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Terrorism and drug trafficking

—Problems with the international legal framework on drug control*—

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Abstract

Recently, the links between terrorism and organised criminal activity have become stronger, and although the relationship between them has attracted considerable interest in the social sciences, the legal linkages are less well articulated. At present, an international drug control system has been established with the involvement of United Nations agencies and other organisations, centering on the three Conventions. They have, thus far, focused on the ‘criminal’ aspects of drug trafficking and have strengthened their response. However, this response, which has linked crime with drug trafficking, is currently under worldwide criticism. To enable a more comprehensive approach to all illegal activity, a detailed analysis of the characteristics of international terrorism and transnational organised crime must be undertaken, as well as an examination of the cross-sectoral applicability of present legal frameworks.

Keywords: international law, terrorism, drug trafficking, international drug control system

テロリズムと麻薬取引

—薬物規制に関する国際法枠組みの問題点—

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I Introduction

Even now, there is no generally agreed-upon definition of terrorism in international community. Instead, the international community has responded to terrorism by developing counter-terrorism conventions that focus on specific types of crimes, the nature of victims, and the types of terrorist acts.¹ However, especially after the 1990s, the link between terrorism and organised criminal activity has become stronger, and although the relationship between them has attracted considerable interest in the social sciences, the broad spectrum of legal linkages is less well articulated. The international

1 The following are typical examples: Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention, 1963); Convention for Suppression of Unlawful Seizure of Aircraft (Hague Hijacking Convention, 1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (Protection of Diplomats Convention, 1973); International Convention against the Taking Hostages (Hostages Convention, 1979); Convention on the Physical Protection of Nuclear Material (1980); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention, 1988); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA PROT, 1988); Convention on the Making of Plastic Explosives for the Purpose of Detection (1991); International Convention for the Suppression of Terrorist Bombings (Terrorist Bombings Convention, 1997); International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention, 1999); International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention, 2005); Amendment to the Convention on the Physical Protection of Nuclear Material (2005); Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA 2005, 2005); Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (SUA PROT 2005, 2005); Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention, 2010); Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol, 2010); and Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montreal Protocol, 2014).

legal framework for dealing with organised crime includes mainly the United Nations Convention against Transnational Organized Crime and three protocols (Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air; and Protocol against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components and Ammunition), the United Nations Convention against Corruption, and drug control conventions. Nevertheless, less well explored is the extent to which international terrorism can be effectively addressed through these legal frameworks.²

This article deals with the relationship between international terrorism and drug trafficking as a starting point to examining the legal relationship between international terrorism and various transnational crimes because as we shall see, drug trafficking is one of the most common transnational crimes committed by terrorist groups to finance their operations.³ The concept of 'narco-terrorism' originates from an understanding that the two phenomena of terrorism and narcotics trafficking are interconnected and that, subsequently, a coordination of anti-terror and anti-drug policy is necessary to effectively deal with both threats.⁴ Can the current legal framework effectively deal with these phenomena?

At present, illicit drugs are controlled by three conventions: the Single Convention on Narcotic Drugs 1961 (as amended by its Protocol 1972), the Convention on Psychotropic Substances 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. The international drug control system has been established with the involvement of various UN agencies and others, with these conventions as the core. This article describes the development and character of the international legal framework for drug control and examines the problems the current framework is facing.

II Relationship between Terrorism and Drug Trafficking

During the Cold War, the problems of terrorism and transnational organised crime were relatively insignificant and often considered separate phenomena.⁵ However, the end of the Cold War and the subsequent drop in state sponsorship for terrorism have pressured many terrorist groups to find

2 See, e.g., Ben Saul, "The Legal Relationship between Terrorism and Transnational Crime," *International Criminal Law Review*, Vol. 17, Issue 3 (2017), pp. 417-452.

3 *Ibid.*, p. 418.

4 Emma Björnehed, "Narco-Terrorism: The Merger of the War on Drugs and the War on Terror," *Global Crime*, Vol. 6, No. 3-4 (2004), p. 305.

5 Peng Wang, "The Crime-Terror Nexus: Transformation, Alliance, Convergence," *Asian Social Science*, Vol. 6, No. 6 (2010), p. 11.

financial and material support elsewhere.⁶ This has accelerated further after the terrorist attacks in the United States on 11 September 2001 (September 11 attacks). The global ‘War on Terrorism’, and in particular the constriction of the flow of financial support for terrorist groups, has depleted terrorist groups’ funding sources and made them increasingly reliant on criminal activity for funding and supplies.⁷

The UN Security Council Resolution 1373, adopted on 28 September 2001, shortly after the September 11 attacks, includes ‘with concern, the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials’ in paragraph 4. Drug trafficking is now considered to be the largest source of profits for both terrorists and international criminal organisations.⁸

In Colombia, the FARC (Revolutionary Armed Forces of Colombia) has sustained itself through cocaine trafficking for decades. Although the objective of the group was to overthrow the established order in Colombia and replace it with a socialist dictatorship, its principal source of funding was drug trafficking profits.⁹ It is also alleged that the KLA (Kosovo Liberation Army) was trafficking heroin and engaging in other organised crime in order to raise money for its operations during the Kosovo conflict.¹⁰ Ralf Mutschke of Interpol made a statement before the United States Congress in 2000 that ‘Albanian drug lords established elsewhere in Europe began contributing funds to the “national cause” in the 80s. From 1993 on, these funds were to a large extent invested in arms and military

6 Steven Hutchinson and Pat O’Malley, “A Crime-Terror Nexus? Thinking on Some of the Links between Terrorism and Criminality,” *Studies in Conflict & Terrorism*, Vol. 30, No. 12 (2007), p. 1095.

7 *Ibid.*, p. 1095.

8 Louise I. Shelley and John T. Picarelli, “Methods Not Motives: Implications of the Convergence of International Organized Crime and Terrorism,” *Police Practice and Research*, Vol. 3, No. 4 (2002), pp. 312–313.

9 The FARC became a legal political party after signing a peace agreement with the Colombian government in September 2016, but separatists opposed to the peace deal have continued terrorist activities. Before disarming, the FARC held control of around 70 percent of Colombia’s coca crops, the raw material for cocaine, and have been earning \$67.9 million a year from ‘taxes’ on 452,000kg of coca base. In addition, it is alleged that it earned \$169.5 million a year from moving drugs across borders into neighbouring Panama, Venezuela, Brazil and Ecuador, as well as \$30 million a year from taxing drug shipments passing through FARC territory, the drug laboratories they protected, and every drug-laden plane leaving their zones of influence. In total, the FARC made \$267 million a year from the cocaine trade. See e.g., Jeremy McDermott, “The FARC’s Riches: Up to \$580 Million in Annual Income,” *InSight Crime*, 6 September 2017, at <https://insightcrime.org/news/analysis/farc-riches-yearly-income-up-to-580-million/> (as of 1 October 2022).

10 United Nations Office on Drugs and Crime, *Crime and Its Impact on the Balkans and Affected Countries* (2008), p. 52.

equipment for the KLA, which made its first appearance in 1993... Of the almost 900 million DM which reached Kosovo between 1996 and 1999, half was thought to be illegal drug money'.¹¹ The PKK (Kurdistan Workers Party), operating in Turkey, is also known as a terrorist organisation financed by drug trafficking. Turkey, as the crossroads between Asia and Europe, is one of the major transit points for heroin from the Middle East into Europe. The PKK was primarily based in the Netherlands, France, Belgium, United Kingdom, and Germany, and its overall involvement in European drug trafficking is estimated to be close to 80 percent.¹² The ETA (Basque Homeland and Freedom movement) in Spain and Sendero Luminoso in Peru have been involved in drug trafficking since the 1970s, and the IMU (Islamic Movement of Uzbekistan), the Hizballah in Lebanon, and Abu Sayyaf in the Republic of the Philippines have also all profited from drug trafficking.¹³ In West Africa, there are also drug trafficking-fueled terrorist groups, like Boko Haram and its faction, the ISWAP (Islamic State West Africa Province), AQIM (Al Qaeda in Islamic Maghreb), and the Mouvement pour l'Unité et le Jihad en Afrique de l'Ouest.¹⁴

Perhaps a more well-known example is the Taliban in Afghanistan, which has long financed its activities through drug trafficking. Historically, Afghanistan has been a major source of heroin globally, and at least 85 percent of the world's heroin is sourced from Afghanistan.¹⁵ The United Nations Office on Drugs and Crime (UNODC) has held the Taliban responsible for 73 percent of all terrorism-related deaths in Afghanistan and approximately 13 percent of all terrorism-related deaths worldwide between 2000 and 2015, when the Taliban were profiting from drug trafficking and assuming greater control over regions in Afghanistan where opium poppy was cultivated, and estimated that the Taliban has earned about \$3 billion annually trafficking opium and heroin.¹⁶

A link between drug trafficking and terrorist groups, as implied in the term 'narco-terrorism', has been known to exist for decades; yet, the international focus on terrorism since the September 11 attacks has also increased the attention paid to the phenomenon of narco-terrorism. The term narco-terrorism was first used to describe campaigns by drug traffickers using terrorist methods, such as the use of car bombs, assassinations and kidnappings, against anti-narcotics police in Colombia and

11 Statement of Ralf Mutschke, Assistant Director, Criminal Intelligence Directorate, Interpol, before the Committee on Judiciary, Subcommittee on Crime on 13 December 2000, entitled 'The threat posed by the convergence of organized crime, drugs trafficking and terrorism.'

12 Haydar Karaman, "The Nexus between Illicit Drug Trafficking and Terror: The PKK as an Example of Hybrid Transnational Threat," *Manas Journal of Social Studies*, Vol. 10, No. 4 (2021), p. 2520.

13 Tamara Makarenko, "The Crime-Terror Continuum: Tracing the Interplay between Transnational Organised Crime and Terrorism," *Global Crime*, Vol. 6, No. 1 (2004), pp. 134-138.

14 Yashasvi Chandra, "Illicit Drug Trafficking and Financing of Terrorism: The Case of Islamic State, Al Qaeda and their Affiliate Groups," *Journal of Defence Studies*, Vol. 14, No. 1-2 (2020), p. 71.

15 *Report of the International Narcotics Control Board for 2021*, E/INCB/2021/1 (2022), p. 5.

16 *Ibid.*, p. 5.

Peru.¹⁷ Narco-terrorists, in this context, refers to individuals, such as the drug lord Pablo Escobar from the Medellín cartel in Colombia and other members of drug cartels, mafia or other criminal organisations, whose actions were defined as ‘the attempts of narcotics traffickers to influence the policies of government by the systematic threat or use of violence’,¹⁸ focusing on narcotics trafficking organisations. However, the United States Drug Enforcement Agency (DEA) states that ‘narco-terrorism may be characterised by the participation of groups or associated individuals in taxing, providing security for, or otherwise aiding or abetting drug trafficking endeavours in an effort to further, or fund, terrorist activities’,¹⁹ underlining the fact that terrorist groups use drug trafficking to gain revenue, which has attracted attention.²⁰ On this point, Björnehed argues that ‘[t]his makes the definition of narco-terrorism almost dual in character, where the emphasis placed on the drug aspect or the terrorism aspect may vary considerably’, and that ‘even with the acknowledgement of the duality of the term, narco-terrorism is a problematic concept and can be argued to complicate rather than facilitate discussions on the two concepts that it embodies’.²¹

Makarenko says that ‘[b]uilding on the precedent set by narco-terrorism, as it emerged in Latin America in the 1980s, the use of crime has become an important factor in the evolution of terrorism’, and that the 1990s can be described as the decade in which the crime-terror nexus was consolidated.²² Makarenko argues that organised crime and terrorism theoretically exist on the same plane and that it is necessary to recognise both as the ‘continuum’. And when they ‘converge’, a single entity simultaneously exhibits criminal and terrorist characteristics. Makarenko examines this continuum by considering four different forms of relationships between the two types of organisations: alliances, operational motivations, convergence and the ‘black hole’,²³ explaining that organisations are placed on the crime-terror continuum with regard to the governing motivations of their acts and the environment in which they operate, and that the crime-terror continuum changes in terms of the motivation governing group action, resulting in the position of an organisation being fluid rather than fixed.²⁴ Thus, various aspects of the linkages between terrorism and organised crime have been examined,

17 Sandro Calvani, “United Nations Perspective” paper presented at The Crime-Terrorism Nexus: How does it really work?, Virginia, 12 March 2004, pp. 6–14.

18 Canadian Security Intelligence Service Commentary No. 13, Terrorism and the Rule of Law: Dangerous Comprise in Colombia (1991), p. 1.

19 Asa Hutchinson, “Statement of Asa Hutchinson, Administrator Drug Enforcement Administration, before Senate Judiciary Committee, Subcommittee on Technology, Terrorism, and Government Information,” 13 March 2002, p. 2.

20 Björnehed, *supra* note 4, p. 306.

21 *Ibid.*, pp. 306–307.

22 Makarenko, *supra* note 13, p. 130.

23 *Ibid.*, pp. 130–131.

24 *Ibid.*, pp. 130–131.

especially in the social sciences.²⁵ However, the broad spectrum of legal linkages is less well articulated.

As noted above, there is no generally agreed-upon definition on terrorism in the international community and it has, therefore, taken the approach of developing conventions focusing on specific types of terrorist activities. Most of those conventions avoid referring to ‘terrorism’, with the exception of the three conventions: 1997 International Convention for the Suppression of Terrorist Bombings; 1999 International Convention for the Suppression of the Financing of Terrorism; and 2005 International Convention for the Suppression of Acts of Nuclear Terrorism. As a result, the vast majority of what could practically be considered terrorist activities were prohibited by these conventions. This pragmatic approach enables the repression of a lot of terrorism while side-stepping the irreconcilable problem of definition, especially during the post-war period of decolonisation when states were unable to agree on the legitimacy of violence by liberation movements. In this regard, Saul states that ‘[t]he result has been functional transnational cooperation, even if there remain regulatory gaps because of the reactive, ad hoc nature of treaty-making’.²⁶ Nevertheless, less thought has been given to how effectively international terrorism can be responded to through a legal framework to repress other transnational crimes. The situation is similar for the linkages between international terrorism and drug trafficking.

At present, illicit drugs are controlled by three conventions: the 1961 Single Convention on Narcotic Drugs (as amended by its 1972 Protocol), the 1971 Convention on Psychotropic Substances, and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. These illicit drug conventions do not specifically refer to terrorism. Nevertheless, as noted above, the UN Security Council has been concerned about the ‘close connection’ between international terrorism and illicit drugs and has, therefore, urged states to ratify illicit drug conventions,²⁷ so there is no doubt that illicit drug conventions are regarded as the main legal

25 See e.g., Alex P. Schmid, “Links Between Transnational Organised Crime and Terrorist Crimes,” *Transnational Organized Crime*, Vol. 2, Issue 4 (1996), pp. 40-82; John T. Picarelli, “The Turbulent Nexus of Transnational Organised Crime and Terrorism,” *Global Crime*, Vol. 7, No. 1 (2006), pp. 1-24; Frank Bovenkerk and Bashir Abou Chakra, “Terrorism and Organised Crime,” in Leslie Holmes (ed.), *Terrorism, Organised Crime and Corruption: Networks and Linkages* (Edward Elgar, 2007), pp. 28-39.

26 Ben Saul, “Terrorism as a Legal Concept,” in Genevieve Lennon and Clive Walker (eds.), *Routledge Handbook of Law and Terrorism* (Routledge, 2015), p. 24.

27 The UN Security Council resolution 2195 urges ‘as a matter of priority that Member States ratify, accede to, and implement the relevant international conventions, such as the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United Nations Convention against Transnational Organized Crime of 2000, the Protocol thereto and the United Nations Convention against Corruption of 2003, and the international counter-terrorism conventions and protocols.’ UN Doc. S/RES/2195, 19 December 2014, para. 3.

framework for international drug control.

III International Drug Control System

1 Development of Drug Control Conventions

While the use of psychoactive substances itself extends back many centuries, today's international drug control system is rooted in efforts made a century ago to address the largest substance abuse problem the world has ever faced: the Chinese opium epidemic.²⁸ Opium consumption spread widely in China during the late Qing dynasty, and in 1839, the Qing government forced opium traders to pledge not to bring opium into the country and incinerated large quantities of opium, which caused a war with Britain and brought drug problems to international attention.²⁹ In the United States, too, cocaine imports jumped to an amount five times as high in two years after the imposition of strict controls on opium in 1904, leading to serious abuse. The American Episcopal Bishop of the Philippines, Charles Henry Brent, urged then-US President Theodore Roosevelt to hold international talks on the opium trade, and in 1909, Roosevelt convened delegates from 13 states in Shanghai to call for the International Opium Commission to prevent the international distribution of drugs and crack down on the illicit use of opium.³⁰ Since then, several international conferences on drug control have been held, and each time, an international treaty was adopted, resulting in 9 treaties in existence by 1960.³¹

28 United Nations Office on Drugs and Crime, *A Century of International Drug Control* (2009), p. 13.

29 Daniel Heilmann, "The International Control of Illegal Drugs and the U. N. Treaty Regime: Preventing or Causing Human Rights Violations?," *Cardozo Journal of International and Comparative Law*, Vol. 19, Issue 2 (2011), p. 241.

30 Ian G. Waddell, "International Narcotics Control," *American Journal of International Law*, Vol. 64, No. 2 (1970), p. 311.

31 The nine treaties are as follows: International Opium Convention (Hague, 1912); Agreement concerning the Suppression of the Manufacture of, International Trade in, and Use of, Prepared Opium (Geneva, 1925); International Opium Convention (Geneva, 1925); Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs (Geneva, 1931); Agreement concerning the Suppression of Opium Smoking (Bangkok, 1931); Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (Geneva, 1936); 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 (Lake Success, 1946); 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 (Paris, 1948); and Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and use of Opium (New York, 1953).

International efforts have been made by these treaties to control the epidemic and spread of drugs and to eliminate their harmful effects, but because these treaties have many overlapping parts in terms of their contents, and because their respective parties are different and their procedures and measures have been very complicated and inconsistent, the need to organise and consolidate these treaties on drugs into one single treaty has become keenly felt.³² At the 4th session of the Commission on Narcotic Drugs, held in Lake Success in 1949, it was decided that efforts would be initiated to draft a new 'single convention' in accordance with UN Economic and Social Council (ECOSOC) Resolution 159 (VII) IID, and in January 1961, a draft was deliberated at the UN headquarters in New York, attended by representatives of 73 states, and the Single Convention on Narcotic Drugs was adopted in March of the same year. Subsequently, in 1972, the Protocol amending the Single Convention on Narcotic Drugs of 1961 was adopted, which included strengthening the powers of the International Narcotics Control Board (INCB) established under the Single Convention, and the Convention on Psychotropic Substances was adopted in 1971 to impose the similar regulations on psychedelic drugs, such as LSD and barbiturates.

Amongst the three main objectives of the 1961 Single Convention were the consolidation of existing international treaties, the extension of the control system to include plant-based substances, such as coca, cocaine and cannabis, and the reorganisation of the United Nations drug enforcement mechanisms.³³ Consolidation was achieved with a marked preference for the penal aspects of previous agreements, emphasising the sharp distinction between lawful trade and unlawful trafficking, and requiring states to establish control measures.³⁴ It was established that parties shall take legislative and administrative measures to give effect to and carry out the provisions of the Convention within their own territories and to cooperate with other states in the execution of the provisions of the Convention (Article 4). The Parties shall not permit the possession of drugs except under legal authority (Article 33), and subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of the Convention, and any other action which in the opinion of such Party may be contrary to the provisions of the Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty (Article 36). The Single Convention has attracted the support of so many parties that its historical significance

32 Heilmann, *supra* note 29, p. 244.

33 Richard Vogler and Shahrzad Fouladvand, "The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 and the Global War on Drugs," in Pierre Hauck and Sven Peterke (eds.), *International Law and Transnational Organised Crime* (Oxford University Press, 2016), p. 115.

34 *Ibid.*, p. 115.

will not be in doubt.³⁵

The 1971 Convention on Psychotropic Substances reproduces the structure and approach of the Single Convention, addressing the key problem as one of supply, dividing synthetic drugs into four schedules, and applying controls through a similar infrastructure. However, the enthusiasm for the Psychotropic Convention amongst most members of the international community, mindful of the importance of their own pharmaceutical industries, was considerably weaker than for the Single Convention.³⁶

The Single Convention and the Psychotropic Convention, both of which place the cultivation, manufacture, possession, sale, importation and exportation of drugs under a licensing and authorising system and require punishments for violations, are structured primarily to regulate the distribution and use of drugs. However, despite the strict international and national control that accompanied the adoption of these treaties, the methods of bringing in and trafficking drugs became increasingly sophisticated year by year, and by the mid-1980s, it became clear that global drug abuse had reached unprecedented proportions.³⁷ This situation led to the recognition by the UN General Assembly in 1984 that it was necessary to prepare a convention that would consider various aspects of the problem that had not been considered in the existing international instruments.³⁸ In response to the UN General Assembly resolution in 1984, the UN ECOSOC directed its subsidiary body, the Commission on Narcotic Drugs (CND), to begin work on a new treaty, which was to be considered. After deliberations at the CND in 1987, meetings by intergovernmental experts between 1987 and 1988, as well as meetings by the review group in 1988, the 1988 Convention was adopted.

The main accomplishment of the 1988 Convention is that it extends controls to the entire market chain, including precursors at the beginning of the chain, to anti-money laundering measures at the end of the chain.³⁹ The 1988 Convention requests that each party adopts such measures as necessary to establish as criminal offences under its domestic law, when committed intentionally, the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substances contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention. The 1988 Convention also requests that each party criminalises the organising, managing or financing of any of these offences (Article 3 (1) (a)). Furthermore, the 1988 Convention requests that each party criminalises the conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph a), or from

35 Mahmoud Cherif Bassiouni, "Critical Reflections on International and National Control of Drugs," *Denver Journal of International Law and Policy*, Vol. 18, No. 3 (1989), p. 313.

36 Vogler and Fouladvand, *supra* note 33, pp. 116–117.

37 United Nations Office on Drugs and Crime, *supra* note 28, pp. 65–66.

38 UN Doc. A/RES/39/141, 14 December 1984.

39 Heilmann, *supra* note 29, p. 250.

an act of participation in such offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such offences to evade the legal consequences of their actions (Article 3(1)(b)(i)), and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing that such property is derived from offences established in accordance with subparagraph a) or from an act of participation in such offences (Article 3(1)(b)(ii)). It further requests that each party adopts such measures as necessary to enable the confiscation of proceeds derived from offences under the Convention, and to identify, trace and freeze or seize proceeds, property, instrumentalities or any other things for the purpose of eventual confiscation (Article 5).

2 United Nations Drug Control Agencies

The international drug control system, built on the basis of the Single Convention, the Psychotropic Convention and the 1988 Convention, is comprised of three agencies: the Commission on Narcotic Drugs (CND), the United Nations Office on Drugs and Crime (UNODC) and the International Narcotics Control Board (INCB).

(1) Commission on Narcotic Drugs (CND)

As a subsidiary body of the ECOSOC, the CND is currently composed of 53 member states. The CND's functions are to monitor the implementation of international conventions and agreements, to advise the ECOSOC on all matters pertaining to the control of narcotic drugs under international conventions, and to make recommendations and draft conventions to strengthen drug control.⁴⁰ On this foundation, the CND functions as the protector of the three international drug conventions. In each convention, the CND is authorised to consider and make recommendations on all matters pertaining to the aim and implementation of conventions (Article 8 of the Single Convention, Article 17 of the Psychotropic Convention and Article 21 of the 1988 Convention).

(2) United Nations Office on Drugs and Crime (UNODC)

In 1991, the United Nations International Drug Control Programme (UNDCP) was established as an agency within the United Nations to deal comprehensively and integrally with drug issues. The United Nations Crime Prevention and Criminal Justice Programme (UNCPCJP) was also established in the same year, but in addition to drug control and drug crime prevention, it was integrated in 1997 as the United Nations Office for Drug Control and Crime Prevention (UNODCCP) with the aim of combating organised crime, including human trafficking and money laundering, as well as corruption. It was renamed the UNODC in 2002.

⁴⁰ UN Doc. E/RES/1946/9(I), 16 February 1946.

In addition to serving as the secretariat of the CND, the UNODC has 115 field offices in addition to its headquarters in Vienna to provide practical support to member states in implementing relevant conventions. It also supports the early accession of non-signatories and the development of national legislation, investigates and analyses illicit drugs and crime, leads anti-drug projects, provides funding and technology, and coordinates international technical cooperation.

(3) International Narcotics Control Board (INCB)

The INCB was established in 1968 as a monitoring body for the implementation of the Single Convention, and later, it also began monitoring the application of the Psychotropic Convention and a specific provision of the 1988 Convention (Article 12). Implementation measures for monitoring the application of conventions include receiving reports containing the estimates and statistical information of narcotic drugs, compiling them to consider the adequate amount required for medical and scientific purposes, and to limit the cultivation, production, manufacture and use of drugs.

The INCB can consider non-compliance with conventions. In Article 14 of the Single Convention, '[i]f, on the basis of its examination of information submitted by Governments to the Board under the provisions of this Convention, or of information communicated by United Nations organs or by specialized agencies or, provided that they are approved by the Commission on the Board's recommendation, by either intergovernmental organizations or international non-governmental organizations which have direct competence in the subject matter and which are in consultative status with the Economic Social Council under Article 71 of the Charter of the United Nations or which enjoy a similar status by special agreement with the Council, the Board has objective reasons to believe that the aims of this Convention are being seriously endangered by reason of the failure of any Party, country or territory to carry out the provisions of this Convention, the Board shall have the right to propose to the Government concerned the opening of consultations or to request it to furnish explanations'.⁴¹ The INCB may call upon the governments concerned 'to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions' of conventions (Article 14(1)(b) of the Single Convention, Article 19(1)(b) of the Psychotropic Convention and Article 22(1)(b)(i) of the 1988 Convention), and further, if the governments concerned have failed to adopt any remedial measures, it may call for the attention of the parties, the ECOSOC and the CND to the matter (Article 14(1)(d) of the Single Convention, Article 19(1)(c) of the Psychotropic Convention and Article 22(1)(b)(iii) of the 1988 Convention).

Apart from these agencies, the World Health Organization (WHO) provides drug-related services from a health perspective, while the international drug control system is built around the CND, the UNODC and the INCB.

41 Article 19 of the Psychotropic Convention and Article 22 of the 1988 Convention have similar provisions.

IV Growing Criticism of the International Drug Control System

As noted above, the 1988 Convention requests that each party adopts such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substances contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention. However, this ‘criminalisation’ is said to have led to an almost worldwide surge in the prison population.⁴² Especially in the United States, Russia and China, mass imprisonment for drug offences has been practiced, but the majority of European, Latin American and Asian states have also seen a major increase in their drug-related prison populations.⁴³ In a position paper presented in 2008, the Secretary-General of the UNODC admitted that the application of the drug control system has had several ‘unintended consequences’.⁴⁴

The first unintended consequence is a significant *criminal black market* that now thrives and aims to move prohibited substances from producers to consumers. The second is a *policy displacement*, in which more resources are diverted to public security and the law enforcement that underpins it than to public health, the first principle of drug control, as a result of the recognition that public security is the primary, or at least the most effective, way to solve the drug problem. The third is *geographical displacement*, which is often also called the balloon effect because squeezing (by tighter controls) one place produces a swelling (namely, an increase) in another place, although it may well be accompanied by an overall reduction.⁴⁵

42 Martin Jelsma, *The Development of International Drug Control: Lessons Learned and Strategic Challenges for the Future* (Transnational Institute, 2011), p. 8.

43 Tom Blickman and Martin Jelsma, “Drug Policy Reform in Practice: Experiences with Alternatives in Europe and the US,” *Nueva Sociedad*, No. 222 (2009), p. 6.

44 “Making Drug Control ‘Fit for Purpose’: Building of the UNGASS Decade,” *Report by the Executive Director of the United Nations Office on Drugs and Crime as a Contribution to the Review of the Twentieth Special Session of the General Assembly*, UN Doc. E/CN.7/2008/CRP.17, 7 May 2008, pp. 10–11.

45 In the report, geographical displacement is described as follows: ‘[s]uccess in controlling the supply of illicit opium in China in the middle of the 20th century, for example, displaced the problem to the Golden Triangle. Later success in Thailand displaced the problem to Myanmar. A similar process unfolded in Southwest Asia from the 1970s onward. Supply control successes in Turkey, Iran and Pakistan eventually displaced the problem to Afghanistan. In the 21st century, displacement indirectly connected Southeast and Southwest Asia: as opium production declined in Myanmar, it increased markedly in Afghanistan, although there were other forces at play—namely the role of insurgents and terrorists in promoting opium cultivation, heroin/morphine processing and their trafficking. Cocaine production trends in the Andean countries show a similar dynamic: as supply was reduced in Peru and Bolivia, in the second half of the 1990s it displaced to Colombia, again as a complement to insurgency and violence.’ *Ibid.*, pp. 10–11.

The fourth is *substance displacement*. If the use of one drug was controlled by reducing either supply or demand, suppliers and users both moved on to another drug with similar psychoactive effects but less stringent controls. The fifth is *the way we perceive and deal with the users of illicit drugs*. As a result of system-building, people who fall into the web of addiction are excluded from mainstream society, marginalised, morally stigmatised and unable to find treatment, even when they may be motivated to pursue it.

In this context, recognising these and other ‘unintended consequences’ of the international drug control system, several parties have adopted a variety of methods of defection or resistance. Vogler and Fouladvand cite the following pragmatic strategies adopted to undermine or evade the stricter terms of the conventions: 1) active use of ‘loopholes’, such as the unusual wording of Article 3 of the 1988 Convention;⁴⁶ 2) ‘soft defection’, whereby states attempt to circumvent the accepted provisions of the conventions through creative interpretation; and 3) ‘harm reduction’.⁴⁷

Of these, with regard to ‘soft defection’, there are some states in which the possession of a certain quantity of drugs for personal use is completely decriminalised, and there are many where this is no longer a priority for law enforcement. Spain, Italy, Portugal and Luxembourg, for example, do not consider the possession of drugs for personal use a punishable offence. In the Netherlands, Germany and the Czech Republic, possession for personal use remains unlawful, but guidelines are established for police, public prosecutors and courts to avoid imposing any punishment, including fines, if the amount is insignificant or for personal consumption. Other states impose administrative sanctions and only very few states (Sweden, Latvia and Cyprus) exercise the option to impose prison sentences for the possession of even small amounts.⁴⁸

Harm reduction generally refers to policies and practices aimed to reduce adverse health, social and economic consequences of the use of psychoactive drugs (controlled drugs, alcohol, pharmaceutical drugs) the drug users, their families and the community without necessarily ending drug consumption.⁴⁹ In 2003 the European Council of Ministers adopted harm reduction as the common position of the European Union (EU), and it was included in the EU Drugs Strategy for 2005–2012 and the EU Action Plan on Drugs (2005–2008).⁵⁰ Harm reduction has been also championed by the International Red Cross, and its practices are

46 A number of states have entered variety of reservations to the international drugs control conventions. Robin Room, “Reform by Subtraction: The Path of Denunciation of International Drug Treaties and Reaccession with Reservations,” *International Journal of Drug Policy*, Vol. 23, Issue 5 (2012), pp. 403–405.

47 Vogler and Fouladvand, *supra* note 33, pp. 120–121.

48 Blickman and Jelsma, *supra* note 43, p. 7.

49 *Ibid.*, p. 3.

50 *Council Recommendation of 18 June 2003 on the Prevention and Reduction of Health-Related Harm Associated with Drug Dependence* (2003/488/EC); COM (2005) 45 final, Communication from the Commission to the European Parliament and the Council on an EU Drugs Action Plan (2005–2008), Brussels, 14 February 2005.

rapidly expanding, even by states with very strict anti-drug laws.⁵¹

Anand Grover, the UN Special Rapporteur on the ‘right of everyone to the highest attainable standard of physical and mental health’, recommends that states ‘decriminalize or de-penalize [the] possession and use of drugs’, ‘repeal or substantially reform laws and policies inhibiting the delivery of essential health services to drug users’ and ‘review law enforcement initiatives around drug control to ensure compliance with human rights obligations’.⁵²

The Global Commission on Drug Policy (GCDP), created in January 2011 by a group of personalities from the Americas and Europe, including former heads of state and government, aiming to inspire better drug policy globally, stated in its first report:

‘The global war on drugs has failed, with devastating consequences for individuals and societies around the world. Fifty years after the initiation of the UN Single Convention on Narcotic Drugs, and 40 years after President Nixon launched the US government’s war on drugs, fundamental reforms in national and global drug control policies are urgently needed’.⁵³

In its Report of 2014, the GCDP argues that ‘the UN global drug control regime has the “health and welfare of mankind” as its ultimate goal. But overwhelming evidence points to not just the failure of the regime to attain its stated goals but also the horrific unintended consequences of punitive and prohibitionist laws and policies’. Following this statement, the GCDP lays out five paths to reforming drug policy: 1) putting health and community safety first; 2) ensuring equitable access to controlled medicines; 3) ending the criminalisation of people who use or possess drugs; 4) promoting alternatives to incarceration for low-level participants in illicit drug markets, including cultivators; and 5) encouraging policy innovations, such as legally regulated markets, beginning with, but not limited to, cannabis, coca leaf and certain other psychoactive substances.⁵⁴

Later on, the GCDP has focused on the decriminalisation of people who use drugs,⁵⁵ countering prejudices towards people who use drugs,⁵⁶ government control of currently illegal drug markets

51 Blickman and Jelsma, *supra* note 43, p. 4.

52 *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, UN Doc. A/65/255, 6 August 2010, p. 24, para. 76.

53 Global Commission on Drug Policy, *War on Drugs: Report of the Global Commission on Drug Policy* (2011), p. 2.

54 Global Commission on Drug Policy, *Taking Control: Pathways to Drug Policies That Work* (2014), pp. 17–31.

55 Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalization* (2016).

56 Global Commission on Drug Policy, *The World Drug Perception Problem: Countering Prejudices about People Who Use Drugs* (2017).

through responsible regulation⁵⁷ and the problems posed by substance scheduling.⁵⁸ The 2020 report examines how to respond to transnational organised crime in drug policy.

While acknowledging that illegal drug markets provide an immense source of power and revenue for organised criminal groups, the GCDP argues:

“That has remained the case despite the vast investment of political, financial, social, and military capital into the global “war on drugs,” which has also generated a vast and tragic human cost. Far from curtailing drug markets, which are in fact expanding in scale and complexity worldwide, repressive criminal justice and military response to drug trafficking have exacerbated the already profound impacts of drug-related organized crime, from prolific violence in certain states to increased corruption, and undermined political and economic stability’.⁵⁹

What the GCDP points to is the problems of the system. The approaches of the international drug control system—focusing ideologically on suppressing illegal drug production, trade, and use—have often unintentionally undermined international cooperation on countering the systemic weaknesses that allow organised crime to flourish. According to the GCDP, these approaches have also put the emphasis on low-level actors in the criminal trade and blurred definitions and levels of responsibility within the criminal chain, which has been exacerbated by the ineffectiveness of the multilateral system to lead international cooperation against illegal drug proceeds and crime.⁶⁰ The GCDP also critically argues that there is no strategic framework or inter-departmental coordination body focusing on organised crime, including terrorism, within the UN system despite the UN mandates and responses to organised crime cutting across the system, with 70 percent or more of UN departments having some mandate or initiative related to organised crime.⁶¹ The GCDP, therefore, recommends the following:

“The siloed and uncoordinated responses currently provided only add to the existing challenges. There is no justification in addressing drugs at the CND from a pre-dominant perspective of crime. Only a comprehensive approach to drugs such as that recommended by the “UN system common position on drug-related matters” can address organized crime without further

57 Global Commission on Drug Policy, *Regulation: The Responsible Control of Drugs* (2018).

58 Global Commission on Drug Policy, *Classification of Psychoactive Substances: When Science Was Left Behind* (2019).

59 Global Commission on Drug Policy, *Enforcement of Drug Laws: Refocusing on Organized Crime Elites* (2020), p. 6.

60 *Ibid.*, p. 35.

61 *Ibid.*, p. 35.

increasing harms. UN member states must consider merging the 1961 and 1971 Conventions complemented by precursor control and terminating the 1988 “UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.” This would broaden the mandate of the CCPCJ as the functional commission on crime and provide coherence to the fight against organized crime’.⁶²

V Concluding Remarks

Drug trafficking is considered the largest source of revenue for both criminal organisations and terrorist groups, and the linkages between drug trafficking and terrorism attract significant global interest. However, the application of the term ‘narco-terrorism’ can risk conflating very different phenomena and, thereby, impede the complex, evolving dynamics of volatile conflict situations. Criminal and terrorist actors often operate in the same contexts of insecurity, state absence, economic deprivation and inter-communal tensions; yet, this does not automatically equate to ‘narco-terrorism’.⁶³ In that sense, the relationship between drug trafficking and terrorism should not be exaggerated, and the characteristics of both phenomena needs to be scrutinised.

The international drug control system established by international conventions has focused on the ‘criminal’ aspects of drug trafficking and has strengthened its response. Nevertheless, at present, this has led to a ‘repressive’ law enforcement approach in drug policies, leading to the criticism that by focusing repressive drug policies on low-level offenders and people who use drugs, states have aggravated harms to public health, generated human rights violations, overwhelmed criminal justice systems and used valuable resources that should have targeted the most serious organised crime groups.⁶⁴ Apart from the pros and cons of consolidating the Single Convention and Psychotropic Convention and terminating the 1988 Convention as proposed by the GCDP, the question of how to respond to criticisms that human rights have not been adequately taken into account in drug policies will have to be considered.⁶⁵

On the other hand, in order to enable a comprehensive approach to all illegal activity, a detailed analysis of the characteristics of international terrorism and transnational organised crime must be undertaken, as well as the cross-sectoral applicability of present legal frameworks.

62 *Ibid.*, p. 38.

63 *Ibid.*, p. 17.

64 *Ibid.*, p. 13.

65 *See, e.g.,* Heilmann, *supra* note 29, pp. 271–288.