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## A Legal Perspective on Afghanistan's Troubled History with Opium

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*Opium, one of the oldest recreational and medical drugs in the world, is derived from the poppy plant. Poppy cultivation has had a significant influence on the political, economic and social aspects of Afghanistan. Although not officially recorded, opium is the main export of the country. In this article, we will discuss how Afghanistan evolved into a 'narco-economy' with a focus on how it funds terrorist groups throughout the nation. Afghanistan has evolved to become the major producer and supplier of opiates in the world and the supply has been affected by various political and economic situations. We will also take a look at the 2022 ban on opium cultivation, how it has affected the lives of people and farmers and how a complete ban on opium cultivation is a distant dream for the nation. An in-depth study has been done on the legal aspects by looking into international treaties and the national laws surrounding drug control in Afghanistan with its evolution throughout the years. The impact of the opium trade on India and the nation's role in exports to other countries have also been examined. Drug use affects society as well and leads to an increase in other crimes and issues within families. Although complete eradication of the drug is a far-off dream, there are a few possible solutions that if implemented properly could be beneficial in the long run.*

**Keywords:** *opium, poppy cultivation, narco-economy, farmers, drug control.*

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## INTRODUCTION

Drug addiction, the new lifestyle trend, is spreading quickly in rich and poor countries alike. Opium has become a serious health hazard and around 16 million individuals worldwide suffer from opioid use disorder. Since the 1990s Afghanistan has established itself as the largest supplier of opium and heroin in the world. The Mujaheddin and the Taliban have played a huge role in this development. However, the poppy plant, from which opium is derived, has a long history in Afghanistan even before the 1990s. Opium cultivation has existed in Afghanistan since 1100 AD. The European poppy was introduced to the area by Arab traders along the Silk Road. In the early 1900s, during the reign of King Habibullah Khan, opium cultivation was widespread in Afghanistan and this was exported to other countries, mainly Iran. After the 1970s, neighbouring countries of Iran and Pakistan established stricter rules and increased penalties to control drug use and drug trafficking. Following this, Afghanistan became the epicentre of these activities.<sup>1</sup> The nation has seen significant political instability, with a GDP of about \$20 billion since 2012, and an HDI of less than 0.5. Despite efforts to outlaw the growth of poppies in 2001, the practice returned to its pre-ban levels in 2002. The main cause of the issue is the fact that many people in Afghanistan rely on poppy production for their livelihood and restricting poppy cultivation would have a huge impact on the economy.<sup>2</sup>

As of 2021, Afghanistan was the largest producer of opium in the world and opium poppy is refined into heroin in illicit laboratories all over Afghanistan. However, the 2022 ban on poppy cultivation by the Taliban has led to a huge decrease in poppy cultivation all over the country, and according to news reports Myanmar has overtaken Afghanistan to become the largest producer of opium in the world.

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<sup>1</sup> Shafiullah Farzayee, 'Drug Trafficking in Afghanistan' (2020) 3(2) Resolusi Jurnal Sosial Politik 98 <<https://ojs.unsiq.ac.id/index.php/resolusi/article/view/1448>> accessed 16 December 2023

<sup>2</sup> Pol ANTOINE and Dr. Golvine de ROCHAMBEAU, 'Conflicts in Afghanistan and their impact on the opium economy' (Master Thesis, Department of Economics 2023)

## OPIUM AND TERRORISM FUNDING

Afghanistan has been relying heavily on opium as its primary source of income for a long time. However, a significant portion of the generated revenue is used to support terrorist activities. During the Soviet invasion on 27 December 1979, Afghanistan produced about 200 tonnes of opium annually, accounting for roughly 10% of global production. By 1989, when the Soviet troops left the country, the quantity had increased sixfold, marking the beginning of the 'narco-economy'. After the Soviet invasion, there are claims that the CIA and ISI provided financial support, weapons, and other forms of assistance to various Afghan resistance organisations known as the Mujahideen. Given how deeply rooted the Mujahideen were in Afghanistan's tribal and ethnic structure, the US saw the possibilities of cooperating with these groups. Additionally, they commanded the devotion of the local inhabitants and controlled the resources.<sup>3</sup> During a period of warlord governance in Afghanistan after the Soviet withdrawal, the opium trade became one of the primary sources of revenue for military operations. Local leaders raised their share of poppy cultivation to maintain their positions of power and provide for their supporters. As a result, opium output reached its peak in 1994 at 3,400 tonnes, which was a seventeen-fold increase from 1979. Farmers were coerced into growing poppies in exchange for a meagre profit split. This created an opportunity for international narcotics traffickers, smugglers, weapons dealers, and consumer goods providers to profit from Afghanistan's war economy. Even after the Taliban started seizing Pashtun-dominated areas, the trend remained mostly unchanged. In 1999, poppy planting reached its peak again under the Taliban's rule. The Taliban and the Northern Alliance sustained and expanded their reign, in part, by earning income through the opium trade.<sup>4</sup> According to the UN Al-Qaeda & Taliban Sanctions Monitoring Team, drugs contribute to around 30-40% of the Taliban's income. In 2011-2012, the Taliban reportedly earned one-third of its \$400 million budget from poppy sales. The Taliban has a complex system of collecting fees from farmers and paying traffickers to transport drugs through areas that they control. Corruption is widespread, even at the highest levels of

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<sup>3</sup> Vishal Chandra, 'Warlords, Drugs and the 'War on Terror' in Afghanistan: The Paradoxes' (2006) 30(1) Strategic Analysis <[www.idsa.in/system/files/strategicanalysis\\_vhandra\\_0306.pdf](http://www.idsa.in/system/files/strategicanalysis_vhandra_0306.pdf)> accessed 18 December 2023

<sup>4</sup> Hermann Kreutzmann, 'Afghanistan and the Opium World Market: Poppy Production and Trade' (2007) 40(5) Iranian Studies <[www.jstor.org/stable/25597418](http://www.jstor.org/stable/25597418)> accessed 16 December 2023

policy and decision-making bodies, making the opium industry a lucrative business for various players involved. Farmers often pay police and counter-narcotics eradication officials to turn a blind eye to their activities. Similarly, drug traffickers may also pay law enforcement officials to overlook or shield their operations. Shockingly, it is believed that Afghan government personnel are involved in at least 70% of drug trafficking. As a result, there is a connection between drug dealers, corrupt government officials, farmers, terrorist groups, and rebels.<sup>5</sup> Opium production is prohibited in the Quran, so the Taliban had to find justifications for it. Consequently, the Taliban emphasised the 'evil' nature of the West and the Western Kafirs, whose eradication was more important, even though they acknowledged the harmful nature of narcotics.

### INEFFECTIVENESS OF THE BAN IN CONTROLLING PRODUCTION

In 2001, the Taliban government, headed by Mullah Mohammed Omar, imposed a Fatwa or a religious decree, which banned the cultivation of opium and aimed for its eradication, declaring it to be in violation of fundamental Islamic tradition.<sup>6</sup> This was implemented successfully and three hypotheses are given to explain its success. Firstly, the Muslim religious leaders were able to convince the Taliban leaders that banning opium cultivation was necessary for religious reasons. Secondly, the UN offered the Taliban some international legitimacy and monetary support if they reduced their opium production. Lastly, market intervention was applied and proved to be successful in increasing opium prices ten-fold the following year. This was the most convincing reason and as a result, despite putting a stop to poppy cultivation, the Taliban did not make it illegal to possess or sell poppy. Within a year, opium production reduced from 3300 tonnes to 200 tonnes. The Taliban imposed a ban on opium cultivation, however, the Northern Alliance continued to cultivate it in their strongholds. They contributed a significant share to Afghanistan's opium cultivation in 2001.<sup>7</sup>

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<sup>5</sup> "Narco-Jihad' – Haram money for a Halal cause?' (*European Foundation for South Asian Studies*) <[www.efsas.org/publications/study-papers/'narco-jihad'---haram-money-for-a-halal-cause/](http://www.efsas.org/publications/study-papers/'narco-jihad'---haram-money-for-a-halal-cause/)> accessed 19 December 2023

<sup>6</sup> *Ibid*

<sup>7</sup> Kreutzmann (n 4)

After the US-backed Karzai government came into power in 2002, they made opium cultivation and trafficking illegal. However, farmers persisted in growing it because of their poverty. The UNODC reports that during the 2005–06 growing season, opium cultivation spanned an estimated 165,000 hectares, representing a 59 percent rise from the previous year. Even while poppy farming represented less than 4% of Afghanistan's arable land in 2006, the crop produced over \$3 billion in income or more than 35% of the nation's gross national product (GNP). According to the UN's Afghanistan Opium Survey conducted in 2007, the nation produced a record 8,200 tons of opium, which accounted for 93% of the world's illegal heroin supply. In 2010, 93% of Afghanistan's total poppy was cultivated in just five provinces in the south and west regions.<sup>8</sup> As per the UNODC, the cultivation of Opium poppy hit a new height in 2013 with over 200,000 hectares, indicating a 36% rise from the previous year.<sup>9</sup> After the US withdrew in August 2021 and the Taliban took over, the nation faced both economic and humanitarian crises. Another ban on poppy farming was imposed by the Taliban in April 2022, but despite this, the area under cultivation of opium increased by more than 32% from the previous year, reaching over 233,000 hectares.<sup>10</sup> However, poppy farming drastically decreased in 2023, leaving 10,800 hectares of total poppy cultivation in Afghanistan. This indicated that the cultivable area has decreased by more than 95%. Additionally, the amount of opium produced decreased to only 33 tonnes from 6200 tonnes the year before.<sup>11</sup>

## IMPACT OF OPIOIDS ON THE SOCIETY

Extracted from the poppy plant, opium is a non-synthetic opioid that is extremely addictive. It is processed to create morphine, codeine, and heroin, among other drugs. Smoking opium can have immediate effects on the body. The opiate compounds enter the lungs and quickly spread to the brain, producing a burst of euphoria followed by relaxation and pain relief. However, it

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<sup>8</sup> 'The International Heroin Market' (*The White House*) <<https://obamawhitehouse.archives.gov/ondcp/global-heroin-market>> accessed 16 December 2023

<sup>9</sup> Nate Rawlings, 'Opium Production in Afghanistan Hits Record High' (*TIME*, 13 November 2013) <<https://world.time.com/2013/11/13/opium-production-in-afghanistan-hits-record-high/>> accessed 17 December 2023

<sup>10</sup> UN Office on Drugs and Crime, *Opium Cultivation in Afghanistan - Latest findings and emerging threats* (2022)

<sup>11</sup> UN Office on Drugs and Crime, *Afghanistan opium survey 2023 - Cultivation and production after the ban: effects and implications* (2023)

can also cause dryness of the mouth and nasal mucous membranes, and lead to constipation. Opium abuse may also result in overdosing and physical and psychological dependence.<sup>12</sup>

When used non-medically, opioids remain the leading cause of drug-related harm, including fatal overdoses. Opioids are the most frequently prescribed painkillers for patients in most parts of Europe and the Asian subregion. They are responsible for causing two-thirds of drug-related deaths globally. The injection of opiates is also a cause of the HIV/AIDS epidemic in Central Asian countries. In 2019, drug use disorders were associated with approximately 70% of the 128,000 fatalities. Afghanistan remained the largest global producer of illegal opium till mid-2023, responsible for producing 6200 tonnes, which accounts for 80% of the expected global supply. Mexico and Myanmar came in second and third, respectively. However, there has been a significant decrease in cultivation due to the national drug prohibition of 2023, which could have global implications.<sup>13</sup> Recent reports have shown that Afghanistan is now the second largest producer with Myanmar taking the first place.

Afghanistan has been a major source of heroin for Europe for many years. The drug arrives in Europe through two primary land routes. The first is known as the 'Balkan route' and passes through Turkey. The second is called the 'Northern Route' which has been operational since the mid-1990s. This route departs from northern Afghanistan, travels through Central Asia, and eventually reaches Russia.<sup>14</sup>

According to the 2015 Afghanistan Drug Use Survey, around 7% of Afghans, or up to 2.3 million people, take opiates, and up to 2.9 million use other substances. Among Afghan children under the age of 14 who were tested for drugs, 9% tested positive, with opioids being the leading cause (2% in urban areas and 11% in rural regions). In Kabul, heroin is easily accessible, and it only costs about \$6 to purchase. The United Nations reports that Iran has one of the worst drug

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<sup>12</sup> Department of Justice/Drug Enforcement Administration, 'Opium' (*DEA United States Drug Enforcement Administration*, October 2022) <[www.dea.gov/factsheets/opium](http://www.dea.gov/factsheets/opium)> accessed 21 December 2023

<sup>13</sup> UNODC 'World Drug Report 2023' (United Nations publication 2023) <[www.unodc.org/unodc/en/data-and-analysis/world-drug-report-2023.html](http://www.unodc.org/unodc/en/data-and-analysis/world-drug-report-2023.html)> accessed 11 December 2023

<sup>14</sup> Laurent Laniel et al., *Monitoring the Supply of Heroin to Europe* (European Monitoring Centre for Drugs and Drug Addiction 2008)

problems globally, affecting people from all walks of life. Several factors, including poverty, high unemployment, political unrest, economic stagnation, and limited development chances due to years of US sanctions, can leave individuals feeling depressed and hopeless. This desperation might lead some people to take drugs. Addiction may then push drug users into criminality to fund their habit and eventually result in jail time if they are arrested for drug-related offences like possession or sale. Pakistan is among the world's worst drug-abusing nations. 7.6 million drug users, 78 percent male and 22 percent female, live in Pakistan, according to the Drug Use in Pakistan 2013 Survey Report, a joint study by the Narcotics Control Division, Pakistan Bureau of Statistics, and the United Nations. The number of these addicts rises by 40,000 per year.<sup>15</sup>

Domestic violence was a frequent result of drug use, according to research done to examine the effects of drug use on the user and their family. Of those surveyed, half claimed to have been struck by a family member who was a drug user. Interviewees said that 60 percent of their family members who had jobs before their addiction lost them as a result of their drug use, and this was also a contributing factor to unemployment. Children with addicts in their families are also impacted. They were not allowed to attend school and were made to work to make money, which often led to illnesses. Another societal effect of drugs is an increase in crime. Crimes such as robbery, murder, and corruption are on the rise due to the drug problem in Afghanistan.<sup>16</sup> Nearly 80 percent of the 92 inmates at Kandahar's Sarpoza Prison have admitted to using narcotics in the past, according to the 2009 UNODC Drug Use study. Fifty of them, or fifty percent of the convicts examined, said they had used drugs at some point in their lives. Nine of them said they had used heroin, nineteen of them opium, and the other six said they had used both. In addition, female addicts engage in other criminal activities such as child sales, prostitution, and smuggling. They frequently engage in these crimes to get drugs or money.

Therefore, it is reasonable to assert that drug usage carries significant social ramifications for the future of the nation. Furthermore, the well-being of individuals, even those who do not use

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<sup>15</sup> 'Narco-Jihad' – Haram money for a Halal cause? (n 5)

<sup>16</sup> United Nations Office and Crime, *Impacts of Drug Use on Users and Their Families in Afghanistan* (2014)

drugs, is at risk when access to healthcare is limited and drug-related illnesses are high. When drugs are not readily available, it can drive drug users to commit violent acts, which poses a major challenge to society.<sup>17</sup>

## IMPACT ON INDIA

The high rates of Opium production in Afghanistan have adverse impacts on India. An important point to be noted is that a part of the opium production in Afghanistan is controlled by the government of Pakistan, the proceeds of which are used to destabilise India. India has also been a major transit point for trafficking towards Africa, Europe, North America and East and South-East Asia. As per the Indian National Narcotics Control Bureau's 2013 Annual Report, approximately 45% of India's heroin comes from Afghanistan. Apart from that, a considerable amount of raw opium is also used in India. Seizures of heroin grew significantly in 2013 whereas seizures of opium varied, first rising and then falling. The shared borders of India and Afghanistan are used by traffickers to smuggle various opiate products from Afghanistan. A portion of these products are shipped to markets in the East and West and the other portion is used in India. The western regions of India, which border Pakistan, including Punjab and Haryana, accounted for the vast majority of the country's heroin seizures in 2013. The supplies to North America, West Africa, East and Southeast Asia are transited through India as per the data and information seized by Indian officials. Pakistan and India are named as the important entry locations for heroin into the Canadian market. Additionally, there have been instances of the postal system—both regular mail and courier services—being used to carry heroin from India to several locations in Europe, North America, Asia, Africa and Australia.<sup>18</sup>

Around 2.1 percent of the population in the nation reports using opioids, with heroin being the most common at 1.14 percent, followed by prescription opioids at 0.96 percent and opium at 0.52 percent. Dependent usage is the most common use pattern among users. Three times as many people take opioids in India as there are worldwide. The total amount of opioids used has

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<sup>17</sup> Mohammad Haroon Mutasem, 'Drug Trafficking in Afghanistan: Criminalization, Investigation and Prosecution' (D'Phil Thesis, Faculty of Law of University of Hamburg 2021)

<sup>18</sup> United Nations Office and Crime, *Afghan Opium Trafficking Through the Southern Route* (2015)



increased since 2004, and heroin use has overtaken opium consumption.<sup>19</sup> The nation spends a large amount of resources on healthcare and criminal justice, arising out of illegal drug trafficking, which can otherwise be used for the greater good and other policy initiatives. Drug addiction leads to premature mortality which leads to great loss of productivity.<sup>20</sup>

Though the fall in opium production in 2023 will eventually reflect in the quantity smuggled in a few years, the seizure of 3,200 kg of methamphetamine since February 2022 suggests a disastrous change in the drug smuggling nexus, with a shift towards more synthetic drugs and methamphetamine emerging as the 'fulcrum of the new terror-narco' matrix.<sup>21</sup> Hence it is clear that the opium trade in Afghanistan not only affects the host nation but has very devastating effects on India as well

## DRUG CONTROL AT THE INTERNATIONAL LEVEL

Drug trafficking has been recognised as a global issue, and various bilateral and multilateral treaties have been signed by nations at different times in history to address this problem. The first Hague Opium Convention was signed in 1912, and subsequent agreements were mainly regulatory in nature during the League of Nations era. The main objective was to control the excesses of unrestricted free trade, particularly concerning opium. The agreements imposed restrictions on the export of opiates to nations where they had become illegal, except for medical purposes. However, they did not make drug use or cultivation illegal, nor did they impose criminal penalties. The initial set of agreements established administrative guidelines for the

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<sup>19</sup> Om Prakash Singh, 'Substance Use in India – Policy Implications' (2020) 62(2) Indian Journal of Psychiatry <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7197827/#:~:text=Opioid%20use%20is%20reported%20in,thee%20times%20the%20global%20average>> accessed 11 December 2023

<sup>20</sup> 'Impact of Drugs on Society' (The United States Department of Justice) <<https://www.justice.gov/archive/ndic/pubs38/38661/drugImpact.htm#:~:text=Public%20financial%20resources%20expended%20in,with%20drug%2Drelated%20premature%20mortality>> accessed 11 December 2023

<sup>21</sup> Shivam Sekhawat, 'Understanding the Fall in Opium Production in Afghanistan' (Observer Research Foundation, 05 July 2023) <<https://www.orfonline.org/expert-speak/understanding-the-fall-in-opium-production-in-afghanistan>> accessed 11 December 2023

import and export of cocaine and opiates, without making the drugs, their users, or their farming illegal.<sup>22</sup>

The drug control laws, which were established in 1912, were reinforced by the League of Nations, but they weakened during World War II. Despite this, the current structure remained intact. In 1946, the United Nations took over from the League of Nations with the implementation of the Lake Success Protocol, moving from a centralised enforcement role to one of treaty facilitation. The UN Division of Narcotic Drugs and the UN Commission on Narcotic Drugs took over the Opium Advisory Committee's responsibilities. In 1948, the Paris Protocol was put into effect by the UN to close loopholes in drug regulation and handle synthetic drugs. It was effective in that many non-party states implemented its requirements, and major drug manufacturing states joined as parties. On November 19, 1948, Afghanistan became a party to it. The New York Protocol of 1953 gave enforcement authority, limited opium production rights to seven states, and created the notion of opium production limitation. The United Nations Single Convention was created in 1964 as a result of the postponement of the ratification process. Afghanistan proposed to be included in the list but withdrew later on. The international community sought a single, comprehensive treaty to regulate drug control because there were several existing treaties. This effort resulted in the Single Convention on Narcotic Drugs, which was ratified in 1961.<sup>23</sup>

**UN Single Convention on Narcotic Drugs 1961:** International agreements that had been evolving since the early 20th century were replaced by the 1961 UN Single Convention on Narcotic Drugs,<sup>24</sup> which introduced new provisions absent from earlier agreements. This new treaty implemented a more stringent zero-tolerance and prohibitive system of control, including the cultivation of plants used to make narcotic drugs in trade control systems. The traditional producing nations of Asia, Latin America, and Africa, which accounted for the majority of the

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<sup>22</sup> Martin Jelsma, 'The Development of International Drug Control: Lessons Learned and Strategic Challenges for the Future' (2010) Global Commission on Drug Policies

<[https://www.senado.gob.mx/comisiones/relext\\_orgint/ungass/docs/Analisis-academicos/Global\\_Com\\_Martin\\_Jelsma.pdf](https://www.senado.gob.mx/comisiones/relext_orgint/ungass/docs/Analisis-academicos/Global_Com_Martin_Jelsma.pdf)> accessed 11 December 2023

<sup>23</sup> Mutasem (n 17)

<sup>24</sup> UN Single Convention on Narcotic Drugs 1961

world's cultivation and widespread traditional usage of cannabis, coca, and opium poppy, were put under additional strain. The treaty determined that traditional practices, including the common traditional usage of all three plants for therapeutic purposes, were 'quasi-medical' and needed to be discontinued.<sup>25</sup>

The 1961 UN Single Convention aimed to eliminate cannabis and coca within 25 years, and opium within 15 years. It created a global framework to restrict the manufacture, distribution, sale, use, and possession of narcotics to only legitimate medicinal and scientific uses, with a focus on drugs originating from plants such as cannabis, opium/heroin, and coca/cocaine.<sup>26</sup> This convention too, besides having many progressive and developing provisions, has some flaws and drawbacks.

The absence of a clause requiring receipt of notices from non-party nations regarding modifications to any of the convention's four schedules is one of the convention's shortcomings. The weak mechanism for controlling drug cultivation in this convention necessitates states to restrict and eventually eradicate drug-producing plants; however, because doing so would incur heavy costs for the states, some developing nations have refrained from joining the convention due to these costs.<sup>27</sup>

Afghanistan ratified the agreement on March 19, 1963, and to some extent has complied with its requirements. Following Article 4 of the Convention, state parties must enact certain laws and regulations to facilitate international collaboration and restrict the production, manufacturing, import, export, distribution, sale, use, and possession of drugs to legitimate medical and scientific endeavors. Afghanistan has implemented several levels of drug-issue legislation to meet these requirements.

The 1990 Counter Narcotics law was the first step towards fulfilling obligations. The subsequent Law in 2000, established during the Taliban era, was not of much significance in fighting the

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<sup>25</sup> Jelsma (n 22)

<sup>26</sup> *Ibid*

<sup>27</sup> Mutasem (n 17)

illicit traffic of drugs and extradition of illicit traffickers although it established a joint commission tangentially responsible for this task.

The 2003 Counter Narcotic Law and the Law against Intoxicating Drinks and Drugs and their Control of 2006 were also enacted as a step towards compliance with its international obligations. The 2003 law required the state to enter into agreements with other states and international organizations for cooperation in the field of campaigns against narcotic drugs and the 2006 law foresees the establishment of a Commission of campaign against drinks and drugs responsible for coordination and cooperation at the national level. Afghanistan has made attempts to provide yearly reports on its drug requirements and data returns to the International Narcotics Control Board. However, data from the INCB reports suggests that they have not followed through as planned.

According to the 1961 Convention on Drugs and Crimes (CONC), drug manufacturing, production, and cultivation are subject to restrictions. Afghanistan has failed to meet these commitments, as their opium acreage increased from 71000 hectares in 1994 to 224000 hectares in 2014. Additionally, Afghanistan remains a major hub for drug trafficking through the northern, southern, and Balkan routes.

Afghanistan has penalised acts that are prohibited by Article 36(1) of the Convention. Almost every crime described in the article has been criminalised in Afghanistan since the country's first law was passed in 1990. However, the penalisation has evolved progressively. While Afghanistan has mostly complied with its commitments on paper, there has been a significant amount of noncompliance in practice.<sup>28</sup>

The Single Convention of 1961, which was amended in 1972 to reinforce the preexisting framework, is considered the cornerstone of international drug control. On February 19, 2015, Afghanistan joined the 1972 Protocol as a party. Although the 1961 agreement was expected to

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<sup>28</sup> *Ibid*

cover every aspect of drug regulation, the actual situation demonstrated the necessity of the 1971 convention.<sup>29</sup>

**The Convention on Psychotropic Substances 1971:** The international community has traditionally focused on narcotic drugs and paid less attention to psychotropic substances. However, the Commission on Narcotic Drugs realised that the 1961 Single Convention did not cover these substances and needed to be addressed separately. With help from the United Nations, the World Trade Organization, and other organizations, the Commission on Narcotic Drugs adopted the 1971 Convention in 1976 to address this concern. This Convention required state parties to collaborate, restricted the use of psychotropic drugs to legal purposes, and kept activities within the framework of the United Nations to combat their misuse.<sup>30</sup> Article 22 of the Convention deals with imprisonment and other forms of loss of freedom.

Afghanistan has made efforts to comply with the Convention's requirements as a party to it. The 2004 Counter Narcotics Law includes obligations such as limiting the use of psychotropic substances to medical and scientific purposes only,<sup>31</sup> obtaining licenses for manufacturing and trading,<sup>323334</sup> and notifying the UN Secretary-General of any changes to the law, abuse or illicit traffic in psychotropic substances.<sup>35</sup> Afghanistan has also penalised acts defined in the relevant legislation passed in 2006 and 2010.

**The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988:** The United Nations' drug control system was effective until the late 1970s. However, with the rise of illegal drug trafficking in the 1980s, a centralized convention was needed to address this issue. The 1988 Convention was approved by the United Nations General Assembly, with the aim of promoting collaboration and coordination among 190 nations to combat the illegal trade

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<sup>29</sup> *Ibid*

<sup>30</sup> *Ibid*

<sup>31</sup> Counter Narcotics Law of Islamic Republic of Afghanistan 2006, art 7(4); The Law Against Intoxicating Drinks and Drugs as well as Controlling them 2010, art 2(3)

<sup>32</sup> Counter Narcotics Code of Islamic Republic of Afghanistan 2003, art 7

<sup>33</sup> Counter Narcotics Law of Islamic Republic of Afghanistan 2006, art 7

<sup>34</sup> The Law Against Intoxicating Drinks and Drugs as well as Controlling them of Islamic Republic of Afghanistan 2010, art 11

<sup>35</sup> Convention on Psychotropic Substances 1971, art 16(1)

of illicit drugs and other substances. The Convention penalizes several actions related to the production, manufacture, extraction, preparation, offering, distribution, sale, delivery, brokerage, dispatch, transport, transit, import, export, cultivation, and possession of narcotic substances and their derivatives.<sup>36</sup> Additionally, it punishes the conversion, transfer, acquisition, ownership, and use of property related to these activities, as well as the organization, administration, and funding of these crimes, and hides the actual source and nature of the property generated from these crimes.<sup>37</sup>

Afghanistan ratified the agreement in 1992 and has complied with it to a limited extent. Nearly all of the mentioned acts under Article 3 of the 1988 Convention have been made illegal by the 2010 Law against Intoxicating Drinks and Drugs and Their Control, including the cultivation,<sup>38</sup> trafficking,<sup>39</sup> import and export, use and possession,<sup>40</sup> and illicit consumption of drugs and their derivatives.<sup>41</sup>

The third necessity of this rule is extradition, which is not taken into account by any of Afghanistan's enacted anti-drug laws. This demonstrates Afghanistan's shortcomings in this particular area. The Convention is unique in that it provides a framework for addressing the global problem of drug trafficking. Its penal provisions are considered the cornerstone of the existing mechanism for combating drug trafficking in the world.<sup>42</sup>

## EVOLUTION OF NARCOTIC LAWS IN AFGHANISTAN

The opium trade has harmed Afghanistan since the 1990s. In response, the government has introduced various counter-narcotic laws over time. The international community also started criminalizing drug trafficking in the early 20th century, with the Opium Convention of 1912 being the first international agreement on the matter. This was followed by many other

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<sup>36</sup> Convention against Illicit Traffic in the Narcotic Drugs and Psychotropic Substances 1988, art 3

<sup>37</sup> *Ibid*

<sup>38</sup> Convention against Illicit Traffic in the Narcotic Drugs and Psychotropic Substances 1988, art 41

<sup>39</sup> Convention against Illicit Traffic in the Narcotic Drugs and Psychotropic Substances 1988, art 42

<sup>40</sup> Convention against Illicit Traffic in the Narcotic Drugs and Psychotropic Substances 1988, art 52

<sup>41</sup> Convention against Illicit Traffic in the Narcotic Drugs and Psychotropic Substances 1988, art 57

<sup>42</sup> Mutasem (n 17)

international conventions and protocols. Most countries have adopted stricter policies to combat drug trafficking at the national level. In this section, we will take a closer look at the various anti-drug laws in Afghanistan that have been briefly mentioned before.

**The Counter Narcotics Code 1990:** The first comprehensive drug regulation in Afghanistan was the Counter Narcotics Code of 1990. At that time, drug trafficking was a significant national concern, and the country's legal framework was insufficient to address it. This code is considered the first step towards criminalizing drug trafficking under a specific law. Prior to the implementation of this law, the country's legal records either did not make drug trafficking illegal or, if they did, did not specify any penalties.<sup>43</sup>

According to Article 13(2) of this law, drug trafficking is defined as 'production, processing, selling, purchasing, supplying, importing, exporting, and transporting drugs without the government's permission.'<sup>44</sup> The law established a system where the amount of drugs was the main factor in determining the severity of punishment. The type of drug also had an impact on the penalty. The punishment for trafficking in opium ranged from 24 hours to a year, and for more than 50g and up to 1kg, it increased to a year and a half.<sup>45</sup> The penalty period increased with the quantity and could be up to 20 years.<sup>46</sup> The penalty for narcotic drug substances varied from one to twenty years.<sup>47</sup> The penalty differed for various narcotic substances based on the specific situation. The court could seize the narcotics, and the vehicle used to transport the drugs could also be seized, depending on the quantity transported.<sup>48</sup>

The law stipulated 16-20 years in jail for crimes committed by government personnel, criminal networks, or with government assistance.<sup>49</sup> The maximum penalty for drug trafficking was death, but only if murder was committed during the trafficking process.<sup>50</sup> The severity of

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<sup>43</sup> *Ibid*

<sup>44</sup> Counter Narcotics Code of Afghanistan 1990, art 13(2)

<sup>45</sup> Counter Narcotics Code of Afghanistan 1990, art 20

<sup>46</sup> *Ibid*

<sup>47</sup> Counter Narcotics Code of Afghanistan 1990, art 22

<sup>48</sup> Counter Narcotics Code of Afghanistan 1990, art 29

<sup>49</sup> Counter Narcotics Code of Afghanistan 1990, art 34

<sup>50</sup> Counter Narcotics Code of Afghanistan 1990, art 25

punishment depended on various factors, including substance amount, type, association, organized crime, and government involvement. However, these conditions did not apply to the capital penalty for homicide committed during trafficking. The reason for this harsh punishment was an increase in drug trafficking due to a decrease in foreign aid. This law did not establish a specific executive agency within the government.

**The Counter Narcotics Code 2000:** To demonstrate their commitment to addressing the drug problem in Afghanistan, the Taliban implemented the 2000 Counter Narcotics Code. There are no severe penalties for drug trafficking under this legislation, which is a replica of the 1990 code. The name of the Afghan government has been changed to Islamic Imarat, and Islamic Shari'a has replaced the old system of punishment. The new law may have only been implemented because the Taliban disapproved of the prior code, which had been implemented during the communist administration. It has not made a big difference in Afghanistan's efforts to make drug trafficking illegal.

**The Counter Narcotics Code 2003:** The Counter Narcotics Code of 2003 was the first set of regulations to specifically outline penalties for heroin trafficking. The code states that trafficking of opium and heroin is punishable under articles 25 and 26. If the amount of the drug is less than 50g, the penalty for opium trafficking is a minimum of 24 hours to a year; for higher quantities, the penalty may increase to 5 or 7 years.<sup>51</sup> If the quantity is more than 10 kg, the sentence can last up to 20 years.<sup>52</sup> On the other hand, the penalty for trafficking in heroin is a minimum of one to three years (for amounts under ten grams), with a maximum of twenty years for larger amounts.<sup>53</sup> The code mandates the harshest punishment for offenders to address the problem of recidivism in drug trafficking cases.<sup>54</sup>

Since several heroin processing facilities in Afghanistan could have converted raw opium into heroin, the law also takes a step towards criminalising heroin trafficking in that country. As a

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<sup>51</sup> Counter Narcotics Code of Islamic Republic of Afghanistan 2003, art 25

<sup>52</sup> *Ibid*

<sup>53</sup> Counter Narcotics Code of Islamic Republic of Afghanistan 2003, art 26

<sup>54</sup> *Ibid*



result, heroin became widely available across Afghanistan and was then transported to other countries throughout the world.

The code takes into account several variables, including the quality and quantity of drugs transported, criminal networks engaged in the trafficking, the commission of an organised crime, and the role played by government authorities in deciding how criminals should be punished. It also establishes the death penalty as a penalty for traffickers who kill people while doing so. The sections of the law address the minimum and maximum penalties for drug trafficking that are available under Afghanistan's legal system, ranging from a day of imprisonment to death. A new code was enacted in 2005 as a result of the code's flaws and vulnerabilities, which were present despite its comprehensive nature.<sup>55</sup>

**The Counter Narcotics Code 2006:** A new counter-narcotics code was introduced following a shift in the US government's stance on drugs in Afghanistan. The aim was to implement a more effective approach to dealing with drug-related issues in Afghanistan, in line with the new US policy. The code differs from previous ones in terms of its structure and penalties.

The definition of the new code is much broader than the definition of earlier codes. It is the first time that the phrases distribution, possession, delivery, brokerage, concealment, and storage were included in the definition of drug trafficking.<sup>56</sup> The new code also includes changes to the amount of narcotics, such as heroin, morphine, cocaine, and opium. This new rule has reduced the penalty for trafficking less than 10 g of heroin from one to three years to a period of six months to one year. Additionally, cash penalties ranging from 5000Afs to 10000000Afs have been implemented. Paragraph 4 of article 16 states that the involvement of more than three people in drug trafficking is an aggravating circumstance that warrants a penalty of nearly double the actual amount, as long as the sentence does not exceed twenty years in jail.

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<sup>55</sup> Mutasem (n 17)

<sup>56</sup> Counter Narcotics Law of Islamic Republic of Afghanistan 2006, art 15

For those who are convicted of drug trafficking offences, the new regulations prohibit parole, probation, and judicial leniency.<sup>57</sup> They also forbid 20 days of home leave.<sup>58</sup> Afghanistan implemented a new counter-narcotics law in 2010 to continue the country's criminalization process because the previous law was not considered sufficient to meet the demands of the industry.

**The Law Against Intoxicating Drinks and Drugs as well as Controlling Them 2010:** Drug traffickers face more severe penalties according to the 2010 Law Against Intoxicating Drinks and Drugs as well as Controlling Them, which was passed to address the problem. The only punishment for violators under this rule is imprisonment, and all monetary fines from the previous code have been removed. The code has taken a lenient approach to offenders, particularly young people who engage in child trafficking. The penalty for 100g to 500g of opium has been reduced from one to three years to six months to one year.<sup>59</sup> In addition to limiting judges' discretion, Article 43 binds them to a formula for increasing punishment.<sup>60</sup> The penalty of having transportation vehicles confiscated and having offences repeated is subject to the same provisions as the 2006 counter-narcotics code.

**The 2018 Penal Code:** The 2018 Penal Code was enacted on February 15, 2018, after being published in the official gazette on May 15, 2017. This code consolidates all of Afghanistan's criminal laws into one comprehensive code. While crimes related to drug trafficking fall under Chapter 5, Volume II of this code, punishments associated with Sharia law are covered by Islamic criminal law. The previous Afghanistan counter-narcotics code has undergone minor changes. It removes morphine, heroin, and cocaine from mixtures and bases punishment on the quantity of each drug present. Moreover, it increases the penalty by six months for each excessive 500g of these drugs above 1kg. The maximum sentence is now 30 years in jail, and certain offences are punishable by execution.<sup>61</sup>

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<sup>57</sup> Counter Narcotics Law of Islamic Republic of Afghanistan 2006, art 31

<sup>58</sup> Counter Narcotics Law of Islamic Republic of Afghanistan 2006, art 30

<sup>59</sup> The Law Against Intoxicating Drinks and Drugs as well as Controlling them of Islamic Republic of Afghanistan 2010, art 43

<sup>60</sup> *Ibid*

<sup>61</sup> Penal Code of Islamic Republic of Afghanistan 2017, art 302

This legislation reduces penalties for trafficking less than 10g and lowers the maximum sentence from 20 to 16 years. It also substitutes a monetary fine for imprisonment to minimise opium trafficking. However, it also introduces aggravating circumstances, such as harsher penalties for trafficking in 10 to 100g of opium, heavier penalties for trafficking in 100 to 500g, and an additional two to three years for trafficking in 500g to 1kg of opium.<sup>62</sup> A general assessment of the provisions of this penal code reveals a more severe approach to narcotic drug trafficking, with increased punishments compared to previous counter-narcotic laws, primarily due to the abuse of leniency that traffickers exploited.

### FEASIBLE MECHANISMS TO CURTAIL PRODUCTION

**A Ban on Poppy Cultivation:** The 2022 ban on opium cultivation is not the first one in the history of Afghanistan. However, although the 2001 ban was quite effective in curbing the production and supply, it could not survive long term. Therefore, it is uncertain to draw conclusions on the long-term prospects of the 2022 ban including whether the prohibition would have sustained political support. The intentions behind the ban also are not clear like the previous ban.

The opium poppy is vital to the Afghan economy. For the farmer, poppy is an ideal crop. It grows well in most parts of Afghanistan, is resistant to drought, and does not require specific storage conditions. The price, though, is what draws most people in. According to a 2003 survey by the UNODC, the primary driving force behind poppy production, cited by 61% of the farmers surveyed, was the high price of opium. Prices for the drug have changed throughout time, but for farmers, it is still the best choice. Even as opium costs dropped, wheat prices could never match those of opium, making it a comparatively unappealing alternative.<sup>63</sup>

Even before the Taliban's takeover in 2021, the economies of both rural and urban areas were already struggling due to the impact of both drought and the COVID-19 pandemic. The lack of water significantly affected the growth and yield of various crops, including vegetables, fruits, maize, and wheat. Interestingly, poppy production, which requires less water, saw a 37%

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<sup>62</sup> Penal Code of Afghanistan 2017, art 304

<sup>63</sup> Amina Khan, 'Afghanistan and the Drug Trade' (2005) 25(3) Strategic Studies  
<[www.jstor.org/stable/45242584](http://www.jstor.org/stable/45242584)> accessed 17 December 2023

increase in 2020 as reported by the United Nations Office on Drugs and Crime (UNODC). This can be attributed to the crop's resilience in harsh agricultural environments, making it an attractive long-term investment.<sup>64</sup>

Afghanistan has very few natural resources and almost 80 percent of its population lives in poverty. Opium plant generates revenue and is a major avenue for the survival of the people. Therefore, banning opium cultivation leads to rural discontent. However, declining cultivation also leads to higher market prices for heroin which in the end benefits the Taliban themselves.<sup>65</sup> A complete ban, as can be seen, fails to be a good solution in the long run and other alternatives are required.

**Licit Opium:** Producing legal opiates is a viable option, however, the market for licit is too small for the large amount produced within the nation and this by itself cannot be enough. Regardless, this is an arena worth exploring. Afghanistan could implement a strict licencing system for the production of opium, which would be used to produce necessary opiate-based medications like codeine and morphine. This kind of licence programme, which is currently in place in Turkey, India, France, and Australia, will benefit some Afghan farmers who would be able to make an adequate income from it.<sup>66</sup>

**Alternative Livelihood Methods:** Developing alternate livelihood methods for Afghan farmers is a very difficult task. As mentioned earlier, no other crop can match the price of opium. The majority of Afghans rely on sales of cash crops and other agricultural goods for their livelihoods. Their livelihood and food security are not guaranteed by growing their own food. In the long term, tree crops and fruits are also feasible alternatives; however, they need substantial time and financial commitment. However, this is a long-term solution and we need short-term solutions

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<sup>64</sup> Shehryar Fazli, 'The Taliban's poppy ban redux' (*Global Initiative*, 13 April 2022)

<<https://globalinitiative.net/analysis/talibans-poppy-ban-afghanistan/>> accessed 17 December 2023

<sup>65</sup> *Ibid*

<sup>66</sup> John A Glace, 'Opium and Afghanistan: Reassessing U.S. Counternarcotics Strategy' (2007) U S Army War College <[www.jstor.org/stable/resrep11563](http://www.jstor.org/stable/resrep11563)> accessed 17 December 2023

that would provide an incentive to farmers to give up opium production.<sup>67</sup> Saffron is a viable alternative as it is one of the most valuable spices in the world and might even be as valuable as poppy. About 7,000–10,000 hectares spread across 32 regions in Afghanistan are suited for saffron farming. At present, there have been positive results from the western province of Afghanistan, especially Herat Province. France, Spain, Italy, the United States, the United Arab Emirates, Saudi Arabia, and China are among the countries that have imported Afghan saffron. Due to these profitable exports, few farmers have switched from poppy to saffron cultivation.<sup>68</sup>

**Financial Aid:** There is a desperate need for humanitarian relief for over two-thirds of the country's population i.e., around 28.3 million people.<sup>69</sup> There is widespread poverty and the unemployment rate is high. Nevertheless, the amount of help that is accessible to Afghans is much less and is reducing day by day. A ban on the drug that is well implemented, can result in a significant decrease in the nation's opium output, as was the case in 2001. A prohibition of this kind might have several effects. It would significantly reduce the already scarce economic prospects available to the rural population, exacerbating their already precarious condition within the nation. As a result, there would be a significant rise in the demand for humanitarian relief to lessen the short-term impacts of the income loss. Unless it is equally effectively banned, those who lost their income from opium production may turn towards other illicit activities, such as methamphetamine manufacture.

Afghanistan's infrastructure, which has been destroyed by decades of violence, is now insufficient to sustain an economy free of opium. Roads, water systems, and energy production facilities must be renovated and extended in order to provide genuine, long-term alternatives to the opium trade for the inhabitants of Afghanistan.

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<sup>67</sup> William Byrd, 'The Taliban's Successful Opium Ban is Bad for Afghans and the World' (*United States Institute of Peace*, 8 June 2023) <[www.usip.org/publications/2023/06/talibans-successful-opium-ban-bad-afghans-and-world](http://www.usip.org/publications/2023/06/talibans-successful-opium-ban-bad-afghans-and-world)> accessed 20 December 2023

<sup>68</sup> Farzayee (n 1)

<sup>69</sup> MATIULLAH QAZIZADA, 'Why humanitarian aid is vital to Afghanistan' (*reliefweb*, 27 September 2023) <<https://reliefweb.int/report/afghanistan/why-humanitarian-aid-vital-afghanistan>> accessed 20 December 2023

To address the world's opiate epidemic is the shared duty of the world as a whole. The reduced levels of international aid, sanctions, and restricted access to international payment systems have made a sustained economic recovery in the legal sector almost impossible to achieve. A worthwhile decrease in opiate production can only be accomplished in conjunction with long-term, national development assistance.<sup>70</sup>

## CONCLUSION

Afghanistan has had a long-standing relationship with opium, which has influenced its political, economic and social atmosphere. There have been attempts by various international systems and by the Taliban themselves throughout the years to eradicate the drug, however, none of them has had a long-lasting impact. The current 2022 poppy cultivation ban also seems to be implemented with ulterior motives and its efficiency remains doubtful in the long run.

Opium has also been a major source of funding for the Taliban and the Mujahideen. A substantial part of foreign income for the country was through smuggling of opium which was curtailed in a significant way once the ban was implemented. Although the Taliban themselves implemented the ban, it has led to higher market prices for the drug, which might be the underlying motive behind it. Thus, it is clear that as long as it remains the major source of income for the ruling authority, a complete eradication of the drug will remain only a fantasy.

Corruption extends to the highest levels of policy and decision-making bodies in the country. The relationship between the farmers, drug traffickers and counter-narcotics officers makes trafficking and production of drugs an easy task and one that is difficult to eradicate. The trade remains profitable for everyone involved in the process. This is one of the reasons for the inefficiency of the national laws implemented throughout the years. Poppy cultivation remains profitable for the farmers as no other crop gives them as high a return. Finding a replacement for poppy, although possible, is one that will take a long time, effort and funding. Considering the nation's economic situation, making such huge investments remains difficult even with international aid. A vast majority of its population lives in poverty and opium is a major driving

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<sup>70</sup> UN Office on Drugs and Crime, *Opium Cultivation in Afghanistan - Latest findings and emerging threats* (2022)

force for the economy, especially the rural economy. Therefore, a complete ban on opium cultivation will also face opposition from the farmers.

As the Afghan economy is fragile, a ban without any development strategy leaves the farmers and workers with no alternative source of income which may lead to an economic and humanitarian crisis. As of current reports, the Afghan rural economy has lost more than one billion dollars per year. A possible outcome could be that many would try to leave Afghanistan for nearby countries and from there to Europe and Turkey. The increase in prices from the ban would also lead to increased quantities of adulterated heroin in the market which leads to higher risks of overdosing.<sup>71</sup> There are doubts about the ban being successfully implemented in 2024. Even if it is, it will have more negative consequences for the nation. Neither would a drug ban lead to an effective reduction in drug consumption within the nation or other countries.

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<sup>71</sup> Byrd (n 67)