

DRUG TRAFFICKING AS A TRANSNATIONAL CRIME*

Uluslararası Bir Suç Olarak Uyuşturucu Ticareti Suçu

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ABSTRACT

The growth of economic interdependence among states, the development of rapid transport and communications systems, the vast increase in international trade, and the emergence of a global financial market have dramatically changed the context within which transnational crime operates. Transnational crimes have taken advantage of new opportunities provided by globalism.

Drug trafficking is a transnational phenomenon, and includes the production, processing, transportation and distribution of drugs, and the laundering of the profits derived from this activity. The drug trade is still expanding, both geographically and in terms of its products. Several important trends in the drug-trafficking industry have become evident in the last few years. More and more states are being drawn into the orbit of drug traffickers and transnational criminal organizations. Combating the illicit production and distribution of drugs has been traditionally regarded as principally a matter for law enforcement agencies. The globalization of criminal activities and the ability of narcotics trafficking to undermine the political and economic sovereignty of states have already made the illicit drug trade a significant security issue for many states and a primary strategic concern for the most seriously affected.

This article aims to make an analysis of drug trafficking and outline the dimensions of drug trafficking as a transnational crime. This study also focuses on a historical review of the international drug control system. In addition, this article discusses one possible means for bringing international drug traffickers to justice: the exercise of universal jurisdiction over persons accused of drug trafficking crimes.

Key Words: drug, drug trafficking, transnational crime, organized crime, universal jurisdiction, International Criminal Court.

* This article has been written in Law School University of Sussex (The United Kingdom) with the support of The Scientific and Technological Research Council of Turkey (TUBITAK). The views which is expressed in this article reflect the views of the scholar.

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ÖZET

Devletler arasında ekonomik bağımlılığın artması, iletişim ve ulaşım sistemlerindeki hızlı gelişme, uluslararası ticaretteki büyük artış ve küresel bir finans piyasasının ortaya çıkışı uluslararası suç aktörlerinin davranışlarını ciddi ölçüde değiştirmektedir. Uluslararası alanda faaliyet gösteren suç aktörleri küreselleşmenin sağladığı bu yeni olanakları kullanmaktadır.

Uyuşturucu ticareti, imal, üretim, taşıma ve dağıtım ile bu süreçten sağlanan kârların ekonomik sisteme sokulmasını içine alan küresel bir sorun olarak karşımıza çıkmaktadır. Uyuşturucu madde ticareti, hem coğrafi hem de ortaya çıkardığı sonuçlar bakımından halen genişlemekte ve son yıllarda yasal olmayan uyuşturucu piyasasında oluşan yeni eğilimler belirgin hale gelmektedir. Günümüzde, uyuşturucu tacirleri ve uluslararası suç örgütleri giderek daha fazla devleti faaliyet alanlarına dahil etmektedir. Yasal olmayan uyuşturucu üretim ve dağıtımını ile mücadele, devletlerin güvenlik birimlerinin uğraştığı geleneksel, temel ve güncel sorunlardan biri olmaya devam etmektedir. Devletlerin ekonomik ve siyasi bağımsızlığını zayıflatan suç faaliyetinin küreselleşmesi ve uyuşturucu maddelerin dağıtım imkanları, yasal olmayan uyuşturucu ticaretini bir çok devlet için çok önemli etkileri olan bir güvenlik sorununa dönüştürmektedir.

Bu çalışma, uyuşturucu ticareti suçunu uluslararası bir suç olarak çeşitli yönleri ile incelemeyi amaçlamakta ve uyuşturucu maddeler ile ilgili uluslararası alanda oluşturulan kontrol sistemini açıklamaya çalışmaktadır. Çalışmada, ayrıca uyuşturucu ticareti suçlarının ve suçlularının uluslararası bir yargılamaya tabi tutulup tutulamayacağı konusu tartışılmaktadır.

Anahtar Sözcükler: Uyuşturucu madde, uyuşturucu ticareti, uluslararası (sınırşan) suç, organize (örgütlü) suç, uluslararası yargılama, Uluslararası Ceza Mahkemesi



1. INTRODUCTION

The evolution of globalization has fundamentally changed the context in which both legitimate and illegitimate businesses operate. Globalization is coupled with an ideology of free markets and free trade, as well as a decline in state intervention. According to advocates of globalization, reducing international regulations and barriers to trade and investment will increase trade

and development. But crime groups have exploited the enormous decline in regulations, the lessened border controls, and the greater freedom to expand their activities across borders and into new regions of the world. As a result, globalization has contributed to an enormous growth in crime across borders, as criminals exploit the ability to move goods and people¹.

Increased interdependence among countries and the globalization of financial networks have created global markets for both licit and illicit commodities². A dark side of globalization has been the growth of transnational organized crime³. The somber side of globalization is a complicated network of illicit markets ranging from drug and arm trafficking to the smuggling of humans into slavery and prostitution. These illicit industries, or black markets, are the product of globalization, and they represent some of the gravest problems in all societies spanning the globe⁴.

A number of landmark events have coincided with this shift: the creation of free-trade blocks such as the European Union and the 1986 North American Free Trade Agreement (NAFTA); the advent of the World Wide Web beginning in 1990; the collapse of the Soviet Union in 1991; and the commercialization of China (including the hand-over of Hong Kong on July 1, 1997). As the activities and interests of criminal organizations have become more global, they have begun to enter into strategic alliances with other criminal groups to gain access to new markets, and to take advantage of their brethren's unique criminal skills⁵. Illicit networks have leveraged the processes and new oppor-

¹ See Shelley Louise, "The Globalization of Crime", *International Crime and Justice*, Ed. Mangai Natarajan, Cambridge University Press, 2011, p.4.

² The increase in international trade in illicit products and services parallels the growth in international trade more generally that accompanies the phenomenon of globalization. See Findlay Mark, "The Globalisation of Crime", *Australian Quarterly*, Vol. 71, No. 4, Jul. - Aug. 1999, pp.23-27.; Thomas Chantal, "Disiplining Globalization: International Law, Illegal Trade and the Case of Narcotics", *Michigan Journal of International Law*, Vol. 24, Winter 2003, pp.549-575.; Thomas Chantal, "Globalization and the Reproduction of Hierarchy", *U.C. Davis Law Review*, Vol.33, Summer 2000, p.1451.

³ See Scherrer Amandine, *G8 against Transnational Organized Crime*, Ashgate Publishing, 2009, p.30.

⁴ See Jenner Matthew S., "International Drug Trafficking: A Global Problem with a Domestic Solution", *Indiana Journal of Global Legal Studies*, Vol. 18, Issue 2, Summer 2011, p.902.

⁵ Richards James R., *Transnational Criminal Organizations, Cybercrime, and Money*

tunities arising from globalization and capitalized on weak institutions and gaps in governance around the world to expand their enterprises. As more people take advantage of the freedom of movement and of widely available and less costly travel opportunities, as more goods and tens of thousands of containers cross international borders, it is harder for the authorities to detect the illicit consignment and the criminal.

One of the largest and most profitable of illicit industries is the market for illicit drugs. Estimated at over \$500 billion a year, the illegal drug trade is an international business that has sustained itself for over forty years⁶. Consistently high consumer demand and appetite for drugs ensures an attractive and extremely lucrative market for the criminal to exploit. Porous borders and weak border controls in many countries contribute to the problem⁷. The various forms of transnational organized crime, particularly drug trafficking, pose a threat to the security and stability of states, undermining the rule of law and damaging their societies and communities.

2. THE RELATIONSHIP OF DRUG TRAFFICKING AND TRANSNATIONAL CRIME

a. Transnational Crime

The degree to which the problem of transnational crime has become a truly global phenomenon during the past three decades is remarkable. Transnational crime became a principal threat around the world, and international drug trafficking is perhaps the most well known of these crimes⁸. Criminal

Laundering, CRC Press, 1999, p.1.

⁶ See Jenner, 2011, p.902.

⁷ See Bantekas Ilias & Nash Susan, *International Criminal Law*, Third Edition, 2007, p.233. "The post-1990 era, with the advent of globalised trade and physical movement of persons, witnessed an increase in organised crime, originating especially from the former Eastern bloc, necessitating a different approach to the problem. Two factors have generally contributed to the eruption of organised crime at the dawn of the 21st century: the emergence of 'weak' States and corruption."

⁸ The increase in transnational economic activity has made it easier to hide illicit transactions, products and movements because law enforcement agencies and customs officers are unable to inspect more than a small proportion of the cargoes and people coming into their territories. Illegal drugs have emerged as a global commodity of immense significance. It is likely that illicit drugs will become an even more significant commodity in the future. See

networks bribe government officials and take advantage of weak border security and ill-equipped law enforcement to facilitate their operations. Due to the enormous profits associated with drug trafficking, the illegal trade is also a way to finance other transnational criminal and terrorist activities⁹. In recent years, transnational crime has increased significantly because of the disintegration of the former Soviet Union, the collapse of the Berlin Wall, the elimination of border controls, and immigration from other parts of the world¹⁰.

The term 'transnational crime' is commonly used by criminologists, criminal justice officials and policymakers, and one of the first major issues that researchers and practitioners tackled was defining transnational crime¹¹. Addressing transnational crime is a challenge¹². Not only is it complex, involving a widespread number of actors, but crime that crosses borders is a burgeoning phenomenon¹³. The term 'transnational crime' is in widespread use as a generic concept covering a multiplicity of different kinds of criminal activity¹⁴. Historically, the crime of slavery, piracy and smuggling has existed since antiquity. During the 1980s, transnational crime came to describe a much broader array of criminal activities, with an increase in attention to drug trafficking,

Williams Phil, "Transnational Criminal Organisations and International Security", *Survival: Global Politics and Strategy*, Vol.36, No.1, 1994, pp.96-113.

⁹ Strategy to Combat Transnational Organized Crime, Addressing Converging Threats to National Security, The United States, July 2011, p.6.

¹⁰ See Swanstrom Niklas, "The Narcotics Trade: A Threat to Security? National and Transnational Implications", *Global Crime*, Vol.8, Number 1, 2007, pp.1-25.

¹¹ See Nadelmann, Ethan Avram, *Cops Across Borders: Transnational Crime and International Law Enforcement*, Harvard University, Theses, 1987, p.9.

¹² See Mueller Gerhard O.W., "Transnational Crime: Definitions and Concepts", *Combating Transnational Crime, Concepts, Activities and Response*, Ed. Williams Phil, Vlassis Dimitri, Psychology Press, 2001, p.13. "It must be noted that the term 'transnational crime' did not have a juridical meaning then, and it does not have one now. It is a criminological term, under which may be lumped what is variously and differently defined in the penal codes of states, but with the common attribute of transcending the jurisdiction of any given state. We also observed then that, almost invariably, transnational criminality is organized criminality, although it is entirely imaginable that a single person can engage in transnational crime."

¹³ Parrish Austen L., "Domestic Responses to Transnational Crime: The Limits of National Law", *Criminal Law Forum*, Vol.23, Issue 4, December 2012, p.279.

¹⁴ Boister, Neil, "Transnational Criminal Law?", *European Journal of International Law*, Vol. 14, No. 5, 2003, p.954.; Jamieson Alison, "Transnational Organized Crime: A European Perspective", *Studies in Conflict & Terrorism*, Vol.24, Number 5, 2001, p.378.

smuggling of illegal aliens, arms smuggling, currency offenses, fraud and terrorism¹⁵.

The definition of transnational crime has evolved, reflecting the increasing complexity and international nature of the phenomenon. The term 'transnational'¹⁶ is used most often to mean the movement of information, money, physical objects, people, or other commodities across national boundaries, when at least one of the actors involved in the transaction is nongovernmental¹⁷. Various countries have different definitions of transnational crime depending on very different law systems and philosophies¹⁸. By definition, transnational crime is crime that violates the laws of more than one state¹⁹, or transnational crimes are criminal acts or transactions that span national borders, thus, violating the laws of more than one country²⁰.

The term 'transnational crime' was first used at the Fifth United Nations (UN) Congress on Crime Prevention and the Treatment of Offenders in 1975 by the UN Crime Prevention and Criminal Justice Branch "in order to identify certain criminal phenomena transcending international borders, transgressing the laws of several states or having an impact on another country"²¹.

¹⁵ See Felsen David & Kalaitzidis Akis, "A Historical Overview of Transnational Crime", *Handbook of Transnational Crime and Justice*, Ed. Philip Reichel, Sage Publications, 2005, pp.9-10.

¹⁶ Transnational crime entered the discourse of criminology in the 1970s at roughly same time that transnationalism entered the vocabulary of other social science. See Felsen & Kalaitzidis, 2005, p.4.

¹⁷ See Keohane R. & Joseph Nye, *Transnational Relations and World Politics*, Harvard University Press, 1971.

¹⁸ The concept of transnational crime, sometimes called international crime or multinational systemic crime, is more than an extension of domestic crime. Transnational crime is a social phenomenon involving people, places and institutions, which is also influenced by a variety of social, cultural, economic determinants. See Wang Peng & Wang Jingyi, "Transnational Crime: Its Containment through International Cooperation", *Asian Social Science*, Vol. 5, No. 11, November 2009, p.26.

¹⁹ See Boister, 2003, p.954. "At its simplest, transnational crime describes conduct that has actual or potential transboundary effects of national and international concern".

²⁰ See Natarajan Mangai, Introduction, *International Crime and Justice*, Ed. Mangai Natarajan, Cambridge University Press 2011, p.25.; McDonald, W., *Crime and Law Enforcement in the Global Village*, Cincinnati, OH Anderson Publishing, 1997.

²¹ See Boister Neil, *An Introduction to Transnational Criminal Law*, Oxford University Press, 2012, p.4. "An offence is 'transnational' if it satisfies one of a number of alternative conditions: (a) it is committed in more than one state; (b) it is committed in one state but

We can find a definition of transnational crime in Article 3 of the United Nations Convention against Transnational Organized Crime of 2000 (or Palermo Convention). Article 3(2) states that an offence is transnational in nature if it is committed in more than one state, if a substantial part of its preparation takes place in a state other than the one where it is committed, if it involves organized criminal groups active in more than one State, or if it has substantial effects in another state²².

It is important to recognize that there is no consensus about the precise meaning of the term 'transnational crime'. It is different from international crimes, which are recognized by and can therefore be prosecuted under international criminal law, and domestic crimes that fall under one national jurisdiction. The United Nations (UN) has defined transnational crimes as offences whose inception, prevention and/or direct or indirect effects involved more than one country²³. The UN has also identified 18 different categories of transnational crime. These are: money laundering, terrorist activities, theft of art and cultural objects, theft of intellectual property, illicit traffic in arms, sea piracy, hijacking on land, insurance fraud, computer crime, environmental crime, trafficking in persons, trade of human body parts, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal business, corruption and bribery of public officials, and finally other offences committed by organized criminal groups²⁴.

Although organization is not a necessary condition of transnational crime,

a substantial part of its preparation, planning, direction, or control takes place in another state; (c) it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; or (d) it is committed in one state but has substantial effects in another State."

²² See Illuminati Giulio, "Transnational Inquiries in Criminal Matters and Respect for Fair Trial Guarantees", *Transnational Inquiries and the Protection of Fundamental Rights in Criminal Proceedings*, Ed. Stefano Ruggeri, Springer-Verlag, Berlin Heidelberg 2013, p.19.

²³ See *Global Programme against Transnational Organized Crime, Results of a Pilot Survey of Forty Selected Organised Criminal Groups in Sixteen Countries*, United Nations Office on Drugs and Crime, September 2002, p.4.

²⁴ See Mueller, 2001, p.14. "Serious discussion of the 18 categories is handicapped not only by the lack of precision in definitions, but especially by the difficulty of gauging the extent -or cost -of the criminality involved."

transnational crime is heavily associated with organized crime and terrorism²⁵. A variety of definitions, several classification systems, models and typologies are developed to explain organized crime²⁶. But, the term 'organized crime' has not been given satisfactory definition or description²⁷. Like the meaning of organized crime, the definitions of terrorism also change over time and a different form of terrorism has emerged after World War II²⁸. The growth of networks has strengthened the links between illicit markets in different commodities as well as relations between individual groups within the criminal world²⁹. Even outside the organized-crime context, criminal activity now commonly transcends national borders³⁰.

²⁵ See Boister, 2012, p.6; Galeotti Mark, "Introduction: Global Crime Today", *Global Crime*, Vol. 6, No. 1, February 2004, p.3.; Spapens Toine, "Macro Networks, Collectives, and Business Processes: An Integrated Approach to Organized Crime", *European Journal of Crime, Criminal Law and Criminal Justice* 18, 2010, pp.185-215.; Jamieson, 2001, p.378.; Williams, 1994, p.96.

²⁶ "The term can be used to refer to certain types of more sophisticated criminal activities embedded, in one form or another, in complex illicit markets. Arms, drug, and human trafficking are often correlated with a set of 'enabling activities' such as (the threat of) violence, corruption, and money laundering." See Hauck Pierre & Peterke Sven, "Organized Crime and Gang Violence in National and International Law, *International Review of the Red Cross*", *International Review of the Red Cross*, Vol. 92, Issue 878, June 2010, p.409.

²⁷ The European Council defines criminal organization in the first paragraph of Article 1 of Joint Action 98/733/JHA "It means a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or by a more serious penalty." See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005PC0006,15.07.2014>.

²⁸ See Mei Leong Angela Veng, *The Disruption of International Organised Crime*, Ashgate Publishing Company, 2007, p.26. "Different approaches should be adopted at different times in different societies and perhaps there is no need for an exact definition of organised crime....On one hand, the terrorists tend to shift to organised criminal activities in obtaining the necessary funding, on the other hand, the organised crime groups tend to resemble the cellular terrorist structures...Furthermore, with innovative development in technology, the tools and methods available to both organised criminals and terrorists have and are still changing. Cyberterrorism is one of the best examples."

²⁹ Jamieson, 2001, p.380.

³⁰ See Hall Tim, "Economic Geography and Organized Crime: A Critical Review", *Geoforum*, Vol. 41, Issue 6, November 2010, pp.841-845.; "Now, Colombian drug cartels are operating in Western Europe; Russian gangsters are operating in Eastern Europe, the United States, and Asia; the Chinese Triads dominate Asia and the west coast of the United States; and the Mexican criminal organizations dominate the world methamphetamine trade. Not only are these organizations operating globally, they are forming strategic alliances with each other, with rogue governments, and with terrorist organizations." See Richards, 1999, p.26.

Globalization and the resulting unprecedented openness in trade, travel, and communications has created significant opportunities for criminals to prosper and broaden their illegal activities by crossing borders³¹. Criminal law was inherently territorial and confined to use exclusively within a nation's borders, countries have begun to enact criminal laws that purport to regulate the conduct of foreigners abroad. Extraterritorial, unilateral, domestic law that punishes illegal conduct wherever it occurs has become a key response in the fight against transnational crime³². Many countries have a number of extraterritorial criminal laws in the world³³.

Transnational crimes harm a range of different private and public interests including security, human rights, social interests, religious beliefs, and morality³⁴. These crimes pose a significant and growing threat to national and international security, with dire implications for public safety, public health, democratic institutions, and economic stability across the globe³⁵. As a result, transnational crimes have been discussed as an international security issue and some state that these crimes are now emerging as a serious threat to national and international security and stability in their own right³⁶.

Some³⁷ argue that international society's concern with the upsurge in certain kinds of criminal activities within a state is considered legitimate because of the fear that these activities will have a knock-on effect in other states.

³¹ Parrish, 2012, p.277.

³² The term extraterritoriality includes jurisdiction over a country's own nationals (nationality jurisdiction), over foreign conduct that causes harm within a state's border (effects jurisdiction or objective territoriality), over foreign conduct that threatens state security or interferes with the operation of government functions (protective principle), over foreign conduct where the victim is a national (passive personality), and over certain kinds of universally agreed upon crimes (universality). See Parrish, 2012, p.280.

³³ See Berman, Paul Schiff, "The Globalization of Jurisdiction", University of Connecticut School of Law Articles and Working Papers. Paper 13, 2002, available at: <http://www.aals.org/profdev/civpro/berman2.pdf>, 15.07.2014.

³⁴ See Boister, 2012, p.7.

³⁵ Strategy to Combat Transnational Organized Crime, 2011, p.5.

³⁶ See Boister, 2012, p.7.; McFarlane John, McLennan Karen, Transnational Crime: The New Security Paradigm, Strategic and Defence Studies Centre, Australian National University, 1996.

³⁷ Dupont Alan, "Transnational Crime, Drugs, and Security in East Asia" Asian Survey, Vol. 39, No. 3, May - Jun. 1999, University of California Press, pp.433-455.

Firstly, transnational criminal activities can pose a direct threat to the political sovereignty of the state because they have the capacity to undermine and subvert the authority and legitimacy of governments. Fears about the criminal erosion of political sovereignty are echoed in a second and related concern about economic security. Thirdly, the growth in the coercive power of organized crime, if unchecked, has international security implications because large-scale criminal enterprise can subvert the norms and institutions that underpin global order and the society of states. Finally transnational crime has an important military and strategic dimension, which can take a number of different forms. Criminal activities, particularly those conducted on a large scale and involving significant international cooperation, have moved along the threat continuum toward the traditional concerns of the national security apparatus³⁸.

Besides domestic law, international society responded to the globalization of harmful conduct by beginning to develop suppression conventions in the 19th century³⁹. The use of treaty law to establish international prohibition regimes is intended to minimize or eliminate the potential havens from which certain crimes can be committed and to which criminals can flee to escape prosecution and punishment⁴⁰. In this context, transnational criminalization today rests upon assumptions about the legitimate political, social and economic interests of states, and assertions about the harm caused to these interests by the conduct criminalized.

Some argue that transnational crime is a rapidly growing phenomenon and, responding to this growth, 'transnational criminal law'⁴¹ is probably the

³⁸ See Naylor R.T., "From Cold War to Crime War: The Search for a New "National Security" Threat", *Transnational Organized Crime*, Vol. 1, No. 4, Winter 1995, pp.37-56. Ciccarelli John, "Crime as a Security Threat in the 21st Century", *Journal of the Australian Naval Institute*, Vol.22, Issue 4, November/December 1996, pp.41-44.

³⁹ Boister, 2003, p.955.

⁴⁰ See Nadelmann Ethan A., "Global Prohibition Regimes: The Evolution of Norms in International Society", *International Organization*, Vol. 44, No. 4, Autumn 1990, pp. 479-526.

⁴¹ See "Why Use the Term 'Transnational Criminal Law'?..the term 'ICL' implies a direct relationship between international society and the criminal in question, and in the indirect system there is none. A drug trafficker may break the law of a particular state, but he or she

most significant existing mechanism for the globalization of substantive criminal norms⁴². From this viewpoint, transnational criminal law is concerned with the treaty crimes excluded from the jurisdiction of the International Criminal Court. Unlike international criminal law, transnational criminal law does not create individual penal responsibility under international law. The individual penal responsibility under international criminal law has required a greater density of institutionalization than that required to suppress transnational crime. The establishment of the International Criminal Court, the application of absolute universal jurisdiction and the classification of crimes as international crimes are all institutional manifestations of the application of individual criminal responsibility to certain offences under international law. On the other hand, transnational criminal law is an indirect system of interstate obligations generating national penal laws. The suppression conventions impose obligations on state parties to enact and enforce certain municipal offences⁴³. Transnational criminal law includes the rules of national jurisdiction under which a state may enact and enforce its own criminal law where there is some transnational aspect of a crime. It also covers methods of cooperation among states to deal with domestic offences and offenders where there is a foreign element and the treaties which have been concluded to establish and encourage this inter-State cooperation. These treaties provide for mutual legal assistance and extradition between States in respect of crimes with a foreign element⁴⁴. Briefly, the aim of transnational criminal law is to suppress inter- and intra-state criminal activity that threatens shared national interests or values.

is not an international criminal and there is no international crime of drug trafficking. On the other hand, including this system within national criminal law obscures its provenance and the international obligations that exist to implement and enforce it." Boister, 2003, p.974.

⁴² See Boister, 2003, p.956.

⁴³ Boister, 2003, p.962.

⁴⁴ See Cryer Robert, Friman Hakan, Robinson Darryl & Wilmshurst Elizabeth, *An Introduction to International Criminal Law and Procedure*, 2nd Edition, Cambridge University Press, June 2010, p.6. "A similar terminological distinction between 'international criminal law' (criminal aspects of international law) and 'transnational criminal law' (international aspects of national criminal laws) can also be found in other languages, such as German ('Völkerstrafrecht' compared with 'Internationales Strafrecht'), French ('droit international pénal' and 'droit pénal international') and Spanish ('derecho internacional penal' and 'derecho penal internacional').".

It tries to achieve this aim through the suppression conventions projecting substantive criminal norms beyond the national boundaries of the state in which they originated⁴⁵. Within this framework ‘transnational criminal court’ has been proposed to fight against transnational organized crime⁴⁶.

Lastly, according to some⁴⁷, until recently, there was not a clear distinction in the literature between international criminal law with its more restricted meaning and transnational criminal law. Transnational criminal law, with its focus on domestic criminal law and on inter-State cooperation in the sphere of criminal law, remains the body of ‘international criminal law’.

b. The United Nations Convention against Transnational Organized Crime

The United Nations began a push towards dealing with transnational crime in the late 1990’s. Since the early 1990s the UN General Assembly had detected the increase and expansion of organized criminal activity worldwide. In 1994, the World Ministerial Conference on Organized Transnational Crime adopted the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, which, inter alia, addressed the issue of convening a conference for the negotiation of a convention on the matter. By Resolution 53/111 the General Assembly established an Ad Hoc Committee for the purpose of elaborating a convention and three additional protocols⁴⁸. In 1997, the United Nations Office on Drugs and Crime was established to provide knowledge and strategies on combating all issues related to drugs and crime, including terrorism, corruption, and human trafficking. Soon after the office was established debate began on several conventions dealing with the topics of the office. After a series of 11 sessions between 1999 and 2000, the United Nations Convention against Transnational Organized Crime (The Palermo Convention or CATOC) and two Additional Protocols were adopted

⁴⁵ Boister, 2003, p.968.

⁴⁶ See Boister Neil, “International Tribunals for Transnational Crimes: Towards a Transnational Criminal Court?”, *Criminal Law Forum*, Vol. 23, 2012, No. 4, pp. 295-318.

⁴⁷ See Cryer, Friman, Robinson & Wilmschurst, 2010, p.6.

⁴⁸ The three additional Protocols are supplementary and subordinate to CATOC. See Bantekas & Nash, 2007, p.237.

in late 2000⁴⁹, while another one on firearms was adopted on 31 May 2001.

The Palermo Convention represents the first attempt to include in one single binding document all the concepts and measures necessary to fight organized crime on a global scale⁵⁰, and is one of the most relevant and acknowledged legal instruments currently in existence for the conceptualization of transnational organized crime. The declared purpose of the Convention is ‘to promote cooperation to prevent and combat transnational organized crime’⁵¹. Among its provisions are the criminalization of participation in an organized crime group, action against a wide range of illicit trafficking activities, and measures to prevent and repress criminal penetration of the legal sector⁵².

The Palermo Convention provides a broad spectrum of cooperation instruments, and sets out a range of measures to be adopted by states parties to enhance effective law enforcement. Among others, it is worth mentioning mutual assistance in the enforcement of coercive measures (arrest, seizure, confiscation); the rules for establishing jurisdiction over the offence and coordinating state actions in this respect; the improvement in mutual assistance in taking evidence and providing information; the establishment of joint investigative bodies; the conclusion of agreements on the use of special investigative techniques; and the establishment of channels of communications between the competent authorities⁵³. In addition, it addresses the protection of witnesses and victims, data collection and exchange, training and technical assistance, and special investigative techniques⁵⁴. Some argue that the Palermo Convention is the most important and comprehensive international instrument to combat organized crime⁵⁵.

⁴⁹ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the Protocol Against the Smuggling of Migrants by Land, Sea and Air; and the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. See Hauck & Peterke, 2010, pp.424-425.

⁵⁰ See Betti Stefano, *The European Union and the United Nations Convention against Transnational Organised Crime*, European Parliament, Civil Liberties Series, 2011.

⁵¹ See Hauck & Peterke, 2010, pp.420-421.

⁵² Jamieson, 2001, p.385.

⁵³ See *Illuminati*, 2013, p.19.

⁵⁴ See Hauck & Peterke, 2010, p.423.

⁵⁵ See Hauck & Peterke, 2010, p.423. “ ...Convention... is the most important and

The Palermo Convention establishes five distinct offences: (a) participation in organized criminal groups; (b) money laundering; (c) corruption; and (d) obstruction of justice⁵⁶. Moreover, “serious crime” is defined in such a way as to include all significant criminal offenses. The reference to the commitment of serious crimes gives states considerable latitude in deciding whether to criminalize a specific form of conduct as being constitutive of an organized criminal group. As a result, states will be able to use the convention to address a wide range of modern criminal activity including trafficking and related exploitation as well as migrant smuggling⁵⁷. In addition, the criminalization obligation addresses one of the key reasons for the existence of the Convention⁵⁸.

In 2003, the United Nations Convention against Transnational Organized Crime and Protocols Thereto entered into force, calling upon states to harmonize domestic laws regarding transnational crime and set up offices specifically designed to allow mutual crime investigations to cooperate between countries⁵⁹. Also entering into force in 2003 was the United Nations Convention against Corruption, aiming to update, harmonize, and create laws regarding corruption to press states to detect and punish corrupt officials much more aggressively⁶⁰.

comprehensive international instrument to combat organized crime...As it obliges states to establish the aforesaid offences ‘independently of the transnational nature or the involvement of an organized criminal group’, its impact goes beyond improving and promoting international co-operation against transnational organized crime and thus helps to create ‘a common language in the fight against organized crime’ in general.” .

⁵⁶ See Bantekas & Nash, 2007, p.234.

⁵⁷ See Gallagher Anne, “Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis”, Human Rights Quarterly, Vol. 23, 2001, p.978.

⁵⁸ See Gallagher, 2001, p.979. “States parties will, however, be required to criminalize 1) participation in an organized criminal group, 2) laundering of the proceeds of crime, and 3) public sector corruption as defined under the convention. These offenses (along with “obstruction of justice”) are also to be made subject to appropriate sanctions.”.

⁵⁹ See <http://www.unodc.org/unodc/treaties/CTOC/>,15.07.2014.

⁶⁰ See Watson Luke, *Suppression of Transnational Crime and the Trade in Illegal Drugs*, Old Dominion University Model United Nations Society, 2013, p.4. “Unfortunately, in the states with the weak institutions that allowed the criminal outfits to flourish, criminals and corrupt officials are reticent to turn themselves in to authorities. The problem resides in the fact that transnational crime is still fought as domestic crime and the measures taken don’t treat the causes of the criminal activities.”.

3. THE PROBLEM OF DRUG TRAFFICKING AND DRUG TRENDS

Humans have always used drugs (or psychoactive substances) for medicinal, social, religious, and nutritional purposes⁶¹. Drugs have been used throughout history by various cultures for various purposes. Consumption of, opium, marijuana, coca, and many other drugs originated in prehistory, archaeological evidence suggests that as far back as 2000 B.C., opium was used in Cyprus, Crete, and Greece for various ritualistic purposes. Drugs comprised an important trade item since the beginning of commercial interaction. Merchants, migrants, and conquerors introduced their culture's substances to others, thereby stimulating the traffic⁶². When European colonial powers established trade links and acquired territory in the Americas, Africa and Asia, they took advantage of the commercial possibilities of the new drugs they discovered being used by the societies they encountered, and they encouraged drug production and trade⁶³. The supply of opium from India to China remains the classic example of such a situation. Scientific advances in the nineteenth century also meant that more hazardous substances were becoming available in the West. Morphine and later heroin were derived from opium, cocaine from the coca leaf and mescaline from the peyote cactus. The use of these drugs was initially approved by the medical profession on the basis of their apparent benefits, but disapproval followed as more rigorous studies showed few positive and many negative effects⁶⁴.

Drug trafficking is a global shared problem that brings threat to every country, and poses one of the most serious challenges to the fabric of society in the US, Western Europe and many drug-producing countries, which have also become consumers of their product⁶⁵. International drug consumption

⁶¹ Drugs have been used since ancient times, and their use has been well documented as a subject of social history. See Bulletin on Narcotics, A Century of International Drug Control, United Nations Office on Drugs and Crime, Ed. Sandeep Chawla, New York, 2009, p.3.

⁶² See McAllister William B. , Drug Diplomacy in the Twentieth Century, An International History, New York, 2000, p.9.; Goodman J., Lovejoy P., and Sherratt A. (eds), Consuming Habits: Drugs in History and Anthropology, Routledge, London, 1995, pp. 33-34.

⁶³ See Nadelmann, 1987, p.60.

⁶⁴ See Boister Neil Brett, The Suppression of Illicit Drugs through International Law, University of Nottingham, 1998, p.29-30.

⁶⁵ See Williams, 1994, p.107.

has increased to some 230 million users of illicit drugs according to the United Nations Office of Drugs and Crime (UNODC)⁶⁶ and the production is increasing rapidly to satisfy this large number of illegal drug abusers. As a result of persistent demand worldwide, the global flow of drugs remains high. Drug trafficking is the most crucial and most dangerous phase of the illicit drug market, thousands of kilograms of illegal drugs cross international borders daily, leaving the hands of violent traffickers and entering the lives of drug dealers and addicts⁶⁷. The illicit trade in drugs continues to have a devastating impact on the developing world, both economically and socially⁶⁸. The drug trade has a direct effect on human, military, political and economic security, and the impact on the different aspects of security varies in different regions and states⁶⁹. The social problems caused by the use of illicit drugs are difficult to quantify, but include health problems and the loss of peoples' participation in ordinary society⁷⁰. This problem has become one of the major criminal activities of organized crime groups that plan, operate and control the deals across national boundaries.

The recognition that drug trafficking is linked to other serious criminal

⁶⁶ See United Nations, World Drug Report 2012; Boister, 2012, p.50.; The United Nations Office on Drugs and Crime's (UNODC) yearly "World Drug Report" is one of the most comprehensive resources on the state of the global drug trade, and is also one of the few reports that attempts to calculate the total value of the global market. See Haken Jeremy, Transnational Crime In The Developing World, Global Financial Integrity, February 2011, p.3. See Jenner, 2011, p.902.

⁶⁷ See Jenner, 2011, p.902.

⁶⁸ Drug trafficking currently forms an integral component of several states' economies, threatens to undermine political and judicial systems, has become a leading cause of domestic crime, and is an increasing burden on states' health and welfare systems. Furthermore, issue of drug trafficking has become a friction point in relations among states, most notably those between the United States and a number of Latin American countries. See Sproule D.W. & St-Denis, Paul, "The UN Drug Trafficking Convention: An Ambitious Step", The Canadian Yearbook of International Law, Vol. 27, 1989, p.264.

⁶⁹ See Swanstrom, 2007, p.22.

⁷⁰ See Bantekas & Nash, 2007, p.239.

activity, including terrorism⁷¹ and money laundering⁷², has raised concern in the international community that trafficking has the potential to destabilize society⁷³. It is clear that the drug trade is directly related to terrorism and separatism since these organizations are supported to an increasing extent by drugs⁷⁴. In this context, the term 'narco-terrorism'⁷⁵ is used to describe the existence of drug cartels and drug trade within the terrorist groups. Furthermore, drug trafficking is considered the largest profit of transnationally operating crime groups. State weakness seems to be one of the more important reasons behind the increase in the successful transit and production of drugs. For example, without the weak states in Central Asia and Southeast Asia it would be much harder to move the drugs to their markets and produce them at a low cost⁷⁶.

The criminal networks have shown a high degree of flexibility in their choice of production states and transit routes, and they rely on the lack of political

⁷¹ Some argue that the international traffic in illicit drugs contributes to terrorist risk through at least five mechanisms: supplying cash, creating chaos and instability, supporting corruption, providing cover and sustaining common infrastructures for illicit activity, and competing for law enforcement and intelligence attention. See Kleiman Mark A.R., *Illicit Drugs and the Terrorist Threat: Causal Links and Implications for Domestic Drug Control Policy*, Domestic Social Policy Division, Congressional Research Service, 2004, p.1.; The U.S. Drug Enforcement Administration (DEA) reports that the number of designated foreign terrorist organizations (FTOs) involved in the global drug trade has jumped from 14 groups in 2003 to 18 in 2008, See Rollins John, Wyler Liana Sun, Rosen Seth, "International Terrorism and Transnational Crime: Security Threats, U.S. Policy, and Considerations for Congress", Congressional Research Service, January 5, 2010, p.2.

⁷² Money laundering is described as "the process by which one conceals the existence, illegal source, or illegal application of income and then disguises that income to make it appear legitimate". See Schroeder William R., "Money Laundering: A Global Threat and the International Community's Response", *FBI Law Enforcement Bulletin*, Vol. 70, Issue 5, May 2001, pp.1-9.; *Estimating Illicit Financial Flows Resulting From Drug Trafficking and Other Transnational Organized Crimes*, United Nations Office on Drugs and Crime, Vienna Austria, Research Report, 2011, p.32.

⁷³ See Bantekas & Nash, 2007, p.239.

⁷⁴ Swanstrom, 2007, p.24.

⁷⁵ Some consider the term too broad and may occasionally reflect political motives. By various definitions, narco-terrorism could be applied to a wide range of groups, ranging from guerrilla organizations to small, fledgling terrorist cells. Wagley John R., *Transnational Organized Crime: Principal Threats and U.S. Responses*, Congressional Research Service, March 2006, p.3.; Mei Leong, 2007, p.23.

⁷⁶ Swanstrom, 2007, p.22.

and military cohesion and state incapability⁷⁷. For example, when production moved to Afghanistan due to its instability and good environment for growing opium, transit routes changed from Iran and Pakistan towards Central Asia due to its instability and Iran's war against the drug trade⁷⁸.

Most illicit drugs are grown and processed in poor countries where economic opportunities are scarce, law enforcement is weak, and are sold or consumed in developing countries⁷⁹. For example, cocaine is produced in Peru, Bolivia, and Colombia, most of it is destined for the North American market⁸⁰. It is estimated that cocaine is produced for export at \$950 to \$1,235 a kilogram and sold at the wholesale level in the United States for \$10,500 to \$36,000 a kilogram. Another example is heroin, a kilogram of heroin costs about \$3,000 to produce, but it sells wholesale in the U.S. for \$95,000 to \$210,000⁸¹.

Drug trafficking has four links⁸²: production⁸³ of raw materials, refinement into the usable product, transportation⁸⁴ to the market, and wholesale and retail distribution⁸⁵, and there are mainly two types of drug trafficking: one is smuggling of illicit drugs through borders while the other one is when drugs are distributed within the nation. Illicit drugs transit through many state,

⁷⁷ See Swanstrom, 2007, p.22.

⁷⁸ Swanstrom, 2007, p.22.

⁷⁹ Illicit drugs are cultivated, manufactured and supplied by individuals from economically poorer states because drugs represent valuable sources of income. See Boister, 1998, p.14.

⁸⁰ See Dzedzic Michael J. "The Transnational Drug Trade and Regional Security", *Survival: Global Politics and Strategy*, Vol. 31 Number 6, 1989, pp.533-548.; Nadelmann, 1987, p.178.

⁸¹ See http://fpif.org/drug_trafficking_and_money_laundering/, 15.07.2014.

⁸² See Boister, 2012, p.50.

⁸³ 'Production' is the agricultural separation of opium, coca leaves, cannabis and cannabis resin from the plant, 'cultivation' includes within its scope the unregulated, illicit, prohibited cultivation of the opium, poppy, coca bush, or cannabis plant, 'manufacture' means all process, other than production, by which the drugs are obtained and includes refining as well as the transformation of drugs into other drugs. See Boister, 2012, p.54.

⁸⁴ 'Transportation' involves the conveying drugs from one place to another by any mode through any medium, the 'import' and 'export' of drugs is the physical transfer of drugs from one State to another State, or from one territory to another territory of the same State. See Boister, 2012, p.54.

⁸⁵ 'Distribution' ensures that drugs move through the chain of supply from producer to consumer, 'purchase' the buying of drugs for resale or use, 'sale' the disposal of drugs for some consideration. See Boister, 2012, p.55.

and are distributed widely⁸⁶. The international drug trafficking system is set up like a hierarchy, manufacturer of drugs would recruit people to smuggle drugs through borders, and then these drugs would be handed over to people known as drug dealers that would connect them to the buyers, the money made by the drug dealers would be used to pay the drug smugglers. The narcotics trade is strictly organized in different networks, controlling criminal activity in all steps from production to consumer markets. Through these networks, Afghanistan, as the primary producer of opium, is directly connected to Europe, Russia, China, Central Asia and Iran; the USA, China and Japan are directly connected to Southeast Asia, as the second largest producer of opium, and the USA to Latin America, as the largest producer of coca⁸⁷.

The impact of drug trafficking has not fallen equally on all regions of the globe. Cocaine started to create problems in North America and Europe towards the end of the nineteenth century. Heroin was first synthesized in 1874 by an English chemist, C. R. Alder Wright, and was rediscovered by the German pharmaceutical company Bayer in 1895 and marketed as a cough suppressant under the name of heroin as from 1898, quickly gaining market shares around the globe and emerging as the world's most dangerous drug in the twentieth century⁸⁸. Most of the psychotropic substances or synthetic narcotics available today had not even been invented a century ago. Some of the most common these drugs were discovered in the beginning twentieth century, and in the years around the Second World War a number of new synthetic of the narcotics were developed. For example, methcathinone was first patented in Germany in 1928; LSD, prevalent through the 1960s and the 1970s, was first synthesized in 1938. Amphetamine and methamphetamine were synthesized earlier (1887 and 1888, respectively), but were not actively marketed before the 1930s. Since the 1980s the illicit manufacture and trafficking of amphetamine-type stimulants has increased⁸⁹.

According to the World Drug Report (2010), the international drug trade

⁸⁶ See Boister, 2012, p.51.

⁸⁷ See Swanstrom, 2007, p.3.

⁸⁸ See A Century of International Drug Control, 2009, p.65.

⁸⁹ See A Century of International Drug Control, 2009, p.135.

is centered on four main types of drugs: cocaine, opiates (heroin and opium), amphetamine-type stimulants (ATS), and cannabis. Some figures show that around 4 percent of the world's population takes illegal drugs, and five main commodities are dominant: opiates such as heroin (14 million users worldwide), cocaine (14 million), amphetamine-type stimulants (30 million), hallucinogens (25 million) and cannabis (140 million)⁹⁰. The global consumption of cocaine, heroin, and amphetamine-type stimulant has grown dramatically over the past three decades⁹¹.

Sources of drugs are spread around the world; briefly, cannabis is cultivated widely, but with concentrations in Africa and the Americas; Asia is the largest source of opiates; cocaine is produced almost exclusively in South America and synthetics are produced in Europe, Asia and North America. The most widely abused and heavily trafficked by volume is cannabis, which is consumed by at least 140 million people worldwide⁹². While cannabis is known to be transported illegally across borders, it is difficult to draw conclusions about the directionality of the flows between developing and developed countries. The production of cocaine and opiates takes place entirely in developing countries. Myanmar (Burma) and Afghanistan are the two major opium-growing countries, and Pakistan has emerged as a major processor of Afghan heroin. The Balkan and Northern routes are the main heroin trafficking corridors linking Afghanistan to the huge markets of the Russian Federation and Western Europe⁹³. Heroin production was estimated to be 330 tons, with 90% being grown in the Golden Triangle and the Golden Crescent (Afghanistan, Iran, and Pakistan) regions and intended for a global market. While

⁹⁰ See Galeotti, 2004, p.2.

⁹¹ See, UNODC World Drug Reports, 2010, 2012.

⁹² See Williams Jenny & Bretteville-Jensen Anne Line, "Does Liberalizing Cannabis Laws Increase Cannabis Use?", *Journal of Health Economics*, Vol. 36, 2014, p.22. "Cannabis users account for 80% of the 200 million illicit drug users in the world. In countries such as the US, the UK and Australia, over 30% of the population have used cannabis and they have done so despite it being illegal."

⁹³ The Balkan route traverses the Islamic Republic of Iran (often via Pakistan), Turkey, Greece and Bulgaria across South-East Europe to the Western European market, the northern heroin route runs through Tajikistan and Kyrgyzstan to Kazakhstan and Russian Federation. See *The Globalization of Crime, A Transnational Organized Crime Threat Assessment*, United Nations Office on Drugs and Crime, 2010, p.110.

opium cultivation and heroin production stabilized during the 1990s, the use and abuse of ATS soared, especially in North America, Europe, and East Asia⁹⁴. The Colombian cocaine cartels have also diversified into heroin, and there is some evidence that heroin use is on the upsurge in the US⁹⁵. During the 1980s, cocaine production doubled and heroin production tripled, creating 13 million cocaine addicts and 8 million heroin addicts globally. Peru and Bolivia are becoming leaders among cocaine producing countries⁹⁶. Ninety percent of all the cocaine that is imported into the United States passes through Mexico, one-third of all the marijuana in the United States comes from Mexico⁹⁷. Amphetamine-type stimulants are also produced and sold intraregionally across the world. Synthetic drugs are gaining in strength and since it is relatively easy to produce these substances this will increase the prevalence of narcotics in all states; we have seen evidence of this trend in Holland, China and Russia where numbers of users have increased significantly⁹⁸. Precursor control is the only effective way of controlling amphetamine-type stimulants supply because there is no botanical raw material to target, and no geographical distance between areas of production and of consumption⁹⁹.

Patterns of drug consumption are constantly changing. According to the UNODC¹⁰⁰, the largest consumer region is North America (44% of total retail

⁹⁴ Dupont 1999, p.438.

⁹⁵ See Nadelmann, 1987, p.186.; See Kenney Michael, "The Architecture of Drug Trafficking: Network Forms of Organisation in the Colombian Cocaine Trade", *Global Crime*, Vol.8, Number 3, 2007, pp.233-259.; *Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment*, United Nations Office on Drugs and Crime, 2012, p.31.

⁹⁶ Cocaine comprises at least two distinct drug products: powder cocaine on the one hand, and a range of cocaine base products, mostly falling under the heading of 'crack', on the other. The coca plant is indigenous to Peru and the Plurinational State of Bolivia, and these two countries produced most of the world's coca leaf. Colombia emerged as the world's largest producer of cocaine as of the late 1970s. See *The Globalization of Crime*, 2010, p.81.

⁹⁷ See Jenner, 2011, p.905.; Nadelmann, 1987, p.181.

⁹⁸ See Swanstrom, 2007, p.23.

⁹⁹ While poppy cultivation and production are fairly easy to measure, the production of amphetamine-type stimulants is made in hidden laboratories. Getting an accurate idea of the number of laboratories and their capacity is close to impossible. See Emmers Ralf, "International Regime-Building in ASEAN: Cooperation against the Illicit Trafficking and Abuse of Drugs", *Contemporary Southeast Asia*, Vol. 29, No. 3, December 2007, p.510.

¹⁰⁰ See UNODC World Drug Reports, 2010, 2012.

sales), followed by Europe (33%), although no region is spared. For example, the United States consumes about twenty-five times more cocaine than Colombia, even though Colombia produces about fifty percent of the world's cocaine¹⁰¹. Heroin consumption dramatically increased in Central Asia and East Africa in the 2000s, while, during the same time, cocaine usage increased in West Africa and South America and synthetic drug consumption increased in the Middle East and South Asia. In recent years, cocaine use has declined in North America and grown in Europe, whereas heroin use has stabilized or fallen in Europe but has increased in some transit countries.

The global value of the illicit drug trade is extremely difficult to calculate, and as a result estimates have varied dramatically¹⁰². The OECD estimates that the criminal drug industry costs its member states over \$120 billion per year, with the USA alone accounting for \$76 billion¹⁰³. According to United Nations Office on Drugs and Crime (UNODC)¹⁰⁴, the global drug market is consistently estimated to be worth more than \$300 billion¹⁰⁵ annually and drug trafficking is now the world's primary revenue source for organized crime¹⁰⁶. The largest drug sales are related to cannabis, followed by cocaine and opiates. According to some figures, the retail value of the global cocaine market is \$88 billion, and the retail value of the global opiate market is \$65 billion, the retail value of the cannabis market is \$141.9 billion, amphetamine-type stimulants market is around \$44 billion¹⁰⁷. At present, illegal drugs comprise an estimated near ten percent of world trade and exceed car production¹⁰⁸ as a proportion of the global economy¹⁰⁹. Some estimated that the turnover of the global criminal

¹⁰¹ See Jenner, 2011, p.905.

¹⁰² See Haken, 2011, p.3.

¹⁰³ See Galeotti, 2004, p.2.

¹⁰⁴ See UNODC World Drugs Report 2005-2006.

¹⁰⁵ See Kleiman, 2004, p.2.

¹⁰⁶ See Robelo Daniel, "Demand Reduction or Redirection? Channeling Illicit Drug Demand towards a Regulated Supply to Diminish Violence in Latin America", *Oregon Law Review*, Vol. 91, 2013, pp.1227-1251.

¹⁰⁷ See UNODC World Drug Reports, 2005-2010.

¹⁰⁸ See Thomas, 2003, p.553.

¹⁰⁹ See Michels Johan David, "Keeping Dealers off the Docket: the Perils of Prosecuting Serious Drug-Related Offences at the International Criminal Court", *Source Florida Journal of International Law*, Vol. 21, 2009, p.449.

economy is roughly estimated at one trillion dollars, of which narcotics may account for about half, illegal drugs are one of the world's largest traded sectors, with the global market estimated at \$400-\$500 billion a year¹¹⁰.

4. INTERNATIONAL MEASURES TO CONTROL DRUG TRAFFICKING

The ultimate goal of the international drug control system is to limit the production, manufacture, export, import, distribution of, trade in, use and possession of the controlled drugs to exclusively medical and scientific purposes. Today, there is a higher level of international consensus in this field than ever before¹¹¹. One hundred and eighty three countries, or 95 per cent of all United Nations Member States, are parties to the three international drug control conventions¹¹².

The roots of the international drug control system lie in the international reaction to the Chinese opium problem of the nineteenth and early twentieth century. This development followed three approaches: first, by confining the international drug trade to very small amounts only for medical and scientific purposes; second, by confining the manufacturing and then the agricultural production of drugs to the same purposes; third, by confining the consumption of drugs to the same purpose¹¹³.

Drug control efforts have focused on both supply and demand reduction¹¹⁴. In the twentieth century, a sophisticated treaty regime was developed

¹¹⁰ See Jenner, 2011, p.905.; Mueller, 2001, p.15.; McConville Molly, "Global War on Drugs: Why the United States Should Support the Prosecution of Drug Traffickers in the International Criminal Court", *American Criminal Law Review*, Vol. 37, Issue 1, Winter 2000, p.77.; Thomas, 2003, p.553.; Galeotti, 2004, p.2.; Surret William Roy, *The International Narcotics Trade, An Overview of its Dimensions, Production Sources and Organizations*, Congressional Research Service Report for Congress, 3 October 1988, p.1.; Dzedzic, 1989, p.533.

¹¹¹ The efficiency of this international drug control system depends to a large extent, if not entirely, on three main pillars: the proper implementation of the provisions of the treaties at the national level; the collaboration of the Parties to these treaties in their implementation; and their cooperation with the international control organs. See Noll Alfons, "International Treaties and the Control of Drug Use and Abuse", *British Journal of Addiction*, Vol.79, 1984, p.18.

¹¹² *A Century of International Drug Control*, 2009, p.98.

¹¹³ See Boister, 1998, p.76.

¹¹⁴ It should be clear that a large number of factors may affect drug-using behaviours, including

by both the supply and the use of drugs for medical and scientific purposes and to suppress the non medicinal supply and the use of drugs¹¹⁵. Supply reduction policies aim to lower drug use by making drugs more expensive and difficult to obtain, and include limiting the availability of illegal drugs by eradicating crops, disrupting smuggling routes, and interdicting or seizing drugs at the border. Demand reduction policies include lowering drug use by changing the behavior of current or potential users, and focusing on reducing drug use through education about the negative consequences of drug use¹¹⁶. The criminalization and punishment of illicit drug production, supply and use, is considered crucial to these goals¹¹⁷.

a. Development of International Control System

For nearly a century, illicit drugs have been trafficked from ‘producer’ to ‘consumer countries’, usually involving a number of criminal groups from countries along the trafficking chain¹¹⁸. International efforts to control drug trafficking were ongoing throughout the 20th century, and several international conventions sought to curtail illegal drug traffic through treaties and agreements in the first half of the twentieth century¹¹⁹. At the beginning of the twentieth century, millions of Chinese were addicted to opium, which was freely traded across borders at the time. China’s attempts to unilaterally address the problem failed and it was not until the first international agree-

traditions, fashion, youth culture, technological progress (and thus drug availability), financial resources, mobility, ethnic links, stress factors (war, work, leisure time, etc.). All of these factors can strengthen or offset progress made in terms of drug control efforts by authorities at the local, national and international levels. See *A Century of International Drug Control*, 2009, p.133.

¹¹⁵ See Boister, 2012, p.50.

¹¹⁶ Supply interdiction attempts to stop the arrival of drugs at the market place, demand reduction targets the user or purchaser of drugs because it identifies them as the cause of the drug problem. See Boister, 1998, p.17.

¹¹⁷ See Boister, 2012, p.50.

¹¹⁸ One of the most typical forms of transnational crime is the illegal movement of drugs across one or more national frontiers. See Chawla Sandeep & Pietschmann Thomas, “Drug Trafficking as a Transnational Crime”, *Handbook of Transnational Crime and Justice*, Ed. Philip Reichel, Sage Publications, 2005, pp.160-180.

¹¹⁹ See Fazy Cindy, “International Policy on Illicit Drug Trafficking: The Formal and Informal Mechanism”, *Journal of Drug Issues*, Vol.37, Issue 4, 2007, p.758.

ments were reached that a solution became possible¹²⁰. Pressure to prohibit all drug use except for approved purposes grew and finally bore fruit during the early twentieth century when the foundations of the international drug control system were laid¹²¹.

The origins of drug prohibition lie in the international rejection of the Indo-Chinese opium trade. The trade flourished when European colonial powers and in particular Britain encouraged opium production in India for supply to China¹²². The formal development of a system of international law to control drugs began with the 1909 Shanghai Opium Commission. In 1909, the US president Theodore Roosevelt called together 13 countries to establish the International Opium Commission, which subsequently produced a range of resolutions which recommended the gradual suppression of opium smoking. Many had economic interests in the existing opium trade, including the UK, which traded Indian cultivated opium in China. Germany, Switzerland and the Netherlands were also reluctant because they were developing pharmaceutical industries and so had an interest in the continuation of opium production. Participants resolved to suppress opium smoking, limit its use to medical purposes, control its export and extend drug control to its harmful derivatives¹²³. At the Shanghai conference it was agreed to limit opium use to medical purposes and to control its export and its harmful derivatives. The greatest accomplishment of the Shanghai Conference was that it created a global conscience and consensus on the issue of opium trafficking¹²⁴.

Signed in January 1912, the Hague Opium Convention restricted the trade in raw and prepared opium and provided for less extensive restrictions on manufactured drugs such as heroin and cocaine. The 1912 Convention invigorated drug control efforts in several countries. In the United States in 1913 it

¹²⁰ See A Century of International Drug Control, 2009, p.1.

¹²¹ See Boister, 1998, p.30.

¹²² See Boister, 2012, p.51.

¹²³ See Boister, 1998, p.31.

¹²⁴ See Kiefer Heather L., Just Say No: The Case against Expanding the International Criminal Court's Jurisdiction to Include Drug Trafficking, *Loyola of Los Angeles International and Comparative Law Review*, Vol.31, Issue 2, 2009, p.158.

prompted the Congress to pass the Harrison Act¹²⁵, which is generally viewed as the foundation of twentieth-century United States drug policy¹²⁶.

The Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and Use of Prepared Opium, was signed on 11 February 1925 and entered into force on 28 July 1926. It focused on opium-producing nations and stated that the signatory nations were “fully determined to bring about the gradual and effective suppression of the manufacture of, internal trade in and use of prepared opium.” This Convention detailed the content of the Hague Convention, institutionalized the international control system and extended the scope of control to cannabis¹²⁷. With respect to the control of legal drugs, the 1925 Convention enhanced the provisions in the 1912 Convention for domestic control of opium and applied the principle that drugs should only be manufactured for “medical and scientific” purposes¹²⁸.

Massive diversion of morphine in the mid-1920s evidenced a breakdown in the control system. The illicit drug traffic was being supplied by the pharmaceutical industry. The League called for a conference on the limitation of production in 1931. The conference adopted the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931. The 1931 Convention elaborated the definition of controlled substances and allowed League experts to enlarge and modify the list of these substances. The 1931 Convention introduced a system of compulsory estimates aimed at limiting the global manufacture of drugs to the amounts needed for medical and scientific purposes and established a Drug Supervisory Body to monitor the operations of the system¹²⁹. This treaty-based system was refined by the 1925 Geneva Convention and extended substantially through the 1931 Limitation Convention¹³⁰.

¹²⁵ See Boister, 2012, p.51.; Musto, David F., *The American Disease, Origins of Narcotic Control*, Yale University, 1973.

¹²⁶ See *A Century of International Drug Control*, 2009, p.66.

¹²⁷ See *A Century of International Drug Control*, 2009, p.70-71.

¹²⁸ See Boister, 1998, p.34.

¹²⁹ See *A Century of International Drug Control*, 2009, p.75.

¹³⁰ See Boister, 1998, p.35.

Concerned over the expansion of drug markets, the League of Nations convened a conference in 1936, the main outcome of which was the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs¹³¹. This Convention was the first significant attempt to harmonize drug offences and provide for procedural cooperation against traffickers¹³². The 1936 Convention contained the first to call to penalize drug-related activities and to define related offences so that national penal systems could be harmonized to ease international cooperation. Also for the first time, the Convention dealt explicitly with drug-related crime committed abroad and extradition¹³³. The convention contained specific provisions relating to law enforcement action and cooperation, and was designed to provide the necessary support in the area of criminal law for the licit drug control system, but did not enter into force, and then World War II began¹³⁴.

Thus, the agreements in the first half of the twentieth century gradually strengthened the medical controls in the trade of narcotics. Some argue that these early agreements sought neither to expand nor to eliminate narcotics production and trade, but rather to control it in accordance with “medical and scientific” concerns¹³⁵. From 1946 onwards, the United Nations assumed the drug control functions and responsibilities formerly carried out by the League of Nations. The Lake Success Protocol of 1946 enabled the Conventions supervised by the League to be brought into the UN framework¹³⁶.

The first development of substantive international drug control law after the United Nation’s assumption of authority was the 1948 Paris Protocol’s extension of existing controls to new mainly synthetic drugs outside the scope of the 1931 Convention¹³⁷. The 1948 Paris Protocol required Member States

¹³¹ See A Century of International Drug Control, 2009, p.77.

¹³² See Boister, 2012, p.52.

¹³³ See Boister, 1998, p.43.; A Century of International Drug Control, 2009, p.78.

¹³⁴ The 1936 Convention was designed to provide the necessary criminal law support for the system controlling licit trade, unfortunately, however it received little general support. See A Century of International Drug Control, 2009, p.77.; Boister, 1998, p.43.

¹³⁵ Thomas, 2003, p.560.

¹³⁶ See Boister, 1998, p.49.

¹³⁷ See Boister, 1998, p.50.

to report information about any “medical and scientific” drugs not listed in the 1931 Convention that could have harmful effects or could be subject to abuse¹³⁸. The Protocol also provided for the application of the 1931 Convention’s controls to any drug deemed harmful by the World Health Organization¹³⁹. After World War II, the United Nations assumed supervision of the international drug control system. The UN placed the system under Economic and Social Council (ECOSOC) control and created the Commission for Narcotic Drugs (CND) to replace the League’s Advisory Committee as the central drug control organ.

The focus of reformers was still on the limitation of the production of opium. A draft protocol embodying a stock limits and estimates system was put to a conference in 1953 which concluded the Protocol signed at New York on June 23, 1953 for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of, Opium. The Protocol’s strengths were that it established the principle of limitation of opium production, and it provided the Board with comprehensive enforcement powers¹⁴⁰. The 1953 New York Protocol restricted the right to export opium to seven traditional opium producing countries¹⁴¹ around the world.

b. 1961 Single Convention on Narcotic Drugs

By the mid-1950s the volume of the illicit traffic was growing and drug supply and consumption patterns were evolving rapidly. By 1961, there were nine international legal agreements on narcotic drugs, and their overlapping provisions were complex, and this was compounded by the fact that several countries had not signed and ratified all the treaties¹⁴². Finally, on the 30 March

¹³⁸ The 1948 Synthetic Narcotics Protocol came into force on 1 December 1949. The application of the 1948 Protocol meant that 14 new substances were placed under international control by 1951 and a further 6 by 1954. See *A Century of International Drug Control*, 2009, p.82.

¹³⁹ See Thomas, 2003, p.560.

¹⁴⁰ See Boister, 1998, p.51.

¹⁴¹ According to its article 6, only seven countries, Bulgaria, Greece, India, Iran, Turkey, the Union of Soviet Socialist Republics and Yugoslavia were authorized to produce opium for export. See *A Century of International Drug Control*, 2009, p.82.

¹⁴² *A Century of International Drug Control*, 2009, p.84.

1961, the Single Convention on Narcotic Drugs was adopted¹⁴³. The Convention provides that Parties are required to limit the production of all drugs, including opium, exclusively to medical and scientific purposes. It provides for government control of opium cultivation, indirectly limits the number of opium producing states, and limits opium exports to authorized states¹⁴⁴.

The 1961 Convention is perhaps the most important of the drug treaties because it introduced a system classifying certain substances according to potential abuse and medical benefit¹⁴⁵. This Convention includes the requirement that State parties should control and license individuals and commercial entities involved in the trade or distribution of licit drugs. It also unified in one document provisions that had previously been contained in a number of documents, including the 1936 Convention which had not come into force, it codified existing provisions into a coherent text, simplified the existing drug control machinery.

The objective of the 1961 Convention was to simplify the control machinery in order to increase the efficiency of international drug control efforts, and this led to the establishment of the International Narcotics Control Board¹⁴⁶. The 1961 Convention provides the INCB with a number of ways of forcing the Parties to comply with the provisions of the Convention, including requests for information and explanations, public declarations that a Party has violated its obligations and two embargo procedures, one recommendatory, the other mandatory¹⁴⁷. Another objective of the Convention was the extension of the existing controls to include the cultivation of the plants grown as raw material for the production of natural narcotic drugs¹⁴⁸, as well as the prevention of

¹⁴³ The Single Convention, adopted by the United Nations Conference in New York in March 1961, became effective on 13 December 1964. See Noll, 1984, p.18.

¹⁴⁴ See Boister, 1998, p.53.

¹⁴⁵ Aoyagi Melissa T., "Beyond Punitive Prohibition: Liberalizing the Dialogue on International Drug Policy", *Journal of International Law and Politics*, Volume 37, Number 3, March 2006, p.577.

¹⁴⁶ See *A Century of International Drug Control*, 2009, p.85.

¹⁴⁷ See Boister, 1998, p.54.

¹⁴⁸ The 1961 treaty continued to keep a tight rein on the production of opium and extended international controls to the production of poppy straw, coca leaf and cannabis. See *A Century of International Drug Control*, 2009, p.86.

non-medical drug consumption¹⁴⁹.

The 1961 Convention consists of 51 articles, covering definitions of the substances under control, the framework for the operations of the international drug control bodies, reporting obligations for Member States, controls on production, manufacture, trade and consumption, and penal provisions. The key provision of the Convention is to be found in article 4: "The Parties shall take such legislative and administrative measures ... (c) ... to limit exclusively to medical and scientific purposes the production, manufacture, export, import distribution of, trade in, use and possession of drugs"¹⁵⁰.

This Convention provides a comprehensive control system covering all stages and activities from the cultivation of the raw material to the production, manufacture, export, import, distribution of, trade in, use and possession of narcotic drugs. Following its predecessor treaties, it is based on the general principle that all Parties to it shall take such legislative and administrative measures as may be necessary to give effect to and carry out its provisions within their own territories; to cooperate with other States in the execution of those provisions, and to limit the above-mentioned activities exclusively to medical and scientific purposes. It also anchored the drug control regime in a supply-reduction orientation more strongly than previous agreements by focusing on the drug producing countries. Furthermore, it strengthened the prohibitionist nature of the regime by completely proscribing the use of a range of psychoactive substances for non-medical purposes, including the plants that are the raw material for the production of narcotic drugs¹⁵¹.

Drug use increased dramatically with the social and cultural changes of the 1960s, first in North America and then in Europe¹⁵². Further developments of the initiatives set out in the 1961 Convention were brought about through the measures of the 1972 Protocol. The Protocol consists of 22 amendments

¹⁴⁹ A Century of International Drug Control, 2009, p.85.

¹⁵⁰ See A Century of International Drug Control, 2009, p.84.; Chawla & Pietschmann, 2005, p176.

¹⁵¹ See Boister, 2012, p.52; Çevik Kürşat, Internationalisation of Turkish Law Enforcement: A Study of Anti-Drug Trafficking, PhD Thesis, University of Nottingham, 2013, p.70.

¹⁵² See Boister, 1998, p.57.

to the 1961 Convention. Its provisions strengthen the control measures originally provided for in the 1961 Convention and stipulate a number of additional measures to improve the international control of narcotic drugs¹⁵³. Article 12 of the Protocol strengthens measures concerning the illicit cultivation of opium and cannabis under the 1961 Convention, in that parties are not only obliged to take measures prohibiting illicit cultivation, but also to seize and destroy plants used for illicit production.

Some¹⁵⁴ argue that the second half of the twentieth century saw the U.N. narcotics regime shift from an administrative model toward an increasingly prohibitionist one: the 1961 Convention on Narcotic Drugs marketing the beginning of this shift.

c. 1971 Convention on Psychotropic Substances

During the 1960s, stimulants such as amphetamines, hallucinogens such as LSD and depressant drugs such as barbiturates and tranquillizers became more widely available. In the mid-1960s, most countries imposed only minimal limitations on the distribution of amphetamines, barbiturates, tranquilizers and other synthetic, non-plant based drugs. The misuse of psychotropic substances became a truly global phenomenon, and the problems gained in intensity, restrictions were introduced in several of the developed countries. These drugs were not controlled by the 1961 Convention. In 1967 the International Narcotics Control Board (CND), the United Nations Legal Office and the World Health Organization (WHO) expressed the view that in order to control these psychotropic substances a new treaty would have to be negotiated¹⁵⁵. In 1969, the CND adopted a draft convention, and a plenary conference held in 1971 in Vienna adopted the Convention on Psychotropic Substances, signed at Vienna, 21 February¹⁵⁶.

The 1971 Convention, also known as the 1971 Vienna Convention, consists of 33 articles, and adopts a range of preventative and prohibitive provisions,

¹⁵³ This protocol entered into force on 8 August 1975. See Noll, 1984, p.18.

¹⁵⁴ See Thomas, 2003, p.560.

¹⁵⁵ See A Century of International Drug Control, 2009, p.90.

¹⁵⁶ See Noll, 1984, p.19.; Boister, 1998, p.56.

and includes measures under which the parties will adopt strict measures for the control of the trade, manufacture and production of the listed psychotropic substances. Its control system was based on the 1961 Convention, though it also contained some innovations. The 1971 Convention placed a number of amphetamine-type stimulants, hallucinogens (such as LSD), sedative hypnotics and anxiolytics (benzodiazepines and barbiturates), analgesics and antidepressants under international control¹⁵⁷. The manufacture, export and import of psychotropic substances is controlled through reliance on prohibition, strict supervision and licensing, and the international trade in psychotropic substances is controlled by the import-export authorization scheme¹⁵⁸.

According to article 8, a general system of licensing should be introduced for the manufacture, the domestic and international trade and the distribution of psychotropic substances¹⁵⁹. Parties are also obliged to provide information to the INCB on their control systems including an annual report regarding the implementation of the convention, changes in their domestic law and reports on important cases of illicit trafficking and seizures¹⁶⁰. The advertising of such substances to the general public was to be prohibited. Article 21 foresees a number of measures to fight the illicit traffic in these substances, including mutual assistance in the area of law enforcement and in the area of judicial cooperation.

The Convention established four different schedules for controlled psychotropic substances, based on two criteria: the potential therapeutic value of a substance and the potential risks related to its consumption¹⁶¹.

The 1971 Convention provides for measures relating to the abuse of

¹⁵⁷ A significant number of other substances, forming part of these groups, were added in subsequent decades. See *A Century of International Drug Control*, 2009, p.91.; Aoyagi, 2006, p.578.

¹⁵⁸ Boister, 1998, p.56.

¹⁵⁹ See *A Century of International Drug Control*, 2009, p.91.

¹⁶⁰ Boister, 1998, p.56.

¹⁶¹ Schedule I lists those substances that are prohibited, except for scientific and very limited medicinal purposes. Schedule II substances may have a strong abuse potential or be widely abused, but they also have properties suitable for generally recognized therapeutic use. Control of schedule III and schedule IV substances is less strict. See *A Century of International Drug Control*, 2009, pp.90-91.; Kiefer, 2009, p.161.

psychotropic substances including provision for rehabilitation and social re-integration (article 20), for cooperation against the illicit traffic (article 21) and for criminal sanctions in national law (article 22). It also took a more remedial line, emphasizing that non-legal means such as education, treatment and rehabilitation could also be important factors in the illicit control of drugs¹⁶².

d. 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Despite efforts made over the previous decades, sharp increases in drug abuse occurred in many countries towards the end of the 1970s. Levels of drug production, trafficking and abuse remained high into the 1980s¹⁶³. Illicit opium production in Burma continued at high levels, and Afghanistan emerged as an important illicit opium-producing country. Illegal coca-leaf production and resulting cocaine manufacture in the Andean region set a new record each year¹⁶⁴. Cannabis production and consumption remained high, though some significant eradication had taken place in several countries of Latin America. In addition, the clandestine manufacture of psychotropic substances, notably the amphetamine-type stimulants, was increasing in North America, Europe and South-East Asia. The global influence of organized crime groups also increased throughout the 1980s¹⁶⁵.

In the 1980s, with the growth in the global consciousness of the dangers of the illicit traffic, the Commission on Narcotic Drugs studied the possibilities of launching a comprehensive strategy to reduce international drug abuse; this resulted, in 1981, in the formulation of the International Drug Abuse Control Strategy¹⁶⁶. The status of the implementation of the Strategy was reviewed each year through reports of the Economic and Social Council¹⁶⁷. The UN Gen-

¹⁶² See Boister, 1998, p.56.

¹⁶³ By the early 1980s, the United States was pushing for further development of the international drug control system. The impact of growing drug use globally induced both developed and developing states to accept the American view. See Boister, 1998, p.61.

¹⁶⁴ See A Century of International Drug Control, 2009, p.95.

¹⁶⁵ See A Century of International Drug Control, 2009, pp.96-97.

¹⁶⁶ A Century of International Drug Control, 2009, p.94.

¹⁶⁷ See A Century of International Drug Control, 2009, p.94.

eral Assembly began a process of consultation in 1984¹⁶⁸ which resulted in the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances¹⁶⁹. The treaty was intended to supplement and to reinforce several earlier UN measures contained in the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and the 1971 Convention on Psychotropic Substances¹⁷⁰.

The 1988 Convention, consisting of 34 articles, entered into force on 11 November 1990, and has proved to be a powerful and comprehensive instrument in the international fight against drug trafficking. The Convention complements the earlier drug conventions, which are largely concerned with building a global legal structure for the control of the licit production of drugs, because it is dedicated almost entirely to measures for the suppression of the illicit traffic. Some¹⁷¹ argue that the 1988 Convention reflects the strongest punitive measures. Whereas the 1961 and 1971 Conventions consider drugs from a health perspective, the 1988 Convention deals explicitly with the drug market and distribution¹⁷².

¹⁶⁸ The Assembly declared that the “illegal production of, illicit demand for, abuse of and illicit trafficking in drugs impede economic and social progress, constitute a grave threat to the security and development of many countries and people and should be combated by all moral, legal and institutional means, at the national, regional and international levels”. See *A Century of International Drug Control*, 2009, p.95.

¹⁶⁹ While preparation of the draft convention was going on, the UN Secretary General convened a ministerial conference in June 1987, the International Conference on Drug Abuse and Drug Trafficking. 161 Delegates from 138 states to the 1987 Conference approved a wide range of voluntary measures. The measures focus on four main areas: prevention and reduction of demand for drugs; control of supply; suppression of trafficking; and treatment and rehabilitation of addicts. See Boister, 1998, p.63-64.

¹⁷⁰ See Gurule Jimmy, “The 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances – A Ten Year Perspective: Is International Cooperation Merely Illusory?”, *Fordham International Law Journal*, Vol. 22, Issue 1, 1998, p.79.

¹⁷¹ See Boister, 2012, p.56.; Aoyagi, 2006, p.579.; “The 1961 Convention’s “drug abuser” exception narrowed in 1988 to production only “for personal consumption,” or otherwise to “cases of a minor nature. “ Moreover, the 1988 Convention multiplied the number of offenses deemed criminal: Now not only were production, trade and conspiracy criminal, but knowing acquisition, possession, use, conversion or transfer of property derived the reform. By expanding the scope of the criminal and reducing the reach of the rehabilitative, the 1988 Convention shifted away from the administrative and toward the prohibitive mode.” See Thomas, 2003, p.561.

¹⁷² See Jenner, 2011, p.917.

The preamble to the Convention has three separate strands, representing to an extent the different concerns of different states¹⁷³. The first substantive provisions of the Convention are the definitions section which provides specific definitions of terms used in the substantive articles of the Convention or confirms definitions used in the earlier conventions¹⁷⁴.

The Convention requires the parties to take legal measures to prohibit, criminalize, and punish all forms of illicit drug production, trafficking, and drug money laundering, to control chemicals that can be used to process illicit drugs, and to cooperate in international efforts of these goals¹⁷⁵. It also creates a framework for international cooperation to bring those persons who profit from drug trafficking to justice¹⁷⁶. Each measure has been proven useful in dismantling drug trafficking groups, which are increasingly transnational in nature¹⁷⁷. In practice, although sentencing differs widely, parties generally punish trafficking offences relatively heavily. Taking factors like the volume of the substances involved and the harmful potential of the particular class of drugs into account, supply is usually punished by periods of imprisonment or fines, or a combination of the two¹⁷⁸. Some states apply tougher penalties to supply offences¹⁷⁹.

The 1988 Convention's most significant substantive feature is article 2, entitled Scope of the Convention, which asserts state sovereignty in the face of international obligation. According to article 2, paragraph 1, the purpose¹⁸⁰ of this Convention is "to promote cooperation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic

¹⁷³ Kiefer, 2009, p.161.

¹⁷⁴ See Boister, 1998, p.65-66.

¹⁷⁵ See Sproule & St-Denis 1989, pp.263-293.; Zagaris Bruce, "U.S. International Cooperation Against Transnational Organized Crime" Wayne Law Review, Vol.44, 1998, p.1409.

¹⁷⁶ See Gurule, 1998, p.80.

¹⁷⁷ See Chawla & Pietschmann, 2005, p177.

¹⁷⁸ See Boister, 2012, p.57.

¹⁷⁹ Drug supply offences are still sanctioned with the death penalty in 33 countries. Although there is no provision for the death penalty in the Convention of 1988, the Convention does not explicitly rule out its use. Human rights bodies have criticized executions for drug offences as a violations of international law. See Boister, 2012, p.57.

¹⁸⁰ See Gurule, 1998, p.81.

drugs and psychotropic substances having an international dimension.”. The Convention comprehensively addresses most aspects of the illicit drug industry in article 3. In article 3, paragraph 1 “The production, manufacture, extraction, preparation, offering ... distribution, sale, ... delivery ..., brokerage, dispatch, ... importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of ... the 1961 Convention as amended [by the 1972 Protocol] or the 1971 Convention.”.

The cultivation of the opium poppy, coca bush or cannabis plant for the purpose of producing of narcotic drugs contrary to the provision of the 1961 Convention are added to this list in article 3, paragraph 1. This list is basically the same as that found in the 1961 and 1971 conventions. However, the 1961 Convention obliged parties only to make such activities punishable offences, the 1988 Convention goes an important step further and compels parties to make them criminal offences¹⁸¹.

Article 3, paragraph 2, stipulates that, “the possession, purchase or cultivation of ... drugs ... for personal consumption” has to be established as a criminal offence. Some argue that this goes beyond the requirements of the previous conventions¹⁸².

The Convention recognizes that, whilst drug trafficking is an international criminal activity, State parties should develop procedures in domestic law to identify, arrest, prosecute and convict those who traffic drugs across national boundaries. These measures include establishing drug-related offences and sanctions under domestic criminal law, providing for extradition in respect of those offences, providing for mutual legal assistance and co-operation on investigating and prosecuting those offences and establishing measures to seize and confiscate the proceeds from illicit drug trafficking. The Convention requires each party to enact far-reaching domestic laws providing for the “confiscation” defined as freezing, seizing, and forfeiting, of drug proceeds or instrumentalities used, intended to be used, or derived from

¹⁸¹ See A Century of International Drug Control, 2009, p.99.

¹⁸² See See Boister, 2012, p.59; Aoyagi, 2006, p.579.; A Century of International Drug Control, 2009, p.100.

proscribed drug trafficking activities¹⁸³.

A particularly innovative feature of the Convention is the introduction of controls set down on precursor chemicals¹⁸⁴ and equipment used to manufacture synthetic drugs¹⁸⁵. Although trade in precursor chemicals for the manufacture of illicit drugs was established as a punishable offence under the 1961 Convention if considered a “preparatory act” under article 36, very few countries had implemented precursor legislation prior to the 1988 Convention. The 1988 Convention expanded the scope of the international treaties by adding to the drug schedules ‘precursor chemicals’ used for manufacture of illicit drugs to the list of controlled substances, and emphasized the importance of precursor control at the international level¹⁸⁶. In article 12, the Convention went several steps further, establishing an international precursor control regime to be monitored by the International Narcotics Control Board.

The 1988 Convention developed additional mechanisms to increase efficacy in criminal enforcement, multiplied the bases for confiscation of narcotics materials and instruments, and allowed for and encouraged eradication of illicit crops¹⁸⁷. Today the 1988 Convention is almost universally adhered to

¹⁸³ See Gurule, 1998, p.80.

¹⁸⁴ Parties are obligated to implement measures to monitor, label, and furnish information to other parties on chemicals that might be diverted for use in the illicit manufacture of narcotic drugs or psychotropic substances. See Sproule & St-Denis 1989, p288.

¹⁸⁵ The production of heroin and cocaine relies on essential chemicals, which are used in the processing and refining of the drug. The production of synthetic drugs relies on precursor chemicals that become part of the resulting product. See Bantekas & Nash, 2007, p.244. Precursors are those chemicals which are necessary for the processing of raw materials into illicit drugs (such as acetic anhydride and hydrochloric acid for heroin processing) or those chemicals which form the basis for the laboratory creation of illicit drugs (such as pseudophrine and ephedrine for amphetamine, methamphetamine, and ecstasy). See Fazey, 2007, p.771.

¹⁸⁶ See Aoyagi, 2006, p.579.

¹⁸⁷ One of the main characteristics of the 1988 Convention was the emphasis it placed on the prevention of money-laundering. Another money-related issue is the confiscation of proceeds derived from drug-related offences. Thus, the 1988 Convention is clearly designed to hit drug traffickers where it hurts them most, by depriving them of ill-gotten financial gains. While special provisions in the 1961 and the 1971 conventions dealt with extradition, their scope was widened to take into account the increase in criminal offences in the 1988 Convention. See *A Century of International Drug Control*, 2009, p.101-102.; See Gurule, 1998, p.81.

and has formed the basis for their anti money-laundering legislation for many countries¹⁸⁸.

The 1988 Convention covers “controlled delivery”¹⁸⁹, in article 11, in fact, the first endorsement of the practice of controlled delivery by an international convention¹⁹⁰; previous conventions had emphasized only the seizure of drugs. It also provides for innovative law enforcement techniques such as interdiction of foreign flag vessels on the high seas. Due to the problems of establishing an effective framework of jurisdiction over drug trafficking at sea in international waters, article 17 of the Convention introduced a scheme whereby a party to the Convention may request the Flag State of Vessels permission to board, search and take appropriate measures against vessels suspected of trafficking drugs¹⁹¹.

e. Developments after 1988 Convention

By the late 1990s, although some of the large drug networks had been neutralized, drug trafficking continued at a high level. The downward trend in drug abuse seen in the second half of the 1980s did not continue in the United States after 1992, and Europe also experienced major increases in drug abuse¹⁹². The changes following the end of communism in Central and Eastern Europe, such as the opening of trade, media and travel, also included increased drug consumption, especially among the youth. Drug abuse also emerged as a serious social problem in the end of communism in Eastern Eu-

¹⁸⁸ United Nations Research Report, 2011, p.122.; Efforts to stop money laundering were part of the 1988 Convention, but both Financial Action Task Force (FATF) and the Security Council in 2001 and the General Assembly in 2006 have linked money laundering to terrorism, thus giving an added urgency, funding, and priority to anti-money laundering activities. See Fazey, 2007, p.772.

¹⁸⁹ Controlled delivery defined as “the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances [and] substances in Table I and Table II ... to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of the competent authorities” (art. 1 (g)), “with a view to identifying the persons involved” in drug trafficking offences and “taking legal action against them” (art. 11, para. 1). See *A Century of International Drug Control*, 2009, p.103.; Boister, 1998, p.67.

¹⁹⁰ See Fazey, 2007, p.760.

¹⁹¹ See Bantekas & Nash, 2007, p.245.; Boister, 1998, p.67.

¹⁹² *A Century of International Drug Control*, 2009, p.105.

rope, and many developing countries, particularly in countries along the main transit routes¹⁹³. Abuse of amphetamine-type stimulants was a serious problem in many countries of East and South-East Asia. Countries in Latin America started to become increasingly affected by cocaine abuse. Countries in Africa experienced ever-greater cannabis production and consumption, as well as diversions of licit psychotropics into parallel markets¹⁹⁴.

In 1993 The International Narcotics Control Board acknowledged that harm reduction had a role to play in a tertiary prevention strategy; however, the Board pointed out that such harm reduction programmes should not be carried out at the expense of, or be considered substitutes for, activities designed to reduce the demand for illicit drugs, and that they should not promote and/or facilitate drug abuse¹⁹⁵. This response came in the form of the declarations and action plans agreed by Member States at a special session of the United Nations General Assembly in June 1998. The General Assembly unanimously adopted a Political Declaration and linked to it the Guiding Principles on Demand Reduction, as well as a number of measures to enhance international cooperation to counter the world drug problem¹⁹⁶. In 1997, the UN reorganized and reestablished the Office for Drug Control and Crime Prevention (ODCCP) to better address drug trafficking and related crimes¹⁹⁷.

The Declaration on the Guiding Principles of Drug Demand Reduction adopted in 1998 by the General Assembly¹⁹⁸. This Declaration provides States with detailed principles on how to design their national strategies for demand reduction. The Action Plan on International Cooperation on the Eradication

¹⁹³ A Century of International Drug Control, 2009, p.105.

¹⁹⁴ See A Century of International Drug Control, 2009, p.105.

¹⁹⁵ See A Century of International Drug Control, 2009, p.110.

¹⁹⁶ In operative paragraph 1 of the Political Declaration, Member States reaffirm the “unwavering determination and commitment to overcoming the world drug problem through domestic and international strategies to reduce both the illicit supply of and the demand for drugs”. See A Century of International Drug Control, 2009, p.106.

¹⁹⁷ See Kiefer, 2009, p.162.

¹⁹⁸ Paragraph 4, states that “The most effective approach to the drug problem consists of a comprehensive, balanced and coordinated approach, by which supply control and demand reduction reinforce each other... There is now a need to intensify our efforts at demand reduction and to provide adequate resources towards that end”. See A Century of International Drug Control, 2009, p.109.

of Illicit Drug Crops and on Alternative Development ¹⁹⁹ refers to a number of principles to be taken into account in the fight against drugs: shared responsibility, integrated balanced approach, full respect for sovereignty, territorial integrity, non-intervention in internal affairs, human rights, fundamental freedoms, sustainable human development.

The Action Plan against Illicit Manufacture, Trafficking and Abuse of Amphetamine-type Stimulants and Their Precursors adopted in 1998 by the General Assembly. This Action Plan consists of five sections, the first two of which deal with demand-related issues, the third with information technology (affecting both the demand and supply sides) and the last two with supply-related issues²⁰⁰. Like the other action plans (judicial cooperation, control of precursors, money-laundering, General Assembly resolution S-20/4C, resolution S-20/4B, resolution S/20-4/D respectively), the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem was adopted by the ministers and other government representatives following a review of developments since the special session of the General Assembly in 1998²⁰¹. The Political Declaration makes a clear link to the new instruments to fight transnational organized crime and corruption as important tools for confronting the world drug problem²⁰².

It should be noted that the degree to which classical drug prevention has to be given priority over harm reduction, or vice versa, is still subject to heated debates among States today. Harm reduction²⁰³ became prominent in the

¹⁹⁹ General Assembly Resolution S-20/4E, See *A Century of International Drug Control*, 2009, p.112.

²⁰⁰ See *A Century of International Drug Control*, 2009, p.115.

²⁰¹ See *A Century of International Drug Control*, 2009, p.124.

²⁰² In paragraph 30, member states "Acknowledge the entry into force of the United Nations Convention against Transnational Organized Crime and the Protocols thereto and the United Nations Convention against Corruption, recognize that those conventions and other relevant international instruments constitute valuable tools for confronting the world drug problem, and urge Member States that have not yet done so to consider taking measures to ratify or accede to those instruments". See *A Century of International Drug Control*, 2009, p.128.

²⁰³ See Cook Catherine, Bridge Jamie & Stimson Gerry V., "The Diffusion of Harm Reduction in Europe and Beyond", *Harm Reduction: Evidence, Impacts and Challenges*, European

mid-1980s as a response to newly discovered HIV epidemics amongst people who inject drugs in some cities. While China, Japan, the Russian Federation, the United States and several other countries are in favor of traditional demand reduction efforts (prevention) in order to reduce demand, most European countries, as well as Australia and Canada, tend to support policies that also contain elements of harm reduction.

Finally, it should be noted that the international drug control system has tried to balance its two goals for a century: ensuring the supply of drugs for licit purposes, and suppressing the supply of drugs for licit use. On the other hand, drug supply and use for non-medical purposes are still a menace to the whole world, and there is growing pressure to reform the international drug control system and conventions²⁰⁴.

f. The United Nations System of Drug Control

In addition to drafting international treaties for the control of illegal drug trafficking, the United Nation has also created a number of agencies with specific responsibilities in relation to the control of illicit drugs. The UN system of drug control includes the Commission on Narcotic Drugs, the International Narcotics Control Board, and the Office of Drugs and Crime.

The Commission on Narcotic Drugs (CND) was established in 1946 as an organ of the Economic and Social Council. The Commission enables Member States to analyze the global drug situation, provide follow-up to the twentieth special session of the General Assembly on the world drug problem, and to take measures at the global level within its scope of action. It also monitors the implementation of the Conventions and is empowered to consider all matters pertaining to the aim of the conventions, including the scheduling of substances to be brought under international control. Although there are 53 members of the CND, most other UN countries also attend its meetings as

Monitoring Centre for Drugs and Drug Addiction, 2010.; Hunt Neil, A Review of the Evidence-Base for Harm Reduction Approaches to Drug Use, Forward Thinking on Drugs, 2003.; Marlatt, G. Alan, Larimer Mary E., Witkiewitz Katie, Harm Reduction: Pragmatic Strategies for Managing High-Risk Behaviors, The Guilford Press, 2012.

²⁰⁴ See Boister, 2002, p.61.

observers, creating a large, unwieldy formal annual meeting²⁰⁵.

The International Narcotics Control Board (INCB) is the independent and quasi-judicial monitoring body for the implementation of the Conventions. It was established in 1968 in accordance with the 1961 Convention²⁰⁶. It had predecessors under the former drug control treaties of the League of Nations. The Board is in charge of controlling the international trade in narcotic drugs and for taking measures to ensure the execution of the provisions of the 1961 Convention²⁰⁷. The UN Fund for Drug Abuse Control was established in 1971 and is funded by State contributions. Its primary function is to provide professional and technical assistance to governments on law enforcement and social measures for drug control²⁰⁸.

The United Nations Office on Drugs and Crime (UNODC) helps countries create the domestic legal framework to investigate criminal offences related to organized crime and prosecute offenders, and adopt new frameworks for extradition, mutual legal assistance, and international law enforcement cooperation. UNODC is a global leader in the fight against illicit drugs and international crime, and is one of the world's leading sources of reliable data, analysis, and forensic science services related to illicit drugs and crime. UNODC has 21 regional and field offices covering 150 countries²⁰⁹.

The International Criminal Police Organization, better known as Interpol, is the oldest structure for assisting police cooperation in Europe. It developed from a meeting in 1923 and was given its present name in 1956²¹⁰. Interpol currently has 184 member countries and the European region includes 44 separate states which account for 80 per cent of all the messages which pass through the organization each year²¹¹.

²⁰⁵ See Fazey, 2007, p.761.

²⁰⁶ See Fazey, 2007, p.762.

²⁰⁷ See Noll, 1984, p.21.

²⁰⁸ See Bantekas & Nash, 2007, p.245.

²⁰⁹ See Fazey, 2007, p.762.

²¹⁰ See Fazey, 2007, p.764.

²¹¹ See Le Vy, Bell Peter & Lauchs Mark, "Elements of Best Practice in Policing Transnational Organized Crime: Critical Success Factors for International Cooperation", *International Journal of Management and Administrative Sciences*, Vol. 2, No. 3, Feb. 2013, pp.24-34.

Finally, in Europe the amount of legislation embracing both transnational organized crime and international police cooperation in criminal matters is extremely significant, and considerable number of legal instruments has been produced to fight organized crime effectively. Because of the rapid development of transnational organized crime in Europe²¹², and also taking its alarming feature against democracy and rule of law into consideration, the European countries decided to set up the European Police Office²¹³ (Europol) as a Law Enforcement Organization which is involved in co-operation between Member States in preventing and controlling various forms of transnational serious crimes. In Europe, Council of Europe contribution is through the negotiation of international agreement such as the Convention on Extradition, the Convention on Mutual Legal Assistance, the Convention on the Suppression of Terrorism; but the Council also has a role in providing a forum for inter-governmental consultations such as the Pompidou Group on Drug Abuse. The European Drugs Unit (EDU) became operational on 16 February 1994. The central function of the EDU is to analyze information on drug trafficking, money laundering and those involved in these activities, and to facilitate the exchange of intelligence between EU police forces and customs. The adoption of the EU Drug Strategy in December 2004 pointed to the existence of a larger political concern about drugs across the EU countries, beyond the different approaches of the member states. The measures prescribed for establishing joint policies include the enhancement of judicial cooperation in the area of combating drug trafficking and law enforcement and the strengthening of the Europol, Eurojust and other EU structures²¹⁴.

²¹² Due to the inhomogeneous cultural background, tradition and education of the European people and also taking the dramatic social movement of criminality from the East to the West of Europe into account, this process seems to be intensified in the last years more than ever. See Magherescu Delia, "Transnational Criminality in Europe and the Danger of its Movement from East to West", *Journal for Humanities and Social Affairs*, Issue 1, 2011, pp.165-194.

²¹³ The Europol has been established on 7 February 1992 and also regulated by the Convention based on the Article K.3 of the Treaty of the EU. See Mei Leong, 2007, p.82.; See Fazey, 2007, p.765.

²¹⁴ The successive EU Drugs Action Plans are based on the same set of basic principles: a balanced approach to reducing the supply and demand for drugs and the founding values of the EU, which are respect for human dignity, liberty, democracy, equality, solidarity,

5. UNIVERSAL JURISDICTION OF DRUG TRAFFICKING

Drug trafficking is a problem of serious concern to all nations. Despite massive efforts to combat the drug trade, countries have been unable to effectively bring major perpetrators to justice²¹⁵. In the present system of national prosecutions, sophisticated drug traffickers can take advantage of national differences, by basing operations in countries that are unwilling or unable to prosecute them. Countries that do wish to prosecute are frequently helpless because they cannot establish personal jurisdiction over suspected traffickers located outside of their borders²¹⁶. The global drug trade destabilizes governments, corrupts officials, funds terrorist organizations, breeds large-scale organized crime, and results in significant loss of human life²¹⁷. Moreover, the problem of drugs has taken on new dimensions because of the link among drug trafficking, terrorism and money laundering.

There are a multitude of reasons why drug traffickers may not be prosecuted. Differences in legal systems, law enforcement, and judicial practice can be a barrier to law enforcement cooperation. Firstly, states that are crippled by drug problems are often unable or unwilling to enforce their own drug laws, especially if organized drug trafficking groups are able to bribe or terrorize the

rule of law and human rights. See Irrera Daniela, "The EU Strategy in Tackling Organized Crime in the Framework of Multilateralism", *Perspectives on European Politics and Society*, Vol. 12, No. 4, December 2011, p.413.; In the United States, a number of agencies, coordinated mainly by the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL), run anti-drug programs and initiatives. U.S. anti-narcotics efforts center primarily on foreign crop eradication and global narcotics interdiction. The State Department and other agencies help eradicate crops by providing foreign countries with equipment and supplies. INL manages the Andean Counterdrug Initiative (ACI), the primary U.S. program supporting counternarcotics and economic development in the Andean region. The U.S. Agency for International Development (AID) also funds a variety of anti-narcotics programs. Drug Enforcement Agency (DEA) agents cooperate with law enforcement agencies in 58 countries in activities such as bilateral investigations, institution building, and training. The Department of Defense (DOD) responsibilities include heading federal efforts to detect aerial and maritime drug trafficking toward the United States. See Wagley, 2006, p.10.

²¹⁵ See Geraghty Anne H., "Universal Jurisdiction and Drug Trafficking: A Tool for Fighting One of the World's Most Pervasive Problems", *Florida Journal of International Law*, Volume16, 2004, pp.371-403.

²¹⁶ Geraghty, 2004, p.372.

²¹⁷ Geraghty, 2004, p.375.

judiciary²¹⁸. Despite the aggressive work of nations²¹⁹, many countries simply may refuse to prosecute or extradite²²⁰ drug traffickers. Secondly, countries that cannot prosecute but that are otherwise willing to extradite drug traffickers may refuse to do so out of concern that the requesting country will impose harsh prison sentences or the death penalty²²¹. Thirdly, states may also be unable to extradite drug traffickers if there is no extradition treaty between the state where the drug trafficker is present and the prosecuting state²²². Numerous factors illustrate that extradition and prosecution under the existing patchwork of agreements are not working well. Furthermore, the domestic law and constitutions of some states prohibit the extradition of their nationals. Traditionally, a nation could either refuse to extradite its own citizens altogether or use its discretion regarding extradition. The “double criminality” and “specialty” doctrines can also frustrate extradition and prosecution efforts. Finally, drug traffickers caught on the high seas are more like pirates; there may be no country that is able to prosecute them²²³. There

²¹⁸ Geraghty, 2004, p.382.

²¹⁹ See McConville, 2000, p.80. “The current “prosecute-or-extradite” system functions through national prosecutions aided by ad hoc international cooperation...Bilateral and multilateral arrangements also exist to facilitate bringing alleged offenders to justice, such as extradition treaties, Mutual Legal Assistance Treaties (MLATs) and law enforcement and prosecutorial cooperation. The United States is actively involved in negotiating MLATs, extradition treaties, and executive agreements with countries around the globe...The International Criminal Police Organization assists courts in gaining custody of offenders by issuing “red notices” requesting the arrest of a suspect...European Union (EU) nations are now coordinating their law enforcement activities through an EU-based organization...”.

²²⁰ Extradition is the legal process and is the surrender by one state, at the request of another, of a person who is accused of or has been sentenced for a crime committed within the jurisdiction of the requesting state. See Barnett Richard J., “Extradition Treaty Improvements to Combat Drug Trafficking”, *Georgia Journal of International and Comparative Law*, Vol. 15, 1985, p.285-315.; Zagaris Bruce, Peratta Julia Padierna “Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers - 150 Years and Beyond the Rio Grande’s Winding Courses”, *American University International Law Review*, Vol.12, Issue 4, 1997, pp.519-627.; Extradition has become recognised as a major element of international cooperation in combating crime, particularly transnational crimes such as drug trafficking and terrorism. See Griffith Gavan & Harris Claire, “Recent Developments in the Law of Extradition”, *Melbourne Journal of International Law*, Vol. 6, 2005, p.33 et seq.

²²¹ Geraghty, 2004, p.382.

²²² Geraghty, 2004, p.382.

²²³ Tate, 2008, p.271.; Geraghty, 2004, p.383.; Fritch Charles R., “Drug Smuggling on the High Seas: Using International Legal Principles to Establish Jurisdiction Over the Illicit Narcotics

is no question that the international drug trade creates serious human and financial costs worldwide. As a result, the international community has long searched for effective means of combating the drug trade. One possible tool that has been suggested, although never widely embraced, is to allow states to prosecute drug traffickers using universal jurisdiction²²⁴.

a. Jurisdiction under International Law

There are five general doctrines authorizing the exercise of jurisdiction under international law: the nationality principle, the territoriality (or territorial) principle, the protective principle, the passive personality principle, and the universality principle²²⁵. The nationality principle grants states jurisdiction over their own nationals, the territoriality principle gives states jurisdiction over actions committed inside of their boundaries, it also allows states to reach conduct occurring outside of their borders if that conduct has substantial effects within their territory. The protective principle grants states jurisdiction over offenses directed against the security of the state, the passive personality principle authorizes states to exercise extraterritorial jurisdiction over acts against their nationals. Finally, the universality principle gives states the power to punish certain offenses recognized by the community of nations as of universal concern²²⁶.

Universal jurisdiction is the right of a state to 'define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern' regardless of whether the prosecuting state can establish a connection with the perpetrator, victim, or location of the offense²²⁷. States

Trade and the Ninth Circuit's Unnecessary Nexus Requirement", Washington University Global Studies Law Review, Vol. 8, Issue 4, 2009, pp.701-721.

²²⁴ See Geraghty, 2004, p.372.; McConville, 2000, pp.75-102.

²²⁵ See Boggess D. Brian, "Exporting United States Drug Law: An Example of the International Legal Ramifications of the "War On Drugs"", Brigham Young University Law, 1992, pp.165-190.; Tate James A., "Eliminating the Nexus Obstacle to the Prosecution of International Drug Traffickers on the High Seas", University of Cincinnati Law Review, Vol.77, 2008, p.271.; Zagaris, 1998, p.1405.

²²⁶ See Geraghty, 2004, p.383.; Bennett Allyson, "That Sinking Feeling: Stateless Ships, Universal Jurisdiction, and the Drug Trafficking Vessel Interdiction Act", The Yale Journal of International Law, Vol. 37, 2012, pp.433-461.

²²⁷ Geraghty, 2004, p.377.; Some suggested that there are two traditional theoretical

may assert universal jurisdiction in cases where the nature of the crime is so egregious that it is in the interest of the entire international community to bring perpetrators to justice²²⁸.

Universal jurisdiction empowers any state to exercise jurisdiction to prosecute a suspect wherever he is found, regardless of the location of his crime(s), his nationality, or any other contacts with the prosecuting state²²⁹. Therefore, universal jurisdiction would provide a remedy to some problems because it would provide for the prosecution of traffickers by any state. Some²³⁰ suggested that universal jurisdiction would limit immunity from prosecution, make it more difficult to intimidate the judiciary, reduce the potential for escape after sentencing and provide much needed leverage in negotiations with traffickers, and better international cooperation may also make intelligence collection more effective.

There are two ways in determining whether a particular crime is subject to universal jurisdiction. Firstly, a crime can become subject to universal jurisdiction through the development of customary international law, as evidenced by domestic legislation, international agreements, and the commentary of international law scholars²³¹. Customary law consists of the rules that emerge from the experiences of states over time as they try to resolve interstate problems. Customary rules became law when there was a conviction that ex-

rationales for universal jurisdiction. The first rationale is pragmatic because it provides a basis for jurisdiction when jurisdiction is hard to find. Under this theory, universal jurisdiction responds to the danger that no state will be able to establish jurisdiction by traditional means. The second rationale for universal jurisdiction is humanitarian. If a crime is considered heinous or detrimental to the world community, then any member of the world community has a right to prosecute that crime to ensure that perpetrators do not go unpunished. See Jordan Jon B., "Universal Jurisdiction in a Dangerous World: A Weapon for All Nations Against International Crime", Michigan State University DCL Journal of International Law, Vol.9, Issue 1, 2000, p.31.; Bassiouni M. Cherif, Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice", Virginia Journal of International Law Association, Fall 2001, p.81.

²²⁸ Geraghty, 2004, p.385.

²²⁹ Geraghty, 2004, p.372.

²³⁰ See Windle James, "Afghanistan, Narcotics and the International Criminal Court: From Port of Spain to Kabul, via Rome", European Journal of Crime, Criminal Law and Criminal Justice, Vol. 20, 2012, pp.297-314.

²³¹ Geraghty, 2004, p.380.

pected behavior is *opinio juris sive necessitates*, a legal rule that it is necessary to obey²³². Customary law is composed of two elements, an objective and a subjective. The objective element is made up of the uniform and continuous practice of States with regard to a specific issue, and depending on its adherents, this may take the form of a universal or a local custom. The subjective element comprises a state's conviction that its practice on a particular issue emanates from a legal obligation, which it feels bound to respect²³³. Although international legislation may have shifted from customary law to an emphasis on treaty writing, customary law remains important and is often central to some important international court cases²³⁴.

Secondly, countries may establish universal jurisdiction over an offense by treaty. The 1969 Vienna Convention on the Law of Treaties defines a treaty as "an international agreement concluded between states in written form and governed by international law"²³⁵. Such treaties contain a requirement that state parties 'extradite or prosecute' offenders. State parties are required to assert jurisdiction over the parties whether or not they have any link with the suspect or with the crime²³⁶. With this general framework, the most direct means of establishing universal jurisdiction over drug trafficking is to provide for universal jurisdiction by treaty. The international community has long recognized the grave consequences of drug trafficking on the world's population. Beginning with the enactment of the International Opium Convention in 1912, states began a serious effort to combat the problems associated with drug trafficking on an international level²³⁷. This united effort has continued with the enactment of the Single Convention on Narcotic Drugs in 1961, the Convention on Psychotropic Substances in 1971, and the U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988. The three

²³² Henderson Conway W., *Understanding International Law*, 2010, p.58.

²³³ Bantekas & Nash, 2007, p.3.

²³⁴ Henderson, 2010, p.59.

²³⁵ The 1986 Vienna Convention extends the same definition to agreements between International Government Organizations (IGOs) and states or other IGOs. See Henderson, 2010, 65.

²³⁶ See Geraghty, 2004, p.381.

²³⁷ Geraghty, 2004, p.385.

existing treaties dealing with narcotic drugs and psychotropic substances and establish an important regime for international cooperation against drug trafficking. Each of these Conventions contain language that recognizes the seriousness of the global drug problem and the need for the international community to work together to bring traffickers to justice²³⁸.

In the case of drug trafficking, the 1988 U.N. Convention against Illicit Traffic in Narcotic Drugs, marked a significant development in the international community's fight against international drug trafficking by explicitly recognizing illicit drug trafficking as an international criminal activity, and requiring each signatory state to establish legislation outlawing the production, possession, transportation, or distribution of listed narcotic drugs and psychotropic substances. The 1988 Convention additionally required signatory states to criminalize the following drug-related activities: money laundering; the acquisition, possession, or use of property knowingly derived from drug trafficking; the possession of equipment or materials used in producing or manufacturing narcotic drugs or psychotropic substances; and the conspiracy, participation, or aiding and abetting any of the above offenses²³⁹.

Additionally, the 1988 Convention specified the instances in which the signatory states were required to establish jurisdiction over the covered offenses and furnished the power to confiscate all forms of property used in or derived from the covered offenses. The Convention also stipulated the widest measure of mutual legal assistance in the investigations, prosecutions, and judicial proceedings with regard to the listed criminal offenses²⁴⁰. Furthermore, the 1988 Convention permitted state parties to submit otherwise irresolvable disputes to the International Court of Justice.

The 1988 Convention strengthens the existing prosecute or extradite sys-

²³⁸ See Geraghty, 2004, p.385.

²³⁹ See Gianaris William N., "The New World Order and the Need for an International Criminal Court", *Fordham International Law Journal*, Vol. 16, Issue 1, 1992, p.98.

²⁴⁰ This mutual assistance embraced the following procedures: the taking of evidence or statements from persons; service of judicial documents; searches and seizures; examination of objects and sites; providing bank, financial, and business records and documents; and identifying or tracing proceedings, property, instrumentalities, or other potential evidentiary objects. See Gianaris, 1992, p.99.

tem by providing that parties may use the treaty as a legal basis for extradition, and it also amends parties' existing bilateral extradition treaties to include all the offenses in the Convention²⁴¹. Specifically, article 4, paragraph 2(b)²⁴² provides that any state may establish jurisdiction over a suspect when the suspect is within the territory of that state and where that state decides not to extradite the suspect to a third state²⁴³. Article 4, paragraph 3 of the treaty also provides that the convention "does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.". Thus, if a party's domestic law establishes universal jurisdiction over drug trafficking offenses, presumably the treaty does not preclude that exercise of universal jurisdiction²⁴⁴.

On the other hand, some²⁴⁵ argue that the 1988 Convention is limited in major respects and thus does not grant true universal jurisdiction. Firstly, the universal jurisdiction provisions technically apply only to states that are parties to the treaty. But, some argue that if the provision is so widely recognized as to have become customary international law, states may be bound by the treaty regardless of whether or not they are parties²⁴⁶. Secondly, it is not clear whether the 1988 Convention allows for universal jurisdiction where a party does not wish to prosecute a suspect within its own territory but wishes to extradite to a third state party, who would then prosecute on the basis of universal jurisdiction²⁴⁷. Thirdly, a state may not exercise universal jurisdiction

²⁴¹ See McConville, 2000, p.88.

²⁴² See "...b) May take such measures as maybe necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when: i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory; ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article; iii) The offence is one of those established in accordance with article 3, paragraph 1, subparagraph c) iv), and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with article 3, paragraph 1."

²⁴³ Geraghty, 2004, p.392.

²⁴⁴ Geraghty, 2004, p.392.

²⁴⁵ See McConville, 2000, p.88.

²⁴⁶ See Geraghty, 2004, p.393.

²⁴⁷ Geraghty, 2004, p.393.

unless it has explicit authority to do so either based on a treaty or based on customary international law²⁴⁸. The 1988 Convention recognizes this premise by stating that the “The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.”. Finally, the 1988 Convention differs in a significant respect from treaties in that it establishes universal jurisdiction over other offenses²⁴⁹. Convention provides that a state where the suspect is found may prosecute under a universal jurisdiction theory; the language of the treaty is permissive rather than mandatory²⁵⁰. In other words, the state’s constitution and domestic legislation must allow the prosecution, and if the state refuses extradition for any other reason, there is no requirement to prosecute²⁵¹. These shortcomings in the 1988 Convention leave several gaps in the ability of states to prosecute suspected drug traffickers²⁵².

b. Drug Trafficking and the International Criminal Court

Following the conclusion of the Vienna Convention in 1988, the UN General Assembly adopted a resolution requesting that the International Law Commission address the question of establishing an international criminal court which would have jurisdiction over international offences including illicit trafficking in narcotic drugs across national frontiers. Trinidad and Tobago (lead a coalition of Caribbean and Latin American states) made a request to the UN General Assembly to explore the possibility of establishing an international court with jurisdiction over drug trafficking offences in 1989²⁵³.

The UN responded positively to this and instructed the International Law

²⁴⁸ Geraghty, 2004, p.393.

²⁴⁹ Geraghty, 2004, p.393.

²⁵⁰ “While Article 32(2) of the Convention confers jurisdiction on the International Court of Justice (ICJ) to settle disputes relating to treaty interpretation and application, several parties, including the United States, have declared themselves not bound by this article. Apparently, these parties do not desire to have their conduct towards compliance, or lack thereof, scrutinized by the ICJ. As the result, the ICJ has been denied jurisdiction under the compulsory jurisdiction theory.”. See Gurule, 1998, p.121.

²⁵¹ See McConville, 2000, p.89.

²⁵² See Geraghty, 2004, p.395.

²⁵³ See Kiefer, 2009, p.163.

Commission (ILC) to direct its attentions to the creation of such a court. Initially, it was assumed that drug offences as defined by the drug conventions would fall within the ICC's subject matter jurisdiction²⁵⁴. Further discussions on the criminalization of drug trafficking in international law took place in the course of the drafting of the Draft Code of Crimes against the Peace and Security of Mankind²⁵⁵. The ILC's 1991 Draft had included crimes created by the drug conventions, and they were included in all the drafts of the code up to and including the 1995 Draft Code. Over time, considerable opposition to the inclusion of drug trafficking within the ICC's jurisdiction grew to. Some members of the ILC opposed their inclusion in the Code, and they were excluded from the 1996 Draft Code. The Preparatory Committee's draft provided that drug offences essentially meant any article 3(1) of the 1988 Convention's offence "committed on a large scale and in a transboundary context"²⁵⁶. During the Draft Code deliberations, some states expressed the view that drug trafficking should be considered a crime against humanity while others argued that it would be better categorized as a crime against the peace, and some states even argued that drug trafficking should be treated as a crime of aggression²⁵⁷.

At the beginning of the Rome Conference, drug trafficking was under consideration for possible inclusion on this list. Although the Draft Statute specifically included "crimes involving the illicit traffic in narcotic drugs and psychotropic substances" interest in a Court with jurisdiction over narcotics trafficking waned during the concluding days of the conference²⁵⁸. Despite support from some states²⁵⁹ for the inclusion of drug offences, the gener-

²⁵⁴ See Boister, 1998, p.560.

²⁵⁵ See Kiefer, 2009, p.164.

²⁵⁶ See Boister, 1998, p.561.

²⁵⁷ The majority of states agreed that, "in view of its many characteristics, international illicit traffic in narcotic drugs clearly fell within the category of crimes against humanity, since it was directed against all the peoples of the world and its physical result was the destruction of human life in all countries." See these debates, Kiefer, 2009, p.167.

²⁵⁸ McConville, 2000, p.93.

²⁵⁹ Some delegates stated that particularly serious drug trafficking offences which involved an international dimension should be included, that these offences had serious consequences for the world population and that there was no unified system for addressing these crimes because of divergences in national laws. See Boister, 1998, p.565.

al consensus was that the issue of the inclusion of treaty crimes should be postponed²⁶⁰. Drug trafficking was not included in the final Statute; however, the parties adopted a resolution recommending that State parties consider reaching agreement on a definition and on including both drug trafficking and terrorism at a future review²⁶¹.

In 2002, the International Criminal Court (ICC) ²⁶² came into existence, marking the end of over fifty years of elaborations to create a permanent global court to prosecute particularly heinous crimes of international significance. It has the ability to bring those accused of the most serious of criminal offences to justice those who will no longer be able to escape prosecution by hiding behind national legal obstacles which prevent their trial²⁶³. Currently, the jurisdiction of the International Criminal Court encompasses genocide, crimes against humanity, war crimes, and crimes of aggression²⁶⁴.

Some²⁶⁵ argue that despite the best efforts of nations to cooperate, prosecution under the current enforcement system fails to keep pace with the traffickers. International drug trafficking is a global problem; the International Criminal Court is a solution in need of problems. The jurisdiction of the Court

²⁶⁰ See Kiefer, 2009, p.165.

²⁶¹ See Bantekas & Nash, 2007, p.246.; Crawford, 1994, p.146.; Boister, 1998, pp.561-562. At the 1998 Conference, Caribbean states felt that drug offences should be included within the ICC's jurisdiction when committed: (a) on a large scale (and) (or) in a transboundary context, (b) within the framework of an organised and hierarchical structure; (c) with the use of violence and intimidation against private persons, judicial persons or other institutions, or members of the legislative, executive or judicial arms of government, (thereby) creating fear or insecurity within a state or disrupting its economic, social, political or security structures or with other consequences of a similar nature; or d) in a context in which corrupt influence is exerted over the public, the media and public institutions. See Boister, 1998, p.566.

²⁶² In July, 17, 1998, the Rome Statute was agreed upon by 120 nations. Some four years later, on July 1, 2002, the International Criminal Court (ICC) was established and of 2010, have ratified the Rome Statute. See Natarajan Mangai & Kukaj Antigona, "The International Criminal Court", International Crime and Justice, Ed. Mangai Natarajan, Cambridge University Press 2011, p.357.

²⁶³ See Schloenhardt Andreas, Transnational Organised Crime and the International Criminal Court-Towards Global Criminal Justice, Australian Institute of Criminology International Conference, Melbourne Australia, November 2004, p.1, available at. <http://www.aic.gov.au/conferences/2004/index.html>, 15.07.2014.

²⁶⁴ See Bantekas & Nash, 2007, pp.381-390.

²⁶⁵ See Gianaris, 1992, pp.108-109.; McConville, 2000, p.76.

should expand to include international drug trafficking²⁶⁶, and it would provide mechanisms for resolving jurisdictional disputes between nations and for extraditing offenders to the Court rather than to another sovereign nation. Because, unlike some other international crimes²⁶⁷, drug trafficking is clearly transnational; its commission involves crossing national boundaries²⁶⁸.

According to some, the current system of prosecuting international drug traffickers is inadequate, and many traffickers successfully avoid prosecution, lessening the deterrent effect of existing laws²⁶⁹. Inconsistency in sentencing across states is a strong argument for ICC jurisdiction over drug offences. Allowing the Court to exercise jurisdiction over drug trafficking would alleviate states' nationalistic and sovereignty concerns, as they will not be required to cede jurisdiction to a requesting state²⁷⁰. The legal advantages of including drug offences within the ICC's jurisdiction relate mainly to the inadequacies of the present system with respect to jurisdiction, extradition and mutual legal assistance²⁷¹.

Some advocates²⁷² of the inclusion of drug offences have argued that it

²⁶⁶ See McConville, 2000, p.76-79. "First, the U.S. should support this proposal because it will mean a greater certainty of prosecution and punishment for suspected drug traffickers... Second, the Court would likely make international law enforcement more efficient and effective...Third, the United States should support the aggressive prosecution of drug trafficking in the Court because it would help reduce the quantity of drugs supplied to U.S. markets. Consequently, benefits flowing to the U.S. could include reductions in drug-related domestic crime, violence, and dependency."; Also see Lloyd Marshall B., "Conflict, Intervention, and Drug Trafficking: Unintended Consequences of United States Policy in Colombia", *Oklahoma City University Law Review*, 2011, Vol. 36, No.2, p.297.

²⁶⁷ "There is no settled definition of what constitutes an international crime, but a number of criteria have been suggested... The first of these is that the offence must find its source and definition in an international convention.... A second defining criterion of an international crime is the application of extraterritorial jurisdiction. ...A third criterion for classifying crimes as international is an international or transnational element and international steps against this conduct." See Boister, 1998, pp.23-24.

²⁶⁸ See McConville, 2000, p.77.

²⁶⁹ McConville, 2000, p.98.

²⁷⁰ See McConville, 2000, p.95.; Gianaris, 1992, p.110.

²⁷¹ See Patel Faiza, "Crime Without Frontiers: A Proposal for an International Narcotics Court", *New York University Journal of International Law and Politics*, vol 22, No.4, Summer, 1990, pp.709-747.; Boister, 1998, p.566.

²⁷² Boister, 1998, p.567.; "...Accordingly, the call for an international criminal jurisdiction to address large-scale drug trafficking and drug related violence has come from States threatened by powerful drug cartels. In parallel, a court with jurisdiction limited to

would make for more predictable prosecution of unreachable drug barons than national prosecution. According to them the threats, bribery and influence of traffickers on judges and courts have a much stronger effect on national trials of traffickers than they would have at the international level. Such threats also have negative consequences for extradition requests and requests for mutual assistance. The ICC would provide a better quality prosecution and more effective punishment of such individuals. Furthermore, the Court would provide a strong symbolic and legal deterrent and enhance the rule of law by increasing the probability that international narcotics offenders will be brought to justice.

The Court would also reduce the international tensions currently generated when a state refuses to turn over an accused for prosecution by another state²⁷³. Moreover, the Court's diverse panel of independent judges would greatly reduce the current problems of biased national justice systems²⁷⁴.

According to some, the Court would facilitate the discovery and evaluation of evidence located in different nations. The Court would encourage international cooperation through the establishment of a uniform international criminal code with a list of international crimes and punishments, and rights for the accused which all signatory nations would follow²⁷⁵. The Court would also provide a structural vehicle by which a nation could pursue a decision to prosecute suspected individuals, without that nation having to resort to unilateral actions to enforce its prosecutorial decisions²⁷⁶.

Some²⁷⁷ argue that international drug control has produced three distinct

international organized crime related to illicit drug trafficking was advocated in the U.S." See Evered, Timothy C., "An International Criminal Court: Recent Proposals and American Concerns", *Pace International Law Review*, Vol. 6, Issue 1, Winter 1994, p.135.

²⁷³ McConville, 2000, p.95.

²⁷⁴ The jurisdiction of the Court should expand to include international drug trafficking, complementary to the jurisdiction of nation-states, through an Optional Protocol to the International Criminal Court. See McConville, 2000, pp.94-100.

²⁷⁵ See Gianaris, 1992, p.111.

²⁷⁶ See Gianaris, 1992, p.111.

²⁷⁷ See Boister, 1998, pp.571-572. Boister argued that international organisations would begin to develop a draft international convention that focuses on the social and psychological realities that underpin drug use and supply. This convention would have two major facets.

kinds of law. The first phase, regulation of licit drug production, distribution and consumption was developed in the period 1913 to 1972. The 1961 Convention, 1971 Convention and 1972 Protocol are mainly concerned with this aspect of drug control. The second phase, the suppression of illicit drug related activities, began abortively with the 1936 Suppression Convention. Although a small number of provisions in the 1961 and 1971 Conventions and the 1972 Protocol concerned themselves with penal law, the chief instrument today is the 1988 Convention which is concerned almost entirely with the criminal suppression of illicit drugs. Finally, international drug control law appears to be moving into a third phase addressing the needs and problems of users, and the small number of optional provisions in the 1961, 1971 and 1988 Conventions and 1972 Protocol are insufficient. One way to solve this is to place more serious drug offences under the jurisdiction of the ICC; another is to make unqualified universal jurisdiction over these offences obligatory through a protocol to the 1988 Convention. Finally, within this framework, an 'international narcotics court' has also been proposed to deal exclusively with drug offenders²⁷⁸.

c. Arguments against Universal Jurisdiction over Drug Trafficking Offences

There are some arguments against establishment of universal jurisdiction over drug trafficking offences. Firstly, exercise of universal jurisdiction would interfere with national sovereignty²⁷⁹, and the current system is adequate to handle drug trafficking²⁸⁰. Some²⁸¹ countries based their opposition to the inclusion of drug trafficking on internal considerations of national sovereignty

First, it would focus on the social and psychological context of the user. The second facet of this new convention would be a focus on the socio-economic conditions of the supplier. Recognising the socio-economic roots of supply, the convention would have to be integrated within global developmental policy. See Boister, 1998, p.574.

²⁷⁸ See Patel, 1990, pp.709–747.

²⁷⁹ Some claim that some states like the United States favour the present indirect method of control over drug offences, because it suits them. On the other hand, states define crimes differently, impose different penalties for similar conduct, establish jurisdiction on different grounds, grant or refuse extradition using different procedures and on different evidence and base legal co-operation upon different forms of request. See Boister, 1998, p.18 and 570.; Evered, 1994, p.150.

²⁸⁰ See Kiefer, 2009, p.181.

²⁸¹ See Schloenhardt, 2004, p.10.

and confidentiality. According to them, drug crimes were best dealt with bilaterally or regionally and these arguments centered upon the concern that the investigation of drug trafficking is a lengthy, expensive and complicated process, involving long-term planning and extensive intelligence gathering²⁸².

A second objection to the use of universal jurisdiction is that it would create conflict between states. Because, not all states are party to the drug conventions, hence the conventions do not establish the crimes universally. From this view point, drug conventions themselves do not establish universal jurisdiction over drug offences, they establish territorial jurisdiction and extend jurisdiction extraterritorially through versions of accepted jurisdictional principles like nationality and unusual jurisdictional principles like the effects principle²⁸³. Another concern with universal jurisdiction is the argument that there is no assurance that the prosecuting nations will apply fair standards of criminal procedure in adjudicating these cases²⁸⁴.

A third objection is that drug-related crimes might trivialize the role of the International Criminal Court²⁸⁵. Because of this, the Court would not have sufficient resources to conduct the lengthy and complex investigations required to prosecute drug trafficking, and drug offenses would overload the docket of the Court²⁸⁶. Some believe that if the Court's jurisdiction extends beyond the

²⁸² See Arsanjani Mahnouch H., "The Rome Statute of the International Criminal Court", *The American Journal of International Law*, Vol. 93, No. 1, Jan. 1999, p. 29. "The opposition was based on the fact that the nature of investigating the crimes of drug trafficking and terrorism, which requires long-term planning, infiltration into the organizations involved, the necessity of giving immunity to some individuals involved, and so forth, makes them better suited for national prosecution."

²⁸³ See Boister, 1998, pp.563-564.

²⁸⁴ Geraghty, 2004, p.398.; "The Draft Code has its difficulties. These relate, inter-alia, to offence definition, criminal responsibility of, penalties imposed on, and due process safeguards for, perpetrators, and States' obligations to try and sanction or extradite suspects... A central issue is the nature of the court in terms of its relationship to national courts, the applicability of national law, substantive and procedural, including evidentiary rules, crime definition (e. g., where definitions were not accurately defined by treaty provision) and punishment." See Al-Mulla, Mohammed A. H. A., *Evolution of an International System of Drug Control Law and Instrumentation and the Need for Reform: the Breadth and Depth of the Global Illicit Drug Problem*, Ph. D. Thesis, University of London 1995, p.341 and 346.

²⁸⁵ See Crawford James, "The ILC's Draft Statute for an International Criminal Tribunal", *The American Journal of International Law*, Vol. 88, No. 1, 1994, p.146.

²⁸⁶ See Boister, 1998, p.568. "In the Preparatory Committee it was argued that drug trafficking

“serious” or “core” crimes, trivial matters would swamp its limited resources²⁸⁷. Moreover, ICC’s jurisdiction should not be extended to drug-related offences, because this jurisdiction would likely be a less effective measure than proponents have argued, and the extended jurisdiction might damage the ICC as an institution, by introducing possible corruption, as well as by harming its reputation²⁸⁸. Some²⁸⁹ claimed that lack of consensus on drug trafficking could jeopardize the prosecution of crimes against humanity, genocide, war crimes, and crimes of aggression currently under the jurisdiction of the ICC. Perhaps more convincing is the argument that jurisdiction over drug trafficking would overwhelm the resources of an international criminal court.

Some posited that drug-related crimes lacked sufficient definition to be prosecutable under the Rome Statute²⁹⁰. The major problems with the definition and execution of drug offences are that the drug conventions are not self-executing and they define drug offences quite broadly. On the other hand, some of advocates of the inclusion of drug offences have argued that they should be redefined more narrowly in the ICC’s statute in order to make it possible for the ICC to take jurisdiction²⁹¹.

According to some²⁹², despite the obvious harms caused by the drug trade, there is one major difference between the crime of drug trafficking and other crimes subject to universal jurisdiction based on the humanitarian rationale. From this viewpoint, the ICC’s jurisdiction should not be extended to cover drug-related offences because international criminal law should be restricted

should not be included because these crimes were ... of such a quantity as to flood the court; the court would not have the necessary resources to conduct lengthy and complex investigations required to prosecute the crimes; the investigation of the crimes often involved highly sensitive information and confidential strategies; and the crimes could be more effectively investigated and prosecuted by national authorities under existing international co-operation arrangements.”

²⁸⁷ See McConville, 2000, p.98.; “One of the most persuasive arguments for not allowing the ICC to have jurisdiction over drug trafficking cases is the lack of ICC resources.” See Kiefer, 2009, p.179.

²⁸⁸ See Michels, 2009, p.459.

²⁸⁹ See Kiefer, 2009, p.173.

²⁹⁰ See Crawford, 1994, p.146.

²⁹¹ See Boister, 1998, p.564.

²⁹² See Michels, 2009, p.451.

to conduct that violates internationally recognized human rights. So far, international criminal law has concerned itself with the most serious crimes of concern to the whole international community. These crimes constitute gross violations of internationally recognized human rights, such as the rights to life, liberty, property and the right to be free from torture. Drug trafficking or production itself does not infringe on human rights.

Finally, there is a serious debate over whether legalization or decriminalization of the drug trade could solve many of the world's drug problems. States can take one of three general approaches on drugs. Firstly, a punitive, prohibitive approach focuses on prosecuting and punishing those who use, possess or sell illicit drugs. Secondly, a harm minimization approach focuses on mitigating the harms caused by drugs, and decriminalization of possession for personal use, which removes drug-related conduct from criminal law, but maintains non-criminal sanctions. Thirdly, a legalization approach entails no legal prohibitions of any kind for drug manufacturing, sale, possession or use. Moreover, there are large discrepancies in the punishments that countries implement for drug trafficking violations. In some states, the quantity of drugs trafficked and whether there is an association with an organized crime group are factors in determining the severity of the penalty. In some states, these two factors are considered to be aggravating circumstances that warrant increased penalties, some countries are more severe and impose the death penalty for drug trafficking²⁹³. These differences in drug policies between states underscore the problems that arise when trying to determine which drugs should be illegal and under what circumstances. Different states have different views about how each substance ought to be regulated, and these different views imply discrepancies concerning the severity of drug trafficking offenses, if such activities are criminalized at all²⁹⁴. According to some, legalization and decriminalization approaches would be incompatible with complementary ICC jurisdiction²⁹⁵. In this sense, the humanitarian effects of drug trafficking are fundamentally different from those associated with universal

²⁹³ See Kiefer, 2009, pp.175-176.

²⁹⁴ See Kiefer, 2009, p.172.

²⁹⁵ See Michels, 2009, p.456.

jurisdiction crimes, such as genocide or torture²⁹⁶.

CONCLUSION

There has been a growing recognition that crime and criminal organizations have crossed jurisdictional boundaries. Crime networks have exploited expanding trade and financial markets, while benefitting from rapidly advancing technology, broadened international travel, and improved global communications. Transnational crimes are believed to most frequently originate in some regions around the world, but their effects are global. They have been linked with criminal groups in money laundering, counterfeiting, and other activities. It has become evident that the growing activities of transnational crime pose a serious threat worldwide in terms of national and international security, as well as political, economic, financial, and social disruptions.

Drug trafficking is a well known kind of transnational crime and has been the most pressing of all criminal justice issues for the past century. The illegal drug trade is estimated to be the second largest industry in the world today, outweighed only by the weapons industry. The United Nation estimates that global illicit drug users are set to rise by 25 per cent by 2050 and that the bulk of the increase is likely to come from the rapidly rising urban populations of developing countries. It has also had severe political and economic impacts on production, transit, and consumption countries, which are often closely related to widespread corruption. The size of and the violence associated with the illicit drug industry in countries such as Colombia or Afghanistan are destabilizing the security and institutions of these and other countries. The consequences of drug trafficking are appalling and, for the past century, states have widely agreed that they must work together to combat the evils caused by the international narcotics trade. The fundamental objective of the international measures is restricting the use of drugs under international control to medical and scientific use.

²⁹⁶ See Geraghty, 2004, p.387. "The reality is that the decriminalization argument is unlikely to succeed. Most countries, especially the United States, are steadfast in their belief that the drug trade should not be made legal, and have signed international agreements pledging to criminalize and prosecute drug trafficking."

Despite massive investments of time and resources, this international effort has not been easy. The drug trade is transnational in character and its impact, as well as its security consequences cannot be viewed as a national problem, but transnationally. The promise of prosecution has not always been an effective deterrent to drug traffickers, because they tend to operate beyond the reach of criminal jurisdiction. To deal effectively with the security implications of transnational drug trafficking, a collaborative multilateral approach is essential. Since International Opium Convention of 1912, a total of thirteen international agreements on drug control have been concluded along with ten international instruments on drug related issues. Today, the international law on drug trafficking contains a wealth of widely accepted mechanisms to prohibit the illegal manufacturing, transfer, sale, use, possession etc of drugs along with money laundering and corruption, as well as mutual legal assistance and judicial cooperation measures, extradition clauses, provisions on law enforcement cooperation, technical assistance and training, and prevention mechanisms.

There has been expansion of various forms of bilateral cooperation, including technical assistance in law enforcement and criminal law reform, bilateral treaties, and a series of informal working arrangements between law enforcement and the judiciary of a number of countries. These are all important in terms of attempts to overcome certain difficulties related to differences in legal systems otherwise precluding effective cooperation. However, despite increasingly bilateral networking, major gaps still remain. In the area of procedural legislation and law enforcement methods, there are still a number of divergences, ranging from a traditional difference between countries with mandatory and discretionary prosecution, through acceptance or denial of electronic surveillance, undercover agents and controlled delivery, to the granting or not of immunity to informants who disclose information on organized crime groups and their leaders. Differences in organizational structures and admissible methods and evidence still create problems in bilateral, regional and international cooperation.

Some consider that providing states with the ability to exercise universal

jurisdiction over drug traffickers would provide a tool that will help states in ensuring that traffickers are faced with a real threat of prosecution. According to this view, although there is some international treaty law conferring universal jurisdiction, that law is not comprehensive enough such that any state can prosecute drug traffickers wherever they are found. The current system is inadequate, and many traffickers avoid prosecution, allowing the International Criminal Court to exercise jurisdiction over drug trafficking would be a solution in need of problems. On the other hand, attempts to include drug trafficking into the International Criminal Court Statute were met by great opposition so that the final text of the ICC Statute restricts the Court's jurisdiction to genocide, crimes against humanity, war crimes, and crime of aggression alone. Opponents mainly cite that the current system is adequate to handle drug trafficking; drug offenses do not violate fundamental humanitarian principles or constitute exceptionally serious crimes of international concern; the Court would not have sufficient resources to prosecute these offences; and drug offenses would overload the docket of the Court.

In conclusion, it should be noted that the fight against drug trafficking as a transnational crime is not just a fight against crime. The production, trafficking and consumption of illicit drugs can be understood properly only if they are seen in their many different dimensions: political, social, economic and cultural. Strategies at the local, regional and international levels must be coordinated, and strategies to defeat this transnational threat will require effective co-operation among drug-producing and drug-consuming countries. This is essential because drug traffickers have developed a sophisticated capability to permeate state boundaries, as well as to shift their operations internationally in response to pressure originating in any single state. It would be a mistake only to focus on the production and transit regions when many of the problems are to be found in the consumer markets. To defeat drug trafficking is one of the greatest challenges facing the world in the twenty-first century.



BIBLIOGRAGHY

Al-Mulla, Mohammed A. H. A., *Evolution of an International System of Drug Control Law and Instrumentation and the Need for Reform: the Breadth and Depth of the Global Illicit Drug Problem*, Ph. D. Thesis, University of London 1995.

Aoyagi Melissa T., "Beyond Punitive Prohibition: Liberalizing the Dialogue on International Drug Policy", *Journal of International Law and Politics*, Volume 37, Number 3, March 2006, pp.555-610.

Arsanjani Mahnoush H., "The Rome Statute of the International Criminal Court", *The American Journal of International Law*, Vol. 93, No. 1, Jan. 1999, pp. 22-43.

Bantekas Ilias & Nash Susan, *International Criminal Law*, Third Edition, 2007.

Barnett Richard J., "Extradition Treaty Improvements to Combat Drug Trafficking", *Georgia Journal of International and Comparative Law*, Vol. 15, 1985, pp.285-315.

Bassiouni M. Cherif, "Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice", *Virginia Journal of International Law Association*, Fall 2001, pp.81-162.

Bennett Allyson, "That Sinking Feeling: Stateless Ships, Universal Jurisdiction, and the Drug Trafficking Vessel Interdiction Act", *The Yale Journal of International Law*, Vol. 37, 2012, pp.433-461.

Berman, Paul Schiff, "The Globalization of Jurisdiction", *University of Connecticut School of Law Articles and Working Papers*. Paper 13, 2002.

Betti Stefano, *The European Union and the United Nations Convention against Transnational Organised Crime*, European Parliament, Civil Liberties Series, 2011.

Bogges D. Brian, "Exporting United States Drug Law: An Example of the International Legal Ramifications of the "War On Drugs"", *Brigham Young University Law*, 1992, pp.165-190.

Boister Neil Brett, *The Suppression of Illicit Drugs through International Law*, University of Nottingham, 1998.

Boister Neil, "International Tribunals for Transnational Crimes: Towards a Transnational Criminal Court?", *Criminal Law Forum*, Vol. 23, 2012, No. 4, pp. 295-318.

Boister, Neil, "Transnational Criminal Law?", *European Journal of International Law*, Vol. 14, No. 5, 2003, pp.953-976.

Bulletin on Narcotics, *A Century of International Drug Control*, United Nations Office on Drugs and Crime, Ed. Sandeep Chawla, New York, 2009.

Chawla Sandeep & Pietschmann Thomas, "Drug Trafficking as a Transnational Crime", *Handbook of Transnational Crime and Justice*, Ed. Philip Reichel, Sage Publications, 2005, pp.160-180.

Ciccarelli John, "Crime as a Security Threat in the 21st Century", *Journal of the Australian Naval Institute*, Vol. 22, Issue 4, November/December 1996, pp.41-44.

Cook Catherine, Bridge Jamie & Stimson Gerry V., "The Diffusion of Harm Reduction in Europe and Beyond", *Harm Reduction: Evidence, Impacts and Challenges*, European Monitoring Centre for Drugs and Drug Addiction, 2010.

Crawford James, "The ILC's Draft Statute for an International Criminal Tribunal", *The American Journal of International Law*, Vol. 88, No. 1, 1994, pp.140-152.

Cryer Robert, Friman Hakan, Robinson Darryl & Wilmschurst Elizabeth, *An Introduction to International Criminal Law and Procedure*, 2nd Edition, Cambridge University Press, June 2010.

Çevik Kürşat, *Internationalisation of Turkish Law Enforcement: A Study of Anti-Drug Trafficking*, PhD Thesis, University of Nottingham, 2013.

Dupont Alan, "Transnational Crime, Drugs, and Security in East Asia" *Asian Survey*, Vol. 39, No. 3, May - Jun. 1999, University of California Press, pp.433-455.

Dziedzic Michael J. "The Transnational Drug Trade and Regional Security", *Survival: Global Politics and Strategy*, Vol. 31 Number 6, 1989, pp.533-548.

Emmers Ralf, "International Regime-Building in ASEAN: Cooperation against the Illicit Trafficking and Abuse of Drugs", *Contemporary Southeast Asia*, Vol. 29, No. 3, December 2007, pp.506-525.

Estimating Illicit Financial Flows Resulting From Drug Trafficking and Other Transnational Organized Crimes, United Nations Office on Drugs and Crime, Vienna Austria, Research Report, 2011.

Evered, Timothy C., "An International Criminal Court: Recent Proposals and American Concerns", *Pace International Law Review*, Vol. 6, Issue 1, Winter 1994, pp.121-158.

Fazey Cindy, "International Policy on Illicit Drug Trafficking: The Formal and Informal Mechanism", *Journal of Drug Issues*, Vol.37, Issue 4, 2007, pp.755-780.

Felsen David & Kalaitzidis Akis, "A Historical Overview of Transnational Crime", *Handbook of Transnational Crime and Justice*, Ed. Philip Reichel, Sage Publications, 2005, pp.3-19.

Findlay Mark, "The Globalisation of Crime", *Australian Quarterly*, Vol. 71, No. 4, Jul. - Aug. 1999, pp.23-27.

Fritch Charles R., "Drug Smuggling on the High Seas: Using International Legal Principles to Establish Jurisdiction Over the Illicit Narcotics Trade and the Ninth Circuit's Unnecessary Nexus Requirement", *Washington University Global Studies Law Review*, Vol. 8, Issue 4, 2009, pp.701-721.

Galeotti Mark, "Introduction: Global Crime Today", *Global Crime*, Vol. 6, No. 1, February 2004, p.1-7.

Gallagher Anne, "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis", *Human Rights Quarterly*, Vol. 23, 2001, pp.975-1004.

Geraghty Anne H., "Universal Jurisdiction and Drug Trafficking: A Tool for Fighting One of the World's Most Pervasive Problems", *Florida Journal of In-*

ternational Law, Volume16, 2004, pp.371-403.

Gianaris William N., "The New World Order and the Need for an International Criminal Court", *Fordham International Law Journal*, Vol. 16, Issue 1, 1992, pp.88-119.

Global Programme against Transnational Organized Crime, Results of a Pilot Survey of Forty Selected Organised Criminal Groups in Sixteen Countries, United Nations Office on Drugs and Crime, September 2002.

Goodman J., Lovejoy P., and Sherratt A. (eds), *Consuming Habits: Drugs in History and Anthropology*, Routledge, London,1995.

Griffith Gavan & Harris Claire, "Recent Developments in the Law of Extradition", *Melbourne Journal of International Law*, Vol. 6, 2005, pp.33-54.

Gurule Jimmy, "The 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances – A Ten Year Perspective: Is International Cooperation Merely Illusory?", *Fordham International Law Journal*, Vol. 22, Issue 1, 1998, pp.73-121.

Haken Jeremy, *Transnational Crime In The Developing World*, Global Financial Integrity, February 2011.

Hall Tim, "Economic Geography and Organized Crime: A Critical Review", *Geoforum*, Vol. 41, Issue 6, November 2010, pp.841-845.

Hauck Pierre & Peterke Sven, "Organized Crime and Gang Violence in National and International Law, *International Review of the Red Cross*", *International Review of the Red Cross*, Vol. 92, Issue 878, June 2010, pp.409-436.

Henderson Convay W., *Understanding International Law*, 2010.

Hunt Neil, *A Review of the Evidence-Base for Harm Reduction Approaches to Drug Use*, Forward Thinking on Drugs, 2003.

Illuminati Giulio, "Transnational Inquiries in Criminal Matters and Respect for Fair Trial Guarantees", *Transnational Inquiries and the Protection of Fundamental Rights in Criminal Proceedings*, Ed. Stefano Ruggeri, Springer-Verlag, Berlin Heidelberg, 2013.

Irrera Daniela, "The EU Strategy in Tackling Organized Crime in the Framework of Multilateralism", *Perspectives on European Politics and Society*, Vol. 12, No. 4, December 2011, pp.407-419.

Jamieson Alison, "Transnational Organized Crime: A European Perspective", *Studies in Conflict & Terrorism*, Vol.24, Number 5, 2001, pp.377-387.

Jenner Matthew S., "International Drug Trafficking: A Global Problem with a Domestic Solution", *Indiana Journal of Global Legal Studies*, Vol. 18, Issue 2, Summer 2011, pp.901-927.

Jordan Jon B., "Universal Jurisdiction in a Dangerous World: A Weapon for All Nations Against International Crime", *Michigan State University DCL Journal of International Law*, Vol.9, Issue 1, 2000, pp.1-32.

Kenney Michael, "The Architecture of Drug Trafficking: Network Forms of Organisation in the Colombian Cocaine Trade", *Global Crime*, Vol.8, Number 3, 2007, pp.233-259.

Keohane R. & Joseph Nye, *Transnational Relations and World Politics*, Harvard University Press, 1971.

Kiefer Heather L., *Just Say No: The Case against Expanding the International Criminal Court's Jurisdiction to Include Drug Trafficking*, *Loyola of Los Angeles International and Comparative Law Review*, Vol.31, Issue 2, 2009, pp.157-181.

Kleiman Mark A.R., *Illicit Drugs and the Terrorist Threat: Causal Links and Implications for Domestic Drug Control Policy*, Domestic Social Policy Division, Congressional Research Service, 2004.

Le Vy, Bell Peter & Lauchs Mark, "Elements of Best Practice in Policing Transnational Organized Crime: Critical Success Factors for International Cooperation", *International Journal of Management and Administrative Sciences*, Vol. 2, No. 3, Feb. 2013, pp.24-34.

Lloyd Marshall B., "Conflict, Intervention, and Drug Trafficking: Unintended Consequences of United States Policy in Colombia", *Oklahoma City University Law Review*, 2011, Vol. 36, No.2, pp.293-352.

Magherescu Delia, "Transnational Criminality in Europe and the Danger of its Movement from East to West", *Journal for Humanities and Social Affairs*, Issue 1, 2011, pp.165-194.

Marlatt, G. Alan, Larimer Mary E., Witkiewitz Katie, *Harm Reduction: Pragmatic Strategies for Managing High-Risk Behaviors*, The Guilford Press, 2012.

McAllister William B. , *Drug Diplomacy in the Twentieth Century, An International History*, New York, 2000.

McConville Molly, "Global War on Drugs: Why the United States Should Support the Prosecution of Drug Traffickers in the International Criminal Court", *American Criminal Law Review*, Vol. 37, Issue 1, Winter 2000, pp.75-102.

McDonald, W., *Crime and Law Enforcement in the Global Village*, Cincinnati, OH Anderson Publishing, 1997.

McFarlane John , McLennan Karen, *Transnational Crime: The New Security Paradigm*, Strategic and Defence Studies Centre, Australian National University, 1996.

Mei Leong Angela Veng, *The Disruption of International Organised Crime*, Ashgate Publishing Company, 2007.

Michels Johan David, "Keeping Dealers off the Docket: the Perils of Prosecuting Serious Drug-Related Offences at the International Criminal Court", *Source Florida Journal of International Law*, Vol. 21, 2009, pp.449-459

Mueller Gerhard O.W., "Transnational Crime: Definitions and Concepts", *Combating Transnational Crime, Concepts, Activities and Response*, Ed. Williams Phil, Vlassis Dimitri, Psychology Press, 2001.

Musto, David F., *The American Disease, Origins of Narcotic Control*, Yale University, 1973.

Nadelmann Ethan A., "Global Prohibition Regimes: The Evolution of Norms in International Society", *International Organization*, Vol. 44, No. 4, Autumn 1990, pp. 479-526.

Nadelmann, Ethan Avram, *Cops Across Borders: Transnational Crime and International Law Enforcement*, Harvard University, Theses, 1987.

Natarajan Mangai, *Introduction, International Crime and Justice*, Ed. Mangai Natarajan, Cambridge University Press 2011.

Natarajan Mangai & Kukaj Antigona, “The International Criminal Court”, *International Crime and Justice*, Ed. Mangai Natarajan, Cambridge University Press, 2011.

Naylor R.T., “From Cold War to Crime War: The Search for a New “National Security” Threat”, *Transnational Organized Crime*, Vol. 1, No. 4, Winter 1995, pp.37-56.

Noll Alfons, “International Treaties and the Control of Drug Use and Abuse”, *British Journal of Addiction*, Vol.79, 1984, pp.17-39.

Parrish Austen L., “Domestic Responses to Transnational Crime: The Limits of National Law”, *Criminal Law Forum*, Volume 23, Issue 4, December 2012, pp.275-293.

Patel Faiza, “Crime Without Frontiers: A Proposal for an International Narcotics Court”, *New York University Journal of International Law and Politics*, vol 22, No.4, Summer, 1990, pp.709-747.

Richards James R., *Transnational Criminal Organizations, Cybercrime, and Money Laundering*, CRC Press, 1999.

Robelo Daniel, “Demand Reduction or Redirection? Channeling Illicit Drug Demand towards a Regulated Supply to Diminish Violence in Latin America”, *Oregon Law Review*, Vol. 91, 2013, pp. 1227-1251.

Rollins John, Wyler Liana Sun, Rosen Seth, “International Terrorism and Transnational Crime: Security Threats, U.S. Policy, and Considerations for Congress”, *Congressional Research Service*, January 5, 2010.

Scherrer Amandine, *G8 against Transnational Organized Crime*, Ashgate Publishing, 2009.

Schloenhardt Andreas, *Transnational Organised Crime and the International*

Criminal Court-Towards Global Criminal Justice, Australian Institute of Criminology International Conference, Melbourne Australia, November 2004.

Schroeder William R., "Money Laundering: A Global Threat and the International Community's Response", FBI Law Enforcement Bulletin, Vol. 70, Issue 5, May 2001, pp.1-9.

Shelley Louise, "The Globalization of Crime", International Crime and Justice, Ed. Mangai Natarajan, Cambridge University Press 2011.

Spapens Toine, "Macro Networks, Collectives, and Business Processes: An Integrated Approach to Organized Crime", European Journal of Crime, Criminal Law and Criminal Justice 18, 2010, pp.185-215.

Sproule D.W. & St-Denis, Paul, "The UN Drug Trafficking Convention: An Ambitious Step", The Canadian Yearbook of International Law, Vol. 27, 1989, pp.263-270.

Strategy to Combat Transnational Organized Crime, Addressing Converging Threats to National Security, The United States, July 2011.

Surrett William Roy, The International Narcotics Trade, An Overview of its Dimensions, Production Sources and Organizations, Congressional Research Service Report for Congress, 3 October 1988.

Swanstrom Niklas, "The Narcotics Trade: A Threat to Security? National and Transnational Implications", Global Crime, Vol.8, Number 1, 2007, pp.1-25.

Tate James A., "Eliminating the Nexus Obstacle to the Prosecution of International Drug Traffickers on the High Seas", University of Cincinnati Law Review, Vol.77, 2008, pp.267-296.

The Globalization of Crime, A Transnational Organized Crime Threat Assessment, United Nations Office on Drugs and Crime, 2010.

Thomas Chantal, "Disiplining Globalization: International Law, Illegal Trade and the Case of Narcotics", Michigan Journal of International Law, Vol. 24, Winter 2003, pp.549-575.

Thomas Chantal, "Globalization and the Reproduction of Hierarchy", U.C. Da-

vis Law Review, Summer 2000, Vol.33, pp.1451-1475.

Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment, United Nations Office on Drugs and Crime, 2012.

Wagley John R., Transnational Organized Crime: Principal Threats and U.S. Responses, Congressional Research Service, March 2006.

Wang Peng & Wang Jingyi, "Transnational Crime: Its Containment through International Cooperation", Asian Social Science, Vol. 5, No. 11, November 2009, pp.25-32.

Watson Luke, Suppression of Transnational Crime and the Trade in Illegal Drugs, Old Dominion University Model United Nations Society, 2013.

Williams Jenny & Bretteville-Jensen Anne Line, "Does Liberalizing Cannabis Laws Increase Cannabis Use?", Journal of Health Economics, Vol. 36, 2014, pp.20-32.

Williams Phil, "Transnational Criminal Organisations and International Security", Survival: Global Politics and Strategy, Vol.36, No.1, 1994, pp.96-113.

Windle James, "Afghanistan, Narcotics and the International Criminal Court: From Port of Spain to Kabul, via Rome", European Journal of Crime, Criminal Law and Criminal Justice, Vol. 20, 2012, pp.297-314.

World Drug Reports 2005-2010-2012.

Zagaris Bruce, "U.S. International Cooperation Against Transnational Organized Crime" Wayne Law Review, Vol.44, 1998, pp.1401-1464.

Zagaris Bruce, Peratta Julia Padierna "Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers - 150 Years and Beyond the Rio Grande's Winding Courses", American University International Law Review, Vol.12, Issue 4, 1997, pp.519-627.

Internet Sources

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005PC0006>,15.07.2014.

http://fpif.org/drug_trafficking_and_money_laundering/,15.07.2014.

<http://www.aals.org/profdev/civpro/berman2.pdf>,15.07.2014.

<http://www.aic.gov.au/conferences/2004/index.html>,15.07.2014.

<http://www.unodc.org/unodc/treaties/CTOC/>,15.07.2014.