, and policy approaches in the fight against drugs is very high indeed, certainly much higher than in most other areas of international cooperation. It is recalled that the 1988 Convention and the Action Plan adopted under UNGASS 1998 already require signatories to adopt provisions that are spelled out in a great degree of specificity into national criminal law and, in addition, to work towards "[t]he harmonization and simplification of procedures to increase international cooperation ..."¹⁰²

Obviously, these obligations to comply and cooperate do not preclude additional national or regional action by member states, but it bears restating that such action must be done in good faith and remain at all times compatible with those agreed at the international level. For better or worse, the international counter-narcotics consensus as it has developed during the past hundred years has relied on the stringent proscription of certain drug-related behaviour in a series of binding international conventions which obliged signatories to transpose these norms into domestic law, something which has happened universally and most definitely with respect to the three countries under consideration here. In other words, we already have a very high degree of voluntarily-agreed, internationally-mandated and supervised harmonisation of legal norms with respect to the prohibition under domestic criminal sanction of the production, manufacture, trade, use, or possession of narcotic or psychotropic substances or their precursor chemicals.

This comprehensive criminalisation of drug-related activity has been combined since the 1988 Convention with strident controls of the financial proceeds of such illegal activity, replete with the binding obligation to create the domestic legal tools necessary to counteract money-laundering, permit the confiscation of assets, increase judicial cooperation and facilitate the transfer of proceedings, as well as the extradition of criminals across jurisdictions. If anything, as a multitude of critics have been pointed out, the existing international counter-narcotics consensus as nationally implemented is too harmonised, in the sense that its mandatory transposition into domestic criminal

101. For a comprehensive official restatement of this consensus, see Commission of Narcotic Drugs, Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem.

102. § 7 of the Action Plan, quoted and discussed in UNODC, *A Century of International Drug Control*, p. 78.

law doesn't permit much experimentation with alternative policies to manage the drug epidemic.¹⁰³ Be this as it may, it seems extremely unlikely that beyond what has already been agreed in the three international conventions, a yet more stringent common denominator could be found between the three states under consideration in this report, quite irrespective whether additional legal (as opposed to operational) harmonisation should be deemed necessary.

The experts consulted for this study unanimously rejected the need for such additional legal harmonization, deeming the legal landscape in all three countries to be more than adequate and fully in line not only with the international obligations of the three states, but also providing a more than sufficient legal basis for extended operational cooperation. The reason such cooperation remains underdeveloped, all experts agreed, lies in insufficient political will and organisational capabilities, certainly not in legal hindrances to enhanced collaboration.¹⁰⁴

At any rate, the history of the negotiation of the international agreements outlined in the previous section clearly shows that reaching international agreement on such intrusive legal obligations is a very time-consuming task requiring very considerable investments in political capital, human and diplomatic resources, and necessitating considerable lobbying prowess with national political and law-making organs. As the representatives of all three member states made abundantly clear during the consultations for this study, all three consider law-making an inherently sovereign activity to be solely decided by their respective constitutionally mandated law-makers, that is parliaments. The degree of hostility evinced at the mere hint of ECO involvement in so little as drafting suggestions for legal change leads us to conclude that the relatively limited organisational capacities and political capital of the organisation should not be squandered on an activity that its member states have clearly expressed themselves to be opposed to.

c) Ambiguities & Silos: Differences, Common Interests and Collaboration

It is thus necessary to distinguish between the maximalist rhetoric that continues to define international responses to the drug problem, and the political realities which generally tell a very different story. To start with, the evidence after a century of

103. Joanne Csete, "From the Mountaintops. What the World Can Learn from Drug Policy Change in Switzerland, Global Drug Policy Program, Open Society Foundations", New York (May 2010), available at: <http://reformdrugpolicy.com/wp-content/uploads/2011/09/from-the-mountaintops-english-20110524.pdf>; Tom Blinkman and Martin Jelsma, "Drug Policy Reform in Practice. Experiences with Alternatives in Europe and the US," *Nueva Sociedad*, Vol. 222 (August 2009).

104. Some of these difficulties are laid out for instance in Samii, "Drug Abuse: Iran's Thorniest Problem."

international drug efforts premised on prohibition is unequivocal with respect to severe unintended consequences stemming from the creation of an illegal market for proscribed commodities that have acquired an inflated, artificial value merely through their characteristic of being illegal. Assuming a largely inelastic demand -a reasonable assumption given these substances' addictive potential- it appears logical that this literally 'captive' consumer market will be serviced by criminal entrepreneurs attracted by the prospect of exorbitant marginal profits and undeterred by the heightened risk of penal sanction.¹⁰⁵ As the famous economist Milton Friedman succinctly put it: "It is demand that must operate through repressed and illegal channels. Illegality creates obscene profits that finance the murderous tactics of the drug lords; illegality leads to the corruption of law enforcement officials."¹⁰⁶

While this part is not controversial, it is less broadly recognised that these undisputed costs befall societies in a highly unequal fashion. Public pronouncements on the issue generally tend to stress the universal, equally devastating impact of drugs onto all societies and all sectors of each society in every nation, as for instance in the solemnly adopted Political Declaration adopted by UNGASS 1998:

"Drugs destroy lives and communities, undermine sustainable human development and generate crime. Drugs affect all sectors of society in all countries; in particular, drug abuse affects the freedom and development of young people, the world's most valuable asset. Drugs are a grave threat to the health and well-being of all mankind, the independence of States, democracy, the stability of nations, the structure of all societies, and the dignity and hope of millions of people and their families;"¹⁰⁷

Behind the universalist language contained in such international diplomatic and political pronouncements on the topic lurks therefore the grim and cynical realisation that, to the contrary, drugs do not affect societies and people equally. The professed assumption that consumer, transit, and producer states share a common and equally strong interest in abolishing this trade is manifestly false for at least three reasons.

First, the impact of drug abuse and organised crime is very uneven, from truly epidemic proportions -for instance in all three countries under consideration in this report-

105. For a fuller explanation of this logic, see McCoy, "The Stimulus of Prohibition: A Critical History of the Global Narcotics Trade."

106. Quoted in George P. Shultz and Paul A. Volcker, "A Real Debate about Drug Policy. Why the 'War on Drugs' Has Failed — And What to Do Next," Wall Street Journal, (New York, 11 June 2011).

107. UNGAR S-20/2. Political Declaration, A/RES/S-20/2, 21 October 1998, Annex, Preamble, emphasis added.

to relatively small-scale and easily manageable (if not entirely ignorable) proportions in some of industrialised countries. Behind the universalist rhetoric one must, therefore, clearly state that nations states have very different stakes in interfering in the drug trade.

Secondly, to varying degrees elements of many states have been and continue to be implicated in the illicit drug trade, notwithstanding its formal proscription and rhetorical assertions. Such complicity generally takes the form of criminal elements co-opting, bribing, or infiltrating elements of the state to protect their illicit activities, to the point where state structures become seriously compromised and narcotic interests become dominant, a dynamic well-described for instance for Afghanistan but applicable in many other instances.¹⁰⁸

“The sheer size and illicit nature of the opium economy mean that not surprisingly, it infiltrates and seriously affects Afghanistan’s economy, state, society, and politics. It generates large amounts of effective demand in the economy, provides incomes and employment including in rural areas (even though most of the final ‘value’ from Afghan opium accrues outside the country), and supports the balance of payments and indirectly (through Customs duties on drug-financed imports) government revenues. The opium economy by all accounts is a massive source of corruption and undermines public institutions especially in (but not limited to) the security and justice sectors. There are worrying signs of infiltration by the drug industry into higher levels of government and into the emergent politics of the country. Thus it is widely considered to be one of the greatest threats to state-building, reconstruction, and development in Afghanistan.”¹⁰⁹

But it also includes deliberate policy decisions by uncompromised state agents to collaborate with criminal elements or wilfully ignore their activities in return for their

108. In the Latin American context the threat of full-scale state failure appears increasingly realistic, a prospect brought about by the nefarious influence of narco-criminals: “What is proposed here is that Mexico is not on its way to becoming a ‘rotting corpse’ but potentially something far worse – akin to a body being permanently infected by a malicious virus. Already, wide swaths of Mexico have been lost to the corrupting forces and violence generated by local gangs, cartels, and mercenaries. Such narco-corruption faced few barriers given the fertile ground already existing in Mexico derived from endemic governmental corruption at all levels of society and, in some ways, it even further aided the ‘virus’ spreading through Mexican society from this new ‘infection’.” Robert J. Bunker, “Strategic Threat: Narcos and Narcotics Overview,” *Small Wars & Insurgencies*, Vol. 21(1), Special Issue: Narcos Over the Border: Gangs, Cartels, Mercenaries and the Invasion of America, No. 1 (2010) pp. 8-29, p. 9.

109. Doris Buddenberg and William A. Byrd, “Introduction and Overview,” in: *Afghanistan’s Drug Industry. Structure, Functioning, Dynamics, and Implications for Counter-Narcotics Policy*, ed. by Doris Buddenberg and William A. Byrd (Vienna / Kabul: UNODC / World Bank, 2006) pp. 1-24, p. 1.

collaboration of other policy objectives deemed to be more important than containing drug trafficking at that given moment. Such collaborations for instance between US military and law enforcement authorities with organised crime have been described from World War II¹¹⁰ to the Afghan War,¹¹¹ but surely exist with respect to many other law enforcement and military agencies facing a multitude of at times conflicting policy objectives.

Thirdly, therefore, it is necessary to acknowledge the truism that states seldom if ever pursue one single interest single-mindedly to the exclusion of all others. Sometimes these interests are pursued by different agencies which follow their own internal logic, unaware or uninterested in the policies simultaneously pursued by other agencies, thereby leading to contradictory or stalemated policy outcomes. At other times, the same agency must simultaneously pursue contradictory policies brought about by a political or bureaucratic logic defying the unified rational actor model at the heart of many simplistic visualisations of government action.¹¹²

There exists a tendency to look at the international drug problem and governmental responses to it in isolation from the myriad other national or bureaucratic interests being pursued simultaneously. This would be a grave mistake for any field of government action, but it is a fatal flaw for a phenomenon as intricately tied to and influenced by a host of other factors, from geography, economic factors, markets, rural development, urban decay, military confrontations, human psychology, public and individual health, and many, many more. It is thus, as many collocutors stressed during the interviews for this story, necessary to avoid treating the drug problematique as a silo that can be

110. "A 1943 agreement to use his [Salvatore Luciano's] mafia contacts to smooth the way for Allied forces about to embark on their invasion of Italy led, three years later [after his conviction for organised crime], to his release from prison and deportation to Italy. From there he build a major criminal enterprise which involved morphine base smuggled from Turkey via Lebanon to laboratories in Sicily and the French port of Marseille, from whence the resultant heroin was shipped to the US. 'The French Connection', as it became known, continued more or less uninterrupted until the mid 1970s, at which point the very structured and hierarchic nature of the Mafia contributed to its downfall at the hands of US law enforcement." Inkster and Comolli, *Drugs, Insecurity and Failed States: The Problems of Prohibition*, pp. 23-24.

111. "For the Americans, who are racing to secure the country against a deadline set by President Obama, the emergence of such strongmen is seen as a lesser evil, despite how compromised many of them are. In Mr. Matiullah's case, American commanders appear to have set aside reports that he connives with both drug smugglers and Taliban insurgents." Dexter Filkins, "Rule of the Gun. With U.S. Aid, Warlord Builds Afghan Empire," *New York Times*, (5 June 2010).

112. A classical exposition of these tensions is Graham T. Allison and Philip Zelikow, *Essence of Decision: Explaining the Cuban Missile Crisis*, 2nd ed (New York: Longman, 1999); see also Morton H. Halperin, Priscilla Clapp, and Arnold Kanter, *Bureaucratic Politics and Foreign Policy* (Washington, D.C.: Brookings Institution Press, 2006).

addressed isolated from surrounding issues.

Despite the rhetoric of common determination against the scourge of opium production and heroin trafficking, government policies in the region point to a reality that is much more complex. In the competition with other policy priorities dealing with violent insurgents, regional rivalries, and, certainly not least, divergent interests concerning the sanctions regime imposed against Iran, it is unreasonable to expect that counter-narcotics will come out on top. Thus, it needs to be realised that contrary to the single-minded rhetoric used by all states when expressing themselves on the issue of drug policy, it cannot be expected that the most reasonable policy in terms of drug policy will always be chosen. This dynamic plays out not least with respect to the cautious and contradictory engagement of states from outside the region with local counter-narcotic efforts.¹¹³ The obvious congruencies of interest between Western consumer states and Iran as arguably the most important transit country for Afghan opiates did not dislodge these states' contradictory concerns most notably with respect to Iran's nuclear programme. These countries thus hold contradictory representations of Iran as simultaneously an enemy and a partner, something that has clearly affected the cohesiveness of their engagement, not least as donors for international and regional counter-narcotic efforts, including the present project.¹¹⁴ It furthermore cannot be denied that the imposition of an ever more stringent and comprehensive sanction regime has had a deleterious impact on counter-narcotic efforts at all levels, affecting both domestic harm-reduction measures,¹¹⁵ regional cooperation, and the workings of international organisations in the country.¹¹⁶

Given these structural constraints largely beyond the control of any single individual, nation, or international organisation, it is thus important to bear in mind the inherently

113. Ahad Hadian, "Walking on a Delicate Line Between Iran and the United States: India's Competing Set of Interests Regarding Iran's Nuclear Program and Sanctions," Dissertation, Norwegian University of Life Sciences (Ås, Norway, 2014).

114. Myriam Ménard, "Hidden Cooperation: How Nuclear Antagonists Collaborated on Counter-Narcotics Efforts in Iran from 2007 to 2011," Dissertation, Université de Laval (Québec, Canada, 2014).

115. Schwann Shariati and Masoomeh Maarefvand, "Sanctions Against Iran and the Impact on Drug Use and Addiction Treatment," *International Journal of Drug Policy*, Vol. 24(6), No. 6 (2013) pp. 636-37; Expediency Discernment Council of Islamic Republic of Iran, "The Effects of Sanctions on Narcotics Issue [Farsi]," *Tehran, Shura-ye Maslahat*, 2013, available at: <http://maslahat.ir/%D9%84%DB%8C%D8%B3%D8%AA%20%D9%87%D8%A7/newslist/NewsDisp.aspx?ID=597&ContentTypeId=0x010400E3F2C791071A584EA3DDDF27B7A24745>.

116. The issue has been further complicated by NGO agitation against further counter-narcotics cooperation with Iran due to the latter's imposition of capital punishment for drug-related offenses, leading a number of Western nations to withdraw funding from otherwise highly successful UNODC programmes in the country.

limited scope of action that remains in the counter-narcotics field, falling far short of an hypothetical ideal. While this may appear frustrating, one should remember that these are by no means constraints that only affect the particular region under consideration in this report, but have been characteristic of the treatment of drugs in the international arena throughout the last century. Managing expectations is therefore an important element of understanding and managing counter-narcotic policy, as highlighted by McAllister in the opening lines of his much quoted exposition of international drug diplomacy:

“I discovered that, for more than a century, people all over the world have wrestled with the same haunting questions my students asked me. I still have no simple answers; this book does not propose magic-bullet policy solutions to eliminate the evils associated with drug abuse. Indeed, Drug Diplomacy suggests that the “drug problem” cannot be solved but only managed.”¹¹⁷

d) Complementarities: Institutional Comparative Advantage

For a relatively small regional organisation like ECO with a highly diverse membership and relatively modest financial and institutional capabilities the question thus arises how to best contribute to the discharge of its counter-narcotics mandate without duplicating already existing efforts carried out by better positioned organisations. It appears thus questionable that ECO -given its relatively modest budget, mandate, and manpower endowment; the relatively limited political will towards integration evinced by its member states; and its restricted direct reach to decision-making centres in its member states -can achieve legal integration and harmonisation between its member states going beyond what had already been achieved under the auspices of the United Nations.

It likewise appears unlikely that ECO could compete with the very considerable expertise that exists in that organisation, especially throughout UNODC, with respect to statistical data and training initiatives. As a dedicated international civil service, enjoying high levels of political and financial support, and an extensive legal mandate emanating from the conventions, the various parts of the UN family enjoy here a comparative advantage that is difficult to compete with, irrespective of the questionable assumption that ECO's member states desire it to engage in such competition.

As virtually all collocutors in this study have emphasised, the primary obstacle to more effective counter-narcotic collaboration between the three countries under consideration here does not lie in inadequate legal frameworks but in insufficient political will and inter-agency mistrust. It has furthermore been already mentioned

117. McAllister, *Drug Diplomacy in the Twentieth Century: An International History*, p. x.

that official relations between ECO member states and most certainly between some member states and third states continue to be characterised by high degrees of tension. Against this backdrop, formal integration measures such as the conclusion of novel treaty arrangements or institutional creation do not appear to have a high likelihood of success. Instead, the patient, incremental work of political and inter-agency confidence-building measures need to be undertaken.

As an organisation that already has the political mandate to engage officials and agencies from among its member states, that enjoys a certain reputation for neutrality, and that is not controlled by strong extra-regional players, ECO is in a good position to act as the facilitator for fostering practical collaboration between the various drug control agencies and their officials. Such liaisons require repetition and persistence in order to bear fruit, and any such initiatives should be undertaken in collaboration with and taking full advantage of the considerable technical expertise available in other regional and international organisations. The key to success is that ECO offers its member states something other organisations cannot offer, all the while ensuring that expectations are carefully managed.¹¹⁸

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