

FEASIBILITY STUDY ON OPIUM LICENSING IN AFGHANISTAN

FOR THE PRODUCTION OF MORPHINE AND OTHER ESSENTIAL MEDICINES

مطالعه امکانات در مورد جواز دهی تریاک در افغانستان
برای تولید مورفین و ادویه جات ضروری دیگر

*Initial Findings – September 2005
Kabul, Afghanistan*

*The British Institute of International and Comparative Law
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THE SENLIS COUNCIL

Drug Policy Advisory Forum

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ON OPIUM LICENSING IN
AFGHANISTAN**

**FOR THE PRODUCTION OF MORPHINE
AND OTHER ESSENTIAL MEDICINES**

*Initial Findings – September 2005
Kabul, Afghanistan*

Study Commissioned by The Senlis Council
Study Edited and coordinated by David Spivack

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Ernestien Jensema, Manna Kamio Badiella, Fabrice Pothier.

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Jill Hagel, MSc, *University of Calgary, Canada*

Dr Professor Osman Babury, *University of Kabul, Afghanistan*

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 Gabrielle Archer, *The Senlis Council*

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- 5 Amnesty guidelines
- 6 International law guidelines
- 7 Timeline and sequence for implementation (and phasing out) of opium licensing in the short and medium term

ACADEMIC PARTNERS AND CONTRIBUTORS

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University of Kabul



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The Netherlands
*Wageningen University and
Research Centre*



Canada
*University of Toronto
Centre for Addiction and
Mental Health*



Portugal
*University of Lisbon
Faculty of Law*



United Kingdom
*The British Institute of
International and Comparative
Law*





University of Kabul

The faculties of Law, Islamic Law, and Agriculture and the Schools of Medicine and Pharmacology at Kabul University have been involved in the *Feasibility Study on Opium Licensing in Afghanistan for Production of Morphine and Other Essential Medicines* as research partners.

- Prof. Abdul Aziz Ali Ahmad, Dean of the Faculty of Law and Sharia;
- Prof. Mohammad Yasin Mohsini, Dean of the Faculty of Agriculture;
- Prof. Cheragh Ali Cheragh, Dean of the School of Medicine;
- and Dr Prof. Osman Babury, Dean of the School of Pharmacology

Background

The Senlis Council and Kabul University embarked on a partnership in which Kabul University has made a vital contribution to the Feasibility Study through its expertise in the areas of Law, Islamic Law, Agriculture, Medicine and Pharmacology. The Senlis Council conducted this project in consultation with the Office of the Dean of Kabul University, which has overseen Kabul University's involvement in the Feasibility Study.

The first college of Medicine opened in Kabul in 1932 and later faculties were joined to form Kabul University in 1946. In 1964 all faculties were brought to a central campus in 1964. Kabul University extended its facilities by opening the Nangarhar Faculty of Medicine in Jalalabad in 1963, which formed the nucleus of Nangarhar University in 1964. There are approximately 9,000 students currently enrolled at Kabul University.



University of Ghent's Institute for International Research on Criminal Policy

The University of Ghent's Institute for International Research on Criminal Policy (IRCP) has examined the legal international framework for an opium licensing system in Afghanistan, the findings of which can be found in the paper, *The United Nations Convention Regime*.

The Institute for International Research on Criminal Policy (IRCP) carried out its research for the *Feasibility Study on Opium Licensing in Afghanistan for the Production of Morphine and Other Essential Medicines* under the direction of Professor Dr Brice De Ruyver, doctor in Criminology at Ghent University. Laurens van Puyenbroeck, researcher at the IRCP collaborated with Professor De Ruyver on the project.

Background

The IRCP, which is integrated in the Department of Criminal Law and Criminology of the Faculty of Law of Ghent University, conducts and promotes internationally important scientific research regarding criminal policy issues.

The IRCP field of research focuses on three main themes: drugs, organised crime and corruption, as well as the trafficking in human beings and sexual exploitation of children.

The IRCP has produced reports on drug control and demand reduction for the Council of Europe, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Commission, and the Belgian Ministry of Justice, among others, and has worked alongside the UNODC in working on drug-related issues.



University of Calgary's Department of Biological Sciences

The University of Calgary's Department of Biological Sciences has examined the pharmacological aspects of the opium poppy.

The Department of Biological Sciences conducted its research for the *Feasibility Study on Opium Licensing in Afghanistan for the Production of Morphine and Other Essential Medicines* under the direction of Dr Peter Facchini who was assisted by Jill Hagel.

Dr Facchini's area of research is focused on metabolic engineering in the opium poppy, with a view towards the production of biological alternatives to reduce the production and trafficking of illegal drugs in the world. Dr Facchini's work aims to improve the scientific community's biochemical knowledge of secondary metabolism in the opium poppy. This could create opportunities for the introduction of entire metabolic pathways into the various value-added crops that are currently important to the global economy.

Background

Dr Facchini and the Department of Biological Sciences approach the study of alkaloid biosynthesis in opium poppy and related species, from a broad scientific perspective that includes biochemistry, molecular and cell biology, genomics, genetic transformation and metabolic engineering. Most recently, their cell biology work has led to a major breakthrough in the understanding of the unique sites of alkaloid biosynthesis in opium poppy, at both the cellular and sub-cellular levels, employing immunocytochemical and in situ hybridization techniques. The Department of Biological Sciences is currently using these techniques for its functional genomic and metabolic engineering work on the opium poppy and other benzylisoquinoline alkaloid-producing plants.



University of Toronto's Centre for Addiction and Mental Health

The University of Toronto's Centre for Addiction and Mental Health has examined international needs, supply and demand for opium-based medicines, the findings of which can be found in the paper, *Opium Based Medicines: A Mapping of Global Supply, Demand and Needs*.

The University of Toronto carried out its research under the direction of Dr Benedikt Fischer, research scientist and section co-head in Public Health and Regulatory Policy at the Centre for Addiction and Mental Health. Dr Fischer was joined in his research by Dr Jürgen Rehm, from Toronto University's Faculty of Medicine and Todd Culbert, Research Analyst from CAMH who both collaborated on the project.

Background

The Centre for Addiction and Mental Health (CAMH) is one of Canada's leading Addiction and Mental Health research hospitals. The Social, Prevention and Health Policy Research Department of the CAMH conducts research using state-of-the art methodological and statistical techniques. The CAMH has many researchers engaged in international projects through the World Health Organization and is a designated WHO Collaborating Centre.

CAMH researchers have presented their work in over 25 countries, and have jointly produced studies with Swiss, Norwegian, British, Brazilian and Mexican researchers on various projects. In addition, the CAMH has collaborated with, and receives funding for a wide range of research areas from Health Canada, Canadian Heritage & Multiculturalism, Canadian Institutes of Health Research, the Canadian Population Health Initiative, the Pakistan Institute of Learning and Living, the National Crime Prevention Centre, and the Bank of Sweden Tercentenary Foundation, among others.



University of Lisbon's Faculty of Law

The University of Lisbon's Faculty of Law has examined the role of law enforcement in an opium licensing scheme, the findings of which can be found in the paper, *Contribution of Law Enforcement to the Implementation of an Opium Licensing System in Afghanistan*.

Vitalino Canas, Professor of Law at the University of Lisbon and former Portuguese Secretary of State for Drug Affairs, directed the research, with collaboration from Nuno Aureliano.

Background

Vitalino Canas is Deputy to the Assembly of the Republic and coordinator for Home Affairs of the Socialist Party Parliamentary Group. He teaches as a Professor at the Lisbon University Law Faculty, and is the author of several books and papers on Constitutional Law, Political Science and other subjects. As Secretary of State of the Portuguese Government (1995 - 2002), Vitalino Canas was responsible for the coordination of drug policy. He is also a consultant with Fundação Oriente and the Aga Khan Foundation.

The Faculty of Law of Lisbon University was founded in 1911. The Faculty promotes independent thought and reflection and has played a significant role in many crucial legislative reforms in Portugal.



Wageningen University and Research Centre

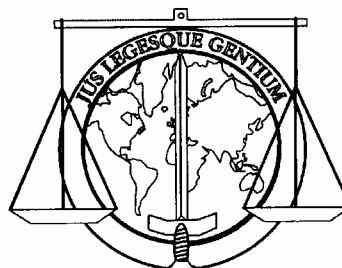
The Wageningen University and Research Centre have researched the agricultural aspects of opium poppy cultivation and opium production in Afghanistan, the results of which are documented in the papers *An agronomic characterization of poppy cultivation in Afghanistan* and *The Afghan Opium Economy: A Supply Chain and Network Analysis*.

Suzanne Pegge and Dr Ir. Jules Bos conducted the research for the Feasibility Study. Susanne Pegge is a specialist in the area of logistics and supply chain management, and works at the Agrotechnology and Food Innovations Institute, an institute belonging to Wageningen University and Research Centre. Jules Bos, is senior researcher of 'sustainable farming systems' at the Department of Agrosystems Research, part of Plant Research International in Wageningen. He is involved in several projects aimed at the design and development of socially, ecologically and economically sound agricultural systems.

Background

Wageningen University and Research Centre is a leading international knowledge institute in the fields of sustainable agriculture systems, environment quality, nutrition and health, and processes of social change. The institute has a long history of development oriented research, and their research and innovative education methods form a vital contribution to the quality of life.

Wageningen UR is known for its critical, enterprising and internationally oriented researchers and students. They are capable of bringing together knowledge from a wide variety of disciplines in order to develop a comprehensive view of public issues, and to understand the implications of these for human life, animal life, plant life and the environment.



The British Institute of International and Comparative Law

The British Institute of International and Comparative Law (BIICL) have examined the proposal for an amnesty scheme in Afghanistan, the findings of which can be found in the paper *Proposal on an Amnesty Scheme in Relation with the Implementation of an Opium License System in Afghanistan*.

The research has been carried out by Hugo Warner, Research Fellow at The British Institute of International and Comparative Law. His work for the Institute includes contributions to projects on Armenian Public Sector Reform, Access to Justice in Sudan, and Political Process Reform in Afghanistan.

Background

The Institute, dating back to 1894, was incorporated in its present form in 1958. The Society of Comparative Legislation, founded in 1894, had the object of promoting knowledge about the course of legislation in different countries.

The Institute continues to pursue its founding mission; to understand and influence the development of law on a supranational basis and to move freely over the boundaries that traditionally divide the fields of law. The Institute has an extensive research record and fulfils its function by maintaining its high standards of academic excellence and independence. The individual projects involve practitioners and leading academics as advisers, and are undertaken under guidance and supervision of the Advisory Board.

Independent Contributors

Dr. Ali Wardak examined the legality of a licensing system within the existing Afghan legal structure, the results of which can be found in the paper *The Afghan Domestic Legal Framework*. Dr Wardak holds a PhD in Criminology and is a Professor in criminology at the University of Glamorgan, Wales. His main teaching areas are Criminology Theory, Comparative Criminology and Social Exclusion and Crime.

Shruti Patel is a development economist and a free lance consultant. Her contribution to the *Feasibility Study on Opium Licensing in Afghanistan for the Production of Morphine and Other Essential Medicines* can be found in the paper *Economic Analysis of the Implementation of an Opium Licensing System in Afghanistan*.



The Senlis Council

The Senlis Council commissioned and coordinated the *Feasibility Study on Opium Licensing in Afghanistan for Production of Morphine and Other Essential Medicines*, as well as contributing to a number of papers in the Study:

Gabrielle Archer is a Research Fellow at The Senlis Council. She graduated from the University of Otago, New Zealand in 2004 with degrees in Law and Political Science.

Guillaume Fournier, Université Paris VII - SEDET - CNRS

Guillaume Fournier graduated with a Masters in Law from Université de Paris II and a Masters in Political Science from L'Institut d'Etudes Politiques de Paris. He is currently finishing a PhD research paper entitled Geopolitics and drugs in the XXth Century (SEDET laboratory CNRS – Université de Paris VII).

Thalia Ioannidou is a policy analyst at The Senlis Council. She graduated with a Masters degree in International Conflict Analysis from the University of Kent at Canterbury after having obtained a BA in Political Science at the University of Cyprus.

Ernestien Jensema has been a drug policy consultant for The Senlis Council since 2002. She obtained a “Doctoraal” in Social Anthropology of Non-Western Societies from Amsterdam University’s Faculty of Political and Social Sciences.

Jorrit Kamminga has been a drug policy consultant for The Senlis Council since 2003. He obtained a "Doctoraal" in International Relations and International Organizations from the Rijksuniversiteit Groningen’s Faculty of Arts, after completing a final thesis on linkages between Terrorism and the Illegal Drugs Trade.

Fabrice Pothier has been with The Senlis Council since 2002. Fabrice graduated with a Master's (DESS) in Political Communication from the University of Versailles. He later obtained a Master's in European Politics from London Metropolitan University.

David Spivack graduated from the University of Manchester with a First Class Degree in Law and Accounting and holds an MA with Distinction in International Peace and Security from King's College, London. David is a visiting research fellow at the British Institute of International and Comparative Law, where he has worked on a range of public international law projects.

Daniel Werb received his B.A. in Philosophy and History at Montreal's McGill University. Aside from his research and writing for The Senlis Council, Dan Werb works as a freelance journalist and researcher. He is based in Toronto, Canada.

DEFINITIONS & GLOSSARY – USE OF TERMS

The following list sets out some of the specialist terms and acronyms used most frequently in this study.

1 SCIENTIFIC/TECHNICAL TERMS:

Alkaloid: An organic compound derived from plants. Opium alkaloids used in medicine include morphine, codeine, thebaine, papaverine and noscapine.

Analgesic: medication that reduces or eliminates pain.

Balloon effect: relocation of opium poppy cultivation to new areas, where farmers and itinerant workers move their undertakings in response to counter narcotics measures taken by the government or other factors.

Codeine: one of the main alkaloids found in opium. A widely used medicine, codeine can be extracted from opium, but is usually manufactured from morphine.

Concentrate of Poppy Straw (CPS): the opiate alkaloids-rich material obtained through the chemical processing of poppy straw. CPS is used in the manufacture of morphine and other medicines.

CPS(M): CPS rich in the morphine alkaloid. Made from poppy straw that has a high morphine content.

CPS(T): CPS rich in the thebaine alkaloid. Made from poppy straw that has a high thebaine content.

Farm-gate price: The price a farmer or producer receives for their agricultural commodity.

Lancing/scoring: the cutting into the surface of an opium poppy seed head, using a sharp-bladed tool to extract make shallow cuts in the seed head, to allow the opium to leach out.

Morphine: the principal alkaloid derivative of opium. It is considered the most effective drug for the relief of moderate to severe pain. Can be extracted from opium, or from CPS, and is often transformed into codeine.

Opiate: any of a group of alkaloids derived from opium poppy (*Papaver somniferum*), such as morphine and codeine, including their derivatives, such as heroin. (UNODC definition)

Opioid: any agent that binds to opioid receptors found principally in the central nervous system and gastrointestinal tract. The term is applied to opiates and their synthetic equivalents, with effects similar to those of morphine, in particular the capacity to relieve pain. They include substances such as fentanyl, methadone, and pethidine (UNODC definition).

Opium: the coagulated juice of the opium poppy. (Article 1, 1961 Convention). Opium is the air-dried latex obtained by scoring the unripe seed heads of opium poppy. It contains morphine, codeine and thebaine, and a variable mixture of other alkaloids including noscapine and papaverine.

Opium poppy: the plant of the species *Papaver somniferum L.* (see Article 1, 1961 Convention).

Poppy straw: all parts (except the seeds) of the opium poppy, after mowing. (Article 1, 1961 Convention). The dried upper part of the stem and the capsules of the poppy plant. (UNODC definition)

Semi-synthetic: describes certain compounds produced by chemical modification of a natural product.

Synthetic: a substance that is formulated or manufactured by chemical synthesis, not of natural origin.

Thebaine: one of the opium alkaloids. Of great pharmaceutical value due to its use in the production of semi-synthetic opioid morphine equivalents such as oxycodone and buprenorphine.

2 ORGANISATIONS/MINISTRIES/GOVERNMENT BODIES:

AIA: Afghan Interim Administration

AsDB: Asian Development Bank

ASNF: Afghan Special Narcotics Force, the main counter narcotics law enforcement agency in Afghanistan.

CJTF: Afghan Counter Narcotics Criminal Justice Task Force

CNM: Afghan Counter Narcotics Ministry

CNPA: Counter Narcotics Police of Afghanistan

CPEF: the Afghan Central Poppy Eradication Force, established in May 2004 to carry out centrally-directed eradication.

DAB: Da Afghanistan Bank, Afghanistan's central bank.

DFID: United Kingdom Department for International Development

ECHO: the European Commission Humanitarian Office

ECOSOC: the Economic and Social Council of the United Nations, which assists the General Assembly in promoting international economic and social cooperation and development.

EU: European Union

GTZ: Deutsche Gesellschaft für Technische Zusammenarbeit, the German Technical Co-operation Agency.

IMF: International Monetary Fund

INCB: the International Narcotics Control Board (INCB) is the quasi-judicial control organ monitoring the implementation of the United Nations drug control conventions.

MoF: Afghan Ministry of Finance.

OECD: Organization for Economic Cooperation and Development

UNAMA: United Nations Assistance Mission to Afghanistan

UNDCP: The United Nations International Drug Control Programme, was established in 1991. In late 2002 the UNDCP was renamed the UNODC.

UNDP: the United Nations Development Programme.

UNHCR: United Nations High Commissioner for Refugees

UNODC: United Nations Office on Drugs and Crime

USAID: the US Agency for International Development, an independent agency that provides economic, development and humanitarian assistance around the world in support of the foreign policy goals of the United States.

WHO: the World Health Organization, the United Nations specialized agency for health.

3 CONVENTIONS/TREATIES/PROGRAMS:

1961 Convention: the United Nations Single Convention on Narcotic Drugs, 1961.

AEMAP: the Afghanistan Essential Medicines Action Programme, launched in 2002.

CNTF: the Afghan Counter-Narcotics Trust Fund, established in May 2005, administered by the UNDP. The CNTF covers programmes and initiatives identified by the Government of Afghanistan and recommended by the Cabinet Sub-Committee on Counter Narcotics.

ICMP: the UNODC's Illicit Crop Monitoring Programme.

'UNODC Definition': the Terminology and Information on Drugs, prepared by the Scientific Section (Laboratory) Policy Development and Analysis Branch Division for Operations and Analysis, UNODC.

UN Treaty Regime: the United Nations Drug Conventions regime, which constitutes the basic international legal framework concerning drug-related issues. This regime comprises the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol; the 1971 Convention on Psychotropic Substances; and the 1988 United Nations Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances. Afghanistan is party to all three UN Drug Conventions, although at the time of writing, it is not yet party to the 1972 Protocol.

4 AFGHAN TERMS:

Anawat: system of speculation, through buying on credit, re-selling or short-selling for credit of goods such as opium, livestock or luxury items.

Fatwa: (Arabic) legal ruling issued by *ulama*.

Fiqh: (Arabic) jurisprudence or school of jurisprudence of *Shari'a* law. Because there is no code of *Shari'a*, Islamic judges refer to works of *fiqh* for precedents and arguments for cases.

Haram: 'forbidden' under Islamic statutory law.

Imam: (Arabic) leader of any Islamic community.

Jarib/jerib: (Farsi, from Arabic) unit of area traditionally equivalent to 1,952 square metres; defined by modern legislation as 2,000 square metres or one-fifth of a hectare.

Jirga: (Pashto, from Turkic) a tribal or clan council; literally circle, denoting the equality of participants. The institution of *jirga* has, over the centuries, operated as an important mechanism of collective decision-making and dispute settlement in Afghanistan, and has contributed to the maintenance of social order in the country significantly.

Karez: (Pashto) an underground gravity-fed irrigation canal.

Konjara: animal fodder made from the dried stalks of opium poppy plants.

Loya Jirga: (Pashto) Great Council; the highest representative institution in the Afghan state.

Mujahideen: (Arabic, singular *Mujahid*) Islamic movement of various loosely-aligned opposition groups that drove out the Soviet army from Afghanistan in 1989, with the

help of the United States, Pakistan, Saudi Arabia and China in the form of financing, arming and training. A *mujahid* is one engaged in *jihad*.

Neshtar: sharp instrument used to harvest opium, by scoring the bulb to release the latex, or gum..

Qanat: (Farsi, from Arabic) irrigation canal.

Salaam: system of advance payments on opium (and legal crops like wheat and black cumin), prior to the harvest, which allows farmers to obtain necessary agricultural inputs like seed and fertilizer.

Shari'a: (Arabic) Islamic law; literally, the 'way'.

Shura (Arabic) a consultation, or a council; a principle or institution of Islamic government. A *shura* is a group of individuals which meets in response to a specific need in order to decide how to meet that need. Typically, it will meet to resolve a conflict between individuals, families, groups of families, or whole tribes.

Shura-i-Nazzar: the political party of the Northern Alliance.

Feasibility Study on Opium Licensing

General Executive Summary

Opium: the decisive challenge for Afghanistan

Despite various positive developments, Afghanistan's progress is jeopardised by opium cultivation – one of the greatest threat to the country's recovery. To rise to this challenge, unparalleled measures are needed.

The multi-billion dollar aid contributed every year and the military commitment of the coalition reflects the international community's shared sense of urgency for a stable Afghanistan. However, the drug policy response led by the US, the UK and the Afghan Government is based on a combination of interdiction, eradication and alternative livelihood strategies with little short term returns. Ineffective policy responses are being applied to an unprecedented threat. The licensing of opium in Afghanistan for the production of medicine adds a missing link to the country's current drug policy. It would provide an economically viable and controllable response to the extraordinary nature and scope of the illegal opium economy in Afghanistan.

The devastating magnitude of the illegal heroin crisis in Afghanistan and beyond

Record levels of production, which has spread to the 34 Afghan provinces, indicate that traditional drug policy responses have failed to contain the illegal opium threat. The illegal heroin trade is the largest and fastest growing business sector in Afghanistan, accounting for a \$2.7bn-profit a year. With agriculture employing 80% of the economically active populations, it is easy to see the impact of the illegal opium crop on Afghan society. It reaches all levels of both the informal and the formal economies, creating an imbalance which starves the country of healthy economic development. In a country striving for peace, opium remains a conflict commodity with its concurrent vicious cycle: small farmers, who account for 356,000 households, depend on illegal opium for access to credit and to land; lawlessness and opium cash strengthen

belligerent actors such as terrorist or insurgent groups. Ultimately, the efforts to build a rule of law are undermined at their core.

With its share of world illegal heroin growing to over 90% by the end of 2004, the problem reaches beyond Afghanistan and becomes a crisis of global magnitude. The Afghan illegal heroin industry feeds aggressive trends affecting people and societies throughout Asia and Europe: the security of transit countries in southwest Asia is deeply affected by illegal trafficking as well as by new drug use patterns. Russia and Eastern Europe's growing heroin use fuel an expanding HIV/AIDS epidemic, with 70% of cases in Russia related to injecting heroin use. Finally, Western Europe represents the biggest market in monetary terms for Afghan illegal heroin valued at approximately \$65bn. Driving supply, consuming countries have a special responsibility to respond to the opium crisis in Afghanistan.

Traditional drug policy responses ineffective

The current drug policy framework in Afghanistan relies on a combination of interdiction, eradication and alternative livelihood interventions. As required under the 1961 Single Convention on Narcotic Drugs, the Afghan drug law contains provisions for the legal production of opium for medicinal purposes. However, no current policy link is established between the strategies against illegal heroin and the provisions to produce opium for essential medicines. Current policy chooses to destroy a valuable natural resource rather than turning it into a powerful driver for economic development. Moreover, the wrong sequencing in counter narcotic strategies can severely affect the economies and stability of rural communities and lead to higher political risk for the country as a whole.

The recent increase in international funding for drug policy has not fundamentally questioned these effectiveness of these strategies, widening the gap between the policy response and the on the ground drug crisis situation in Afghanistan. The proper link between the fight against illegal heroin and rural economic development is yet to be made. With the consolidation of the illegal heroin trade under way, and the potential risk of take over by international crime time is of the essence for Afghanistan. A

comprehensive response to develop farmers' livelihoods, to subsequently create stability in local communities, and to disrupt the illegal heroin economy, which threatens security in Afghanistan is therefore urgently needed.

Unmet pain needs, the global pain relief crisis

In parallel a global crisis of another nature has developed: the pain relief crisis. With increasing prevalence of HIV/AIDS and cancer cases, the need for pain relief medicines is also escalating. However, high-prices and stringent and inappropriate market regulation mean that today too many people are dying in pain, particularly in the developing world. 77 percent of the world's morphine in 2002 was consumed by seven rich countries: USA, UK, Italy, Australia, France, Spain and Japan. Even so, official morphine consumption figures measured in terms of therapeutic effectiveness show that only 24 per cent of moderate to severe palliative need was being met in those countries.

In Central Asia and Eastern European, which face fast-growing HIV/AIDS epidemics, unmet need for pain relief is estimated at 3.9 tons morphine-equivalent. Even in leading morphine producing countries like India, market obstacles bring the consumption of pain killers to dangerously low levels. The response of the International Narcotics Control Board, the independent monitoring body tasked with ensuring the adequate supply of opium for medicines, has been clogged in paradox. On the one hand, the Board maintains that global opium production levels are too high, whilst on the other it tacitly recognises the global under-consumption of opium-based medicines. The gap between morphine production and the needs for pain relief stands as clear signs of a system in deep crisis.

A legal solution to create an economic and security opportunity for Afghanistan

Afghanistan is party to the 1961 Single Convention on Narcotic Drugs. This Convention provides a clear framework within which Afghanistan can develop a system of opium production for medical purposes. The control system laid down in the 1961 Convention would not require Afghanistan to seek Economic and Social Council of the United Nations (ECOSOC) approval, or to notify the INCB where it intends to produce opium sufficient for its own requirements. This would include its own domestic needs for

opium, opium preparations, as well as opium required for manufacture inside Afghanistan of alkaloids such as morphine or codeine. Crucially, this latter provision applies irrespective of whether this medicine is for domestic use or export.

In the context of an expanded opium licensing system, within which raw opium itself is desired to be exported, Afghanistan may present its case before the ECOSOC in order to seek formal approval of such export. One of the key provisions for the establishment of a licensing system requires that ‘prohibition’ of poppy cultivation should be enforced if prevailing conditions make prohibition the most suitable measure to reduce the risk of diversion into the illegal heroin market and to protect public health. However, under the current drug policy regime, there is a 100 percent diversion the opium production. At the same time, current counter-narcotic strategies themselves have failed to protect and have even led to the undermining of public health and welfare. The Afghan Government could determine that legal cultivation through a controlled licensing system would provide a more effective response to Afghanistan’s immediate drug policy, security and public health and welfare needs.

Mobilising traditional and formal practices to build an effective licensing system

The international framework for producing opium for essential medicines opens the way to the implementation of an opium licensing scheme in Afghanistan. Both the Afghan formal legal system, namely the 2004 Constitution and the 2003 Drug Law, and *Shari’a* law provide a framework within which a national opium licensing system can be implemented with no legal obstacles. An opium licensing framework requires the development of effective law-enforcement and control mechanisms to reduce diversion into the illegal market. Traditional forms of justice and social control, mainly tribal conflict-resolutions assemblies such as *jirga* and *shura*, are deeply embedded in today’s Afghanistan, particularly in rural communities. As such, opium licensing should mobilise traditional forms of governance together with formal Afghan national law-enforcement agencies, and international security forces. The bridge between informal and formal institutions is part of the wider strategy to develop an effective multi-level enforcement and control system for opium licensing. This is a pre-condition to reach out

to all stakeholders of the licensed opium chain, especially farmers. As for formal law enforcement, opium licensing sets a more feasible task to police and judicial forces than the general task of law enforcement capacity-building.

The mission of police forces, particularly the Counter-Narcotic Police of Afghanistan, could be broadened to include monitoring and control for the production of opium for medicines. Opium licensing will help phase out part of the illegal heroin market, thus making possible the re-allocation of a portion of eradication funds to opium licensing control and monitoring capacity-building. With the partial switch to licensed production, traditional interdiction and alternative livelihood strategies will be provided with the breathing space to tackle the illegal heroin market more effectively.

A response tailored to Afghanistan economic and social realities

The new link established between informal and formal types of governance as well as between farmers' livelihood and enforcement authorities, will bring the relationships between rural communities and the central government to a new, more collaborative ground. The development of the rule of law in Afghanistan can only benefit from this shift in rural perceptions.

A 'bottom-up' implementation of the control and development strategies for licensed opium is therefore crucial for the scheme to directly empower farmers and their communities as well as to build an effective control system. Farmers will be provided with an enabling environment to integrate the formal rural economy. This dynamic is key to strengthening economic and political stability in poppy growing areas, often the most volatile and lawless regions in Afghanistan. A range of financial incentives and subsidies such as licensed micro-credit will also strengthen farmers' livelihood strategies. Rural communities involved in opium cultivation will move from the fear of punishment to a position of making a responsible contribution to the development of Afghanistan.

The countries producing licensed opium - Turkey, India, Australia and France - show that there is more than one model for licensing, but in fact that control and economic

strategies are as diverse as local conditions. The implementation of scientific pilot projects will provide the ground to test and validate initial agronomic options, control systems as well as the economic requirements to make licensing a viable solution to the problem of illegal heroin in Afghanistan. Through special trade agreements and economic partnerships, such as that already existing between the US and Turkey and India for the purchase of their licensed opium for medicine, the international community can also work on the linkages between Afghan licensed opium and opium medicine markets worldwide.

Shifting the level of risk to build the future of Afghanistan

By disrupting the illegal heroin economy, opium licensing will represent a direct threat to important players who currently gain economic and social leverage from illegal opium. A comprehensive amnesty scheme in the early phase of an opium licensing system will help to mitigate this risk by proposing to re-integrate the stakeholders who are currently high up the illegal opium chain. This risk is nothing compared with the general state of lawlessness and impunity that the current situation of illegal opium feeds. More broadly, it is evident that opium licensing comes with its own level of risk - first and foremost the risk of diversion into the illegal market. Yet with the state of general diversion currently in place, the risk generated by opium licensing is reasonable and manageable. By complementing its drug strategy for Afghanistan with opium licensing, the Afghan government and the international community will make a choice of a policy driven by pragmatism and vision.

Introduction

The initial findings in this Feasibility Study mark the first phase of an academic investigation into the methods and implications of licensing opium production in Afghanistan for the production of morphine and other ‘essential medicines’¹. The scope and complexity of this undertaking has demanded an examination through the lens of a number of academic disciplines: pharmacology, agriculture, medicine, sociology, politics, economics and law.

In pursuit of this endeavour, the research has been carried out in cooperation with a number of partner institutions and experts worldwide. These are: the University of Kabul (Faculty of Islamic Law, Faculty of Pharmacology), the University of Ghent (Institute for International Research on Criminal Policy), the University of Lisbon (Faculty of Law), the University of Calgary (Department of Biological Sciences), the University of Toronto (Centre for Addiction and Mental Health), and the University of Wageningen (Plant Research International).

This Feasibility Study sets out to illustrate how a system of licensed opium production could provide Afghanistan with a transitional solution to the clear and present threat of

¹ The WHO Expert Committee on Essential Drugs defines “essential medicines” as “those [medicines] that satisfy the health care needs of the majority of the population; they should therefore be available at all times in adequate amounts and in the appropriate dosage forms.” (World Health Organization 2000, *Achieving Balance in National Opioids Control Policy*, World Health Organization)

‘narcotisation’ facing its redevelopment. The Study also aims to highlight how such a system could provide a response to the massive unmet global need for opium-based painkillers, notably morphine, in both Afghanistan and other developing nations.

The preliminary findings are based on research that is exploratory in focus, supported by a unique empirical and theoretical contribution, and intended to serve an important role in promoting serious discussion and identifying further areas for investigation. The Feasibility Study does not set out to formulate a precise framework within which a system of licensed opium production in Afghanistan *ought* to operate. Instead, through critical analysis, the Study aims to identify mechanisms, processes and implications that *could* enable the successful operation of such a system.

It is beyond doubt that the cultivation of opium poppy in Afghanistan poses the key threat to the country’s reconstruction agenda. This industry operates entirely outside the law and yet is central to the social, political and economic fabric of Afghanistan, constituting approximately 60% of Afghanistan’s 2003 Gross Domestic Product. Although the ban on opium cultivation has been continually reaffirmed, international and domestic counter-narcotics efforts have proven largely incapable of enforcing this edict. The success of the ban is almost wholly reliant on the cooperation of Afghans involved in the industry to look to other forms of livelihood. Yet the order of magnitude of the opium industry in Afghan economy and society offers little by way of incentive or opportunity to do so. Existing interventions fail to recognize, for example, that opium provides barely more than subsistence for most of those involved in its cultivation. For farmers and laborers, a sudden and enforced cessation of opium cultivation without immediate and viable alternatives, can mean being mired in an ever-deeper opium debt trap.

The opium licensing system under examination here is conceived of as an innovative alternative livelihood intervention that transcends mere *crop substitution* and that seeks to forge a link to *all* aspects of rural economic development, as well as the development of law order and democracy. It is premised on an understanding that the socio-

economic and political structures that create and maintain poverty in Afghanistan are the very same structures that have engendered illegal opium poppy cultivation.

The Study's premise is to built on the historic opportunity that exists to bring about a structural shift in the global supply and demand for opium. This opportunity comes at a crucial juncture in the need for an adequate response to the worsening global pain crisis affecting developing countries most acutely. It also comes at a crucial juncture in Afghanistan's reconstruction agenda. In this respect, the Study aims to identify how the incremental implementation of a system of licensed opium production could create critical leverage for the successful implementation of other, longer-term, development and counter-narcotics strategies.

Above all else, it is clear that Afghanistan's redevelopment must, so far as possible, be grounded in an environment of security and stability. A secure environment also demands re-establishing the rule of law, in particular at the provincial level where the state is often ineffectual at best, or wholly absent at worst. Unless and until a secure environment is in place, the illegal opium industry will continue to endanger the entire fabric of the State. So long as the lack of security persists, Afghanistan cannot begin to move credibly towards real and sustainable development.

The Global Opium for Medicine Market

Executive Summary

Pharmacological Aspects of the Global Opium Market

Opium poppy: an essential plant for pain relief in the world

The poppy species *Papaver somniferum* L is the most important opiate-bearing species of opium poppy. It is cultivated worldwide, including throughout Afghanistan. Only a few of the 80 chemical elements found in the opium poppy are considered important for their medicinal qualities. Today, *opium poppy is the only commercially valuable source of the pain relief drugs morphine and codeine*. Other pharmaceutically important chemical elements found in opium poppy include thebaine, which is used for the production of codeine.

Adapting poppy varieties to local conditions and to the international market needs

The development of valuable poppy types with specialized essential pain relief elements for commercial purposes has been underway for decades. Alteration to poppy types may yet have a powerful impact in an opium poppy industry as evidenced by the *top1* variety of poppy (also known as “Norman”) successfully developed in Australia to produce a poppy rich in thebaine (and low in morphine) and now extensively cultivated in Tasmania. *In the future, new varieties with desirable features, such as increased morphine or codeine content, might be developed.*

Further research needed to determine the most adequate poppy type for the successful implementation of a licensed opium industry in Afghanistan

Further research into the type of poppy most appropriate for cultivation in Afghanistan under a licensing system in Afghanistan is required. For this, the following will be necessary:

- To undertake a biochemical and agronomical investigation of the varieties of *P. Somniferum* cultivated in Afghanistan. ***Due to the current illegal nature of the Afghan opium industry, there is a paucity of scientific data currently available.*** Further research to redress this data shortage will enable proper consideration to be given to how scientific advances in cultivation might be applied within the context of a licensed opium industry in Afghanistan.
- Another interesting strain of poppy, *Papaver bracteatum* Lindl has some particularly interesting features. This plant, the Norman, is a morphine free chemical element source used for medicinal purposes owing to its thebaine content. The transformation of this poppy into illegal heroin is more difficult due to its low morphine content, considerably reducing the risk of diversion. ***Further research should be conducted on the biological, agronomical and industrial implications of developing a thebaine-rich strain of licensed poppy which is not suitable for production of heroin for cultivation in Afghanistan.***
- Finally, further consideration must be given to the possibility of introducing an easily identifiable feature, for the licensing system, such as ***flower colour. This could ensure the easy identification of those poppy fields which have been licensed by the Afghan Government and which have not.***



Pharmacological aspects of the opium poppy

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Pharmacological aspects of the opium poppy

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Introduction

This chapter will examine the two key opioid-bearing species of opium poppy: *Papaver somniferum L.* and *Papaver bracteatum Lindl.* It will look at the role of alkaloids as starting materials for opiates medicines as well as at the other commercial products of opium poppy. A survey will be provided of recent and ongoing research in opium poppy biotechnology and the possibilities for the development of new high alkaloid poppy varieties that this knowledge brings.

1 Description of opioid-bearing poppy species



Papaver rhoeus L



Papaver orientale L



Papaver somniferum L



Argemone mexicana L

In addition to *Papaver somniferum*, other opioid-bearing poppy species of note include *Papaver rhoeus L.*, known as corn or field poppy. This plant is an annual herb native to Europe and Asia. Extracts of *P. rhoeus* are used in medicine and beverages. The alkaloids rhoeadine, morphine, and papaverine have been reported in this species, although the reports of morphine are questionable and further research would be required.¹

Papaver orientale L., formerly *Papaver bracteatum Lindl.*, is a morphine-free alkaloid source used for medicinal purposes. Mexican or prickly poppy, *Argemone mexicana L.*, has been reported have toxicological properties but no substantial medicinal uses have been recorded. The Papaveraceae poppy family is quite large, but there are no real

¹ Linn, *Enhancement of opium alkaloids production in callus culture of Papaver rhoeas*, 2003, p.271-272; Khanna, and Sharma, *Production of opium alkaloids from in vitro tissue cultures of Papaver rhoeas*, 1977, p.951-952.

substitutes for opium poppy at the commercial level as regards producing the medicines morphine and codeine.²

1.1 Key cultivars of *Papaver somniferum* L. (opium poppy), both worldwide and with particular focus on opium in Afghanistan

Early studies have identified some important varieties of commercial opium poppy. One such study was performed in 1957 by Haruyo Asahina, Chief of the Narcotic Section of the Tokyo National Hygienic Laboratory, and his colleagues.³ This group found certain poppies producing opium of exceptionally high morphine percentage, such as Danish and Czech poppies, although these same cultivars produced a very small quantity of opium per capsule. Nonetheless, it was concluded that such poppies had great interest for trials as parent stock for commercial production for medicines.

According to Professor Babury., Dean of the Faculty of Pharmacy at the University of Kabul, the most important subspecies (ssp.) producing opium in Central of Asia are: *P. somniferum* L. ssp. *tianschanicum* N. Basil and *P. somniferum* L. ssp. *Tarbogaticum*.⁴ Further research into the alkaloid content of these subspecies, and their suitability to conditions in Afghanistan should to be undertaken.

Companies in France and Australia, notably Francopia and Tasmanian Alkaloids, use certain high-morphine lines of opium poppy for the commercial production of morphine and thebaine. An important morphine-producing variety from Australia is C048-6-14-

2Upreti K, Das M, Khanna SK, 1991a. *Biochemical toxicology of argemone oil. I. Effect on hepatic cytochrome P-450 and xenobiotic metabolizing enzymes.* Journal of Applied Toxicology, June 1991, Volume 11(3):203-9

Upreti K, Das M, Khanna SK, 1991b. *Biochemical toxicology of argemone oil. Role of reactive oxygen species in iron catalyzed lipid peroxidation..* Bulletin Environmental Contaminants Toxicology, March 1991. Volume 46 (3) p. 422-430.

Upreti K, Das M, Khanna SK, 1988. *Biochemical toxicology of argemone alkaloids. III. Effect on lipid peroxidation in different subcellular fractions of the liver.* Toxicology Letters, September 1988. Volume 42 (3) p. 301-308.

Pahwa R, Chatterjee VC, 1989. *The toxicity of Mexican poppy (Argemone mexicana L) seeds to rats.* Veterinary and Human Toxicology. December 1989. Volume. 31 (6) p. 555-558

3 Asahina H, Kawatani T, Ono M, Fujita S. *Examination of poppies of various species for the presence of morphine.* Bulletin on Narcotics, Issue 2, 005, 1957, p.20-33.

4 Babury MO, 2003. *Pharmacognosy (Terpenoids and Alkaloids)*, SAMT Publications, Tehran, 2003.

64, while an important thebaine-producing variety from Australia has been issued a US patent (no. 6, 067, 749). For more information on opium poppy varieties, please refer to section 1.4.

1.2 *Papaver bracteatum* Lindl (scarlet poppy / thebaine poppy)

Papaver orientale L., formerly *Papaver bracteatum* Lindl., is a morphine-free alkaloid source used for medicinal purposes. It cannot therefore be used to in the production of heroin. An excellent review of the potential use of *Papaver bracteatum* as an alternative to opium poppy is found in ‘An Alternative Raw – The Cultivation and Breeding of *Papaver Bracteatum*,’ by J. Milo, A. Levy and D. Palevitch.

It is important to note that *P. bracteatum* is a biennial plant; thus, the cultivation of this species is considerably different than *P. somniferum*. In general, not much is known about the cultivation of *P. bracteatum* (since it is not really a crop plant), so comparisons with the cultivation of *P. somniferum* are difficult. However, based on current knowledge of the plant, some differences include:

1. *P. bracteatum* is self-incompatible. This means one must outcross the plant (i.e. breed it with a plant of a different strain) making it difficult to maintain the variety being cultivated. Opium poppy, on the other hand, is self-compatible (i.e. capable of self-fertilization) thereby enabling easy maintenance of desired lines.
2. *P. bracteatum* is known to flower during the second growing year (although it is noted by Milo et al. (1998) that certain lines have been developed which flower during the first growing year). Opium poppy is normally an annual plant, giving flowers and capsules each year of sowing.⁵
3. In the case of *P. bracteatum*, early sowing is important for a high flowering rate and capsule yield per plant.

⁵ Milo Levy and Palevitch .*Poppy: The Genus Papaver. In An Alternative Raw – The Cultivation and Breeding of Papaver Bracteatum*,’ (edited by J Bernáth), Harwood Academic Press, 1998.

Once again, according to Prof. Babury, *P. bracteatum* produces 27 alkaloids belonging to 10 of the 14 alkaloids groups described for *Papaver*. The biogenesis of thebaine follows the same pathway as in *P. somniferum*. Feeding experiments with labeled intermediates⁶ have shown that the plant is capable of converting codeinone to codeine but cannot perform either of the demethylations⁷ leading to codeine or directly to morphine. Thebaine does not appear to be entirely an end-product and undergoes further metabolism to unknown products.

In the 1970s, a world-wide effort was invested in the domestication and development of *P. bracteatum* as an alternative source of codeine (thebaine, which accumulates in the capsules and roots, is a precursor to codeine). In 1977, the UN Commission on Narcotic Drugs met and discussed (in addition to many other things) the possibility of cultivating *P. bracteatum* in place of opium poppy. Some delegations expressed the view that the absence of information on the cultivation of *P. bracteatum* and on the quantities used for the extraction of thebaine to produce codeine could constitute an obstacle to the rapid and thorough assessment of thebaine and thus codeine production.

Due to a lack of research in the area, it appears that these concerns persist today. Also the value to substituting *P. somniferum* with *P. bracteatum* is questionable now that there are high thebaine-producing opium poppy varieties.

2 Role of alkaloids as “parents” (starting materials) for semi-synthetic opioids

2.1 Extraction methods

The following process was in fact designed for the extraction of morphine from opium (i.e. the dried gum exudate from lanced capsules), so it

⁶ An intermediate is substance formed as a necessary stage in the manufacture of a desired end product

⁷ ‘Demethylation’ is the process of removing a methyl group from a chemical compound

applies to traditional techniques as well as the more newly developed approach of poppy straw extraction.⁸ The process begins with an extraction using a basic alcoholic solution. The basic alcoholic solution is filtered and the alcohol removed from the filtrate to leave a residue. The residue is then extracted with a basic aqueous solution having a pH of at least 11. The basic aqueous solution may be filtered to remove any solid matter remaining after the aqueous extraction step, and then be stirred with a sufficient amount of a salt to avoid the formation of an emulsion. The basic aqueous solution or filtrate is then extracted with benzine⁹ or toluene. Next, adjusting the pH of the basic aqueous filtrate to pH 8.5 to 9.5 allows the morphine to precipitate (i.e. to separate) and be recovered.

2.2 “High” and “low” alkaloid content

Important, elite narcotic poppy varieties have been reported to contain high levels of morphine, codeine, and thebaine simultaneously in capsule latex. ‘High’ levels of these compounds can be considered about 200 ug morphine / 100 ug protein, 60 ug codeine / 100 ug protein, 300 ug thebaine / 100 ug protein.

As to what may be considered a “low alkaloid content, this is usually dependant on a number of factors (such as overall cost of harvesting, market considerations, etc). For example, varieties with lower-than-average morphine contents may still be useful if the current demand is high. The situation, though, is complex; and will merit further investigation.

The average percentages of alkaloids found in the opium from elite narcotic poppy varieties are as follow: Morphine 12 %, Noscapine 5%, Papaverine 1%, Codeine 1%, Thebaine 0.5 %, Narceine 0.5 %.

⁸ This process was originally described as a US patent (no. 6,054,584) in the year 2000.

⁹ A colorless, flammable, liquid aromatic hydrocarbon, C₆H₆, derived from petroleum

At present there is a lack of data availability on alkaloid content of opium grown in Afghanistan. Further research must redress this deficiency by undertaking comprehensive testing of opium from different regions.

2.3 Main commercial products of opium poppy

The main commercial products of opium poppy are pharmaceutical alkaloids for the productions of medicines such as morphine and codeine. Poppy seeds and poppy seed oil (neither of which contains opium) have a variety of uses: a source of a drying-oil, for manufacture of paints, varnishes, and soaps, and culinary preparations. Oil cake is a good fodder for cattle. Poppy stems can be used as straw, and lecithin has been extracted from poppy seed meal and can be used as an emulsifier in a wide range of commercial products, including foods, cosmetics, paints, and plastics. Seedlings are eaten as a potherb¹⁰ in Iran. Finally, poppies are also valued as ornamental flowers, especially peony varieties.

2.4 Codeine and morphine syntheses

There are several schemes¹¹ for the total synthesis of morphine alkaloids, but yields are low¹² primarily due to the number of chiral centres¹³ in the molecules. Improvements in chemical synthesis sufficient to provide a viable economic alternative to opium poppy cultivation as a source of these alkaloids are certainly a distant reality, at best.

10 A plant whose leaves, stems, or flowers are cooked and eaten or used as seasoning.

11 Useful and current reference includes the following review article:

SYNLETT (3): 388-405 FEB 16 2005, Recent progress in the synthesis of morphine alkaloids. Other references outlining schemes for the total synthesis of morphine can be found in the references section of this chapter.

12 As an example, Taber et al. reported the total synthesis of morphine, in a total of 27 steps, with a yield of 0.5% (Taber et al., 2002)

13 A chiral centre is an atom that has four different atoms or groups attached to it.

3 Medical uses of opium

3.1 Alkaloids with a medical use

Although about 80 alkaloids are reported to occur in *P. somniferum*, a select few are considered important for their medicinal qualities. Today, opium poppy is commercially valuable as the *only source* of the analgesic drugs morphine and codeine. Other pharmaceutically important benzyloisoquinoline alkaloids found in opium poppy include the analgesic precursor thebaine, the antimicrobial agent sanguinarine, and the muscle relaxants papaverine and noscapine.

3.2 Medicines based on alkaloids

There are several poppy cultivars (or varieties) that are/would be useful to medicine, based primarily on the level(s) of medicinally important compounds they accumulate. One such cultivar has been reported to come from Australia, the Tasmanian *Papaver somniferum* L. elite cultivar C048-6-14-64. In this cultivar, 91.2% of the latex alkaloids consist of the three pharmaceutically most valuable alkaloids: morphine, codeine, and thebaine. Another important variety is a high-thebaine producing variety, wherein it is reported that thebaine and oripavine constitute at least 50% by straw weight total alkaloid content. This particular cultivar has been issued a United States Patent (No. 6,067,749).

3.3 Use of medicines based on alkaloids

Morphine and codeine are used as medicines in their unaltered states. Beyond these two compounds, an important group is the 14-hydroxymorphinan family, including oxycodone (used for the relief of moderate to severe pain), naloxone (used, *inter alia*, in the treatment of opioid overdose), naltrexone (similar, though more potent than naloxone), nalbuphine (used for the relief of moderate to severe pain, as well as an

adjunct to anaesthesia) and nalmefene (similar to naloxone though with longer duration). Most practical synthetic routes to the preparation of these pharmaceuticals have utilized the alkaloid thebaine as a starting material. Other important opiate derivatives such as the ring-C bridged compounds buprenorphine (used for the relief of moderate to severe pain, as an adjunct to anaesthesia and in the treatment of opioid dependence) and etorphine (a highly potent painkiller) are also most practically prepared from thebaine.

Members of the 14-hydroxymorphinan family are important due to their behaviors as potent analgesics and/or narcotic antagonists. Oxycodone is a product sold for use as an analgesic and its production consumes large amounts of thebaine. The increased manufacture of thebaine reflects a rising demand for oxycodone, which is used to treat moderate to severe pain. Oxycodone is marketed as Oxycontin™ or Percocet™ (acetaminophen with oxycodone).

4 State-of-the-art opium poppy biotechnology

4.1 Description of those poppy types with specialised alkaloid contents which are presently in development

Development of valuable poppy types with specialized alkaloids content have been underway for decades due to the possibilities for profitable commercial opportunities.¹⁴. Besides classical breeding using standard cross-pollination of seeds, a method of altering metabolic profiles that remains popular today for plants, animals, and microorganisms, is the mutagenesis of a population using chemicals or ionizing radiation. Chemical mutagens, such as ethylmethanesulfonate (EMS), which increase the frequency of mutation in poppies, primarily cause point mutations affecting only one nucleotide¹⁵ in a gene, and have been favored because they generate a relatively high

¹⁴ References documenting the development of opium poppy lines exhibiting specialized alkaloid contents are found in Page, 2005; Milgate et al, 2004; Allen et al, 2004a and 2004b.

¹⁵ Defined as one of various compounds consisting of a nucleoside combined with a phosphate group and forming the basic constituent of DNA and RNA.

density of irreversible genetic lesions.¹⁶ Furthermore, the production of commercially valuable, non-transgenic plant varieties has particular appeal within the industry. In a recent effort,¹⁷ the seeds of a commercial opium poppy cultivar were mutagenized using EMS and the plants were screened for altered latex metabolite profiles. The mutant *top1* was found to accumulate thebaine and oripavine at the expense of morphine, conferring a pigmented color to the latex, rather than the normal white color. Further investigation of the *top1* mutant confirmed a block at thebaine and oripavine, which occur in two branches of the bifurcated pathway leading to morphine. The mutation is possibly due to a defect in a single enzyme responsible for the demethylation of thebaine and oripavine. The *top1* variety is now extensively cultivated in Tasmania, demonstrating the potentially powerful impact of mutagenesis on the opium poppy industry. Interestingly, a variety of opium poppy exhibiting a high-thebaine, low-morphine phenotype was also isolated from a natural (i.e. chemically untreated) population

4.2 New candidate poppy types which are being developed, tested for future registration and cultivation

While general descriptions of candidate poppy types are described in section 1.4.1, further recent information and experimental data can be obtained from the following sources: Nature 431: 413, 2004; Nature Biotechnology 22: 1559-1566, 2004; Journal of Natural Products 68, 666 -673, 2005.

4.3 Possibility of breeding different coloured poppies according to alkaloid content

Floral characteristics such as petal colour don't appear to be linked to alkaloid content. It might be possible to introduce an easily identifiable phenotypic marker (flower colour, for example) to ensure the easy identification of a specific opium poppy variety.

¹⁶ A genetic lesion is an injury or loss of function that occurs in the DNA molecules controlling a cell's proper operation.

¹⁷ Milgate AG et al. 2004. Millgate, Pogson B., Wilson I, Kutchan T, Zenk, M, Gerlach W, Fist, A and Larkin, P. Analgesia: Morphine-pathway block in *top1* poppies. Nature 431, 413-414 (23 Sep 2004) Brief Communications.

This will provide a useful area for further investigation. An identifiable phenotypic marker could, for example, serve the purposes of a licensing system in Afghanistan, by visually demarcating licensed poppy fields.

4.4 Latest developments in *in vivo* and *in vitro* biotechnology as well as gene technology.

4.4.1 Latest *in vivo* biotech developments

In vivo biotechnology is a process in which genetic modifications are applied to already living organisms. Concerning opium poppies, this process has led to many improved agricultural practices. Generally opium poppy straw cultivation is carried out in countries with temperate climates such as Australia, Spain and Turkey, whereas countries in tropical zones, such as those in Southeast Asia, harvest opium gum from poppy bulbs. Two main approaches to poppy cultivation are used in temperate zones, which are referred to as “winter” (using autumn-sown seed) and “spring” (using spring-sown seed) methods. Since the over-wintering of plants cannot be ensured in all regions, spring poppy cultivation is more common in temperate zone areas, such as central Europe. Agents such as nitrofen and chlortoluron are frequently used to control weeds, while aminophos-methyl, furathiocarb, dimethoat, diasinon or malathion treatments can provide protection against insects during stem emergence periods. Of particular danger to opium poppy are weevils (*Ceutorrhynchus macula-alba* or *C. denticulatus*), poppy flies (*Dasyneura papaveris*) and poppy gnats (*Perrisia papaveris*). Weevils chew the leaves and lay eggs in the seed capsule, generating larvae that feed their way through the capsule wall. Causing further damage, flies and gnats will then use the holes made by emerging weevils for laying eggs. Pathogens include powdery mildew (*Erysiphe polygoni*), root rot (*Rhizoctina bataticola*) and a variety of viruses. Protection against harmful fungi may be achieved by seed-treatment prior to sowing, application of sulfur- or copper-containing preparations, and optimal harvesting times. Plants infected with a virus are usually burnt to restrict the spread of the infection. Further information on in vivo developments includes a descriptive article outlining the environmental effects on morphine content in opium poppy, by Choudhury and

colleagues. They examined 10 cultivars of opium poppy for morphine content over five years.¹⁸

4.4.2 Latest *in vitro* biotech developments including gene technology (see Technical Annex to this paper for a biochemical elaboration)

Our understanding of the biochemistry of morphine production in opium poppy has advanced rapidly in the last decade, due in part to the availability of new technologies. Molecular biological experiments, for example, have allowed the cloning and characterization of many genes involved in morphine production. Furthermore, many of the enzymes responsible for the *in vivo* synthesis of morphine have been isolated and characterized. Currently, research is being focused on where these genetic codes and their corresponding enzymes are located, at the cellular and sub-cellular levels within opium poppy. To date, it has been shown that while morphine accumulates in laticifer cells (those cells in which latex is created), the enzymes responsible for its production are located in nearby sieve element cells, which primarily act as conduits for food. This has been a significant discovery, since sieve element cells had not been previously implicated in the production chain of the poppy's metabolism. In addition, it was found that the mRNA encoding the alkaloid biosynthetic genes are located in companion cells, creating an ideal climate for chemical mutagen induced point mutations.

Although there is an understanding of how the opium poppy makes morphine and related alkaloids at the chemical level, how this process is regulated still needs to be discovered. Attempts at genetically engineering opium poppy have lead to unexpected results, highlighting our lack of knowledge regarding the biology of this plant. For example, in an effort to knock-out morphine and codeine production and accumulate their immediate precursors, thus forcing further refinement to obtain morphine (with respect to heroin production), Allen et al. prevented the expression of an enzyme named COR (codeinone reductase). Surprisingly, the morphine-precursor compound reticuline

18 Choudhury et al, 1978. Choudhury B, Kaicker U, Saini H, Singh H. *Environmental effects on morphine content in opium poppy (Papaver somniferum L.)*. Bulletin on Narcotics, Issue 1, 005, 1978. p.69-74.

was found to accumulate, even though this metabolite is seven steps upstream of the alkaloids expected to accumulate.¹⁹ Certainly, more work needs to be done to understand how the process of alkaloid metabolism is regulated in opium poppy.

New tools have been developed to answer some of these questions, including DNA microarrays, which allow the simultaneous expression analysis for thousands of genes. With such a technology, it is hoped to find new genes involved in the overall regulation of alkaloid biosynthesis in opium poppy, in addition to new biosynthetic enzymes. Moreover, the DNA microarray developed in the laboratory of the Department of Biological Sciences at the University of Calgary can allow comparisons – at the genetic level - between different poppy varieties, or single varieties grown under different conditions. Combining such ‘genomic’ approaches with ‘proteomic’ or ‘metabolomic’ strategies (referring to global analyses of protein and metabolite profiles, respectively) will help answer the question: what makes the cells of *P. somniferum* alkaloid-producing ‘factories’? In other words, what enables poppy cells to produce morphine and codeine?

Most of the biological processes underlying the biosynthesis and accumulation of benzyloisoquinoline alkaloids in opium poppy have been analysed over the past decade. This rapid progress is largely due to the availability of reliable molecular tools. These tools, combined with recent advancements in plant genomics, will undoubtedly expedite the knowledge of opium poppy biology at the biosynthetic and regulatory levels. Coupling molecular biology with agronomy is key to the generation of novel, commercially valuable lines of opium poppy.

In the future, new varieties exhibiting desirable metabolite profiles, such as increased morphine or codeine content, might be derived through a combination of classical breeding, mutagenesis, and genetic transformation. The development of reliable, robust transformation protocols remains an important objective to realize these goals, although mutagenesis combined with TILLING (Targeting Induced Local Lesions In Genomes)

19 Allen R et al 2004a. *RNAi-mediated replacement of morphine with the nonnarcotic alkaloid reticuline in opium poppy*. Nature Biotechnology 22, 1559-1566 (01 Dec 2004) Research.

technology provides an alternative means to obtain gene-specific knock-out varieties. When combined with mutagenesis, TILLING strategies allow for the isolation of desired genotypes from large populations of mutant plants, such as those treated with the chemical mutagen, ethylmethanesulfonate (EMS).

Conclusions

Owing to its lack of morphine, *Papaver bracteatum* Lindl also known as *Papaver orientale* L. may provide an interesting alternative to the *Papaver somniferum* currently grown in Afghanistan. More research needs to be carried out to see whether this thebaine rich and morphine free variety could prove a viable alternative in Afghanistan.

In addition to the pharmaceutical alkaloids poppy seed, oil and straw are valuable poppy products. A 'low' alkaloid variety would allow the Afghan farmers to profit from the cultivation of these interesting by-products without producing opium for the illegal market.

The next, logical phase for this research will be to undertake a biochemical and agronomical investigation of the varieties of *P. Somniferum* cultivated in Afghanistan. Due to the illegal nature of the Afghan opium industry, there is a paucity of scientific data available. This must be redressed in order to give due consideration to how scientific advances in cultivation might be applied within the context of establishing a licensed opium industry in Afghanistan.

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Journal of the American Chemical Society 114 *Convergent Synthesis of (+/-)-Dihydroisocodeine in 11 Steps by the Tandem Radical Cyclization Strategy – A Formal Total Synthesis of (+/-)-Morphine*, (24): 9688-9689 (NOV 18 1992).

Technical Annex

Biochemical elaboration on in vitro developments

The chemistry, biochemistry and, more recently, molecular biology, of benzyloquinoline alkaloid biosynthesis in opium poppy is becoming quite well established. Benzyloquinoline alkaloids, such as morphine, are a large and diverse group of about 2,500 defined structures, many of which are used as pharmaceuticals. The structural complexity of these compounds generally precludes chemical synthesis as an alternative to plant cultivation for commercial purposes. Benzyloquinoline alkaloid biosynthesis begins with a lattice of decarboxylations, *ortho*-hydroxylations, and deaminations to generate both dopamine and 4-hydroxyphenylacetaldehyde (4-HPAA) from tyrosine. Genes encoding the aromatic L-amino acid decarboxylase (TYDC) converting tyrosine and dopa to tyramine and dopamine, respectively, have been isolated from opium poppy. The condensation of dopamine and 4-HPAA is catalyzed by norcoclaurine synthase (NCS) to yield (*S*)-norcoclaurine, the central precursor to all benzyloquinoline alkaloids in plants. The isolation of a cDNA for NCS from the meadow rue *Thalictrum flavum* facilitated the cloning of the corresponding gene from opium poppy. A 6-*O*-methyltransferase (6OMT), an *N*-methyltransferase (CNMT), a P450 hydroxylase (CYP80B1), and a 4'-*O*-methyltransferase (4'OMT) are responsible for the conversion of (*S*)-norcoclaurine to (*S*)-reticuline (Fig. 2). Molecular clones encoding each enzyme have all been isolated from opium poppy. (*S*)-Reticuline is a key branch-point intermediate in benzyloquinoline alkaloid biosynthesis and a variety of subsequent enzymatic reactions determine the structural type of alkaloid produced.

(*S*)-Reticuline can be converted to laudanine by (*R,S*)-reticuline 7-*O*-methyltransferase, to (*S*)-scoulerine by the berberine bridge enzyme (BBE), or to 1,2-dehydroreticuline. The reaction catalyzed by BBE represents the first committed step in the branch pathway leading to the benzophenanthridine alkaloid sanguinarine, and the opium poppy genes encoding BBE have been characterized. Two P450-dependant oxidases convert (*S*)-scoulerine to (*S*)-stylophine, which subsequently undergoes *N*-methylation by a specific *N*-methyltransferase. Two additional P450-dependent enzymes convert (*S*)-*cis*-*N*-methylstylophine to dihydrosanguinarine, which is oxidized to yield sanguinarine.

Opium poppy roots generally accumulate the highest concentrations of sanguinarine, which exhibits antimicrobial activity.

The oxidation and subsequent reduction of (*S*)-reticuline to (*R*)-reticuline, via 1,2-dehydroreticuline, are the first committed steps in morphinan alkaloid biosynthesis. (*R*)-reticuline is converted in two enzymatic steps to salutaridinol by a P450-dependent enzyme and an NADPH-dependent oxidoreductase. Acetyl coenzyme A:salutaridinol-7-*O*-acetyltransferase (SAT) catalyzes the conversion of salutaridinol to salutaridinol-7-*O*-acetate, which spontaneously produces thebaine. The subsequent methylation of thebaine results in the formation of either neopinone or oripavine. Neopinone spontaneously forms codeinone, which is reduced by the NADPH-dependent enzyme codeinone reductase (COR) to form codeine. In turn, codeine is demethylated yielding morphine. An alternate route for morphine biosynthesis involves the production of morphinone from oripavine, followed by COR-catalyzed reduction. Although molecular clones encoding SAT and COR have been isolated from opium poppy, most other morphinan-specific biosynthetic enzymes remain poorly characterized.

The cell type-specific localization of benzyloisoquinoline alkaloid biosynthesis in opium poppy has recently been determined. In opium poppy, gene transcripts encoding CYP80B1, BBE, and COR are restricted to companion cells, whereas the corresponding enzymes are localized to adjacent sieve elements of the phloem in the vascular system of the plant. The biosynthesis of morphine and related alkaloids in the phloem breaks the long-standing paradigm that sieve element functions are limited to the translocation of solutes and information macromolecules in plants. Laticifers, the specialized cells in the phloem that contain the latex, are now known to serve as the site of alkaloid accumulation, not biosynthesis, in opium poppy. Overall, the process from gene expression through alkaloid accumulation requires three specialized cell types and necessitates the intercellular translocation of biosynthetic enzymes and products. Due to the toxicity of pathway intermediates and products, benzyloisoquinoline alkaloid biosynthetic enzymes are also compartmentalized at the subcellular level. The non-cytosolic enzymes involved in the benzophenanthridine and morphinan branch pathways are localized to the endoplasmic reticulum (ER), or ER-derived endomembranes.

The availability of such important tools as cloned genes, biochemical information and in vitro technologies including genetic transformation protocols have lead to interesting developments. For example, opium poppy lines with altered alkaloid profiles have been produced by genetic transformation. Altered alkaloid ratios were reported in the latex, but not in roots, in opium poppy lines transformed with an antisense-*BBE* construct. In California poppy (*Eschscholzia californica* Cham.), which is also a member of the Papaveraceae, benzophenanthradine alkaloid accumulation was elevated in root cultures expressing *BBE* from opium poppy, whereas transgenic roots harboring an antisense-*BBE* construct displayed reduced levels of sanguinarine and related benzophenanthridine alkaloids. The suppression of benzophenanthradine alkaloid biosynthesis was also shown to occur in California poppy cell cultures transformed with antisense-*BBE* and antisense-*CYP80B1* constructs. RNA interference (RNAi) was recently used to silence *COR* expression in opium poppy with the surprising outcome that only (*S*)-reticuline, but no morphinan branch pathway intermediates, accumulated to high levels. Transcript levels for seven other benzyloquinoline alkaloid biosynthetic enzymes in the pathway, both before and after (*S*)-reticuline, were unchanged. Thus, the absence of a single enzyme can prevent (*S*)-reticuline from entering the morphine-specific biosynthesis possibly due to the existence of a requisite metabolic complex of morphinan branch pathway enzymes. The regulation of benzyloquinoline alkaloid metabolism is complex and our understanding of opium poppy biochemistry at the molecular level can be advanced with genetic transformation and metabolic engineering biotechnology.

Genomic and proteomic strategies, such as DNA microarrays and random sequencing of proteins separated by two-dimensional gel electrophoresis, respectively, are beginning to offer much-needed, comprehensive perspectives on alkaloid metabolism in opium poppy. The development of DNA microarrays using organ- and tissue-specific expressed sequence tag collections provides a powerful platform for the discovery of new genes. As part of an analysis of the *top1* mutant, a 17,000-gene microarray was developed and used to explore global changes in gene expression patterns. Moreover, an opium poppy latex cDNA library has been used to identify cell-wall-degrading

enzyme homologues, whose expression levels were examined by RNA gel blot hybridization analysis. Poppy laticifers are classified as articulated and anastomosing due to their compound origin and the perforations that develop between the lateral walls of adjacent latex vessels. At maturity, the continuous laticifer networks allow the exudation of large volumes of latex, which is under positive pressure, by lancing the unripe seed capsules. Understanding the development of laticifers and the mechanisms responsible for the degradation of adjoining cell walls, in particular, it might be possible to engineer opium poppy varieties lacking continuous laticifer networks to prevent the illegal collection of opium using the lancing technique. At the post-transcriptional level, two-dimensional gel electrophoresis followed by direct peptide sequencing has been used to develop a database of both cytosolic and vesicular latex proteins. Similar proteomic analysis was used also to clone and characterize the two alkaloid biosynthetic enzymes (*R,S*)-reticuline 7-*O*-methyltransferase and (*R,S*)-norcoclaurine 6-*O*-methyltransferase. Other genomic techniques, such as amplified restriction fragment length polymorphic (AFLP) analysis, have been used to evaluate the genetic diversity of breeding populations to provide information on those lines with desired genetic heterogeneity.

The Global Opium for Medicine Market

Executive Summary

Opium-based Medicines: A Mapping of Global Demand, Supply and the Pharmaceutical Industry

A long history in pain relief Medicines

The role of opium in the management of pain relief has a long history, perhaps even dating back to the ancient Sumerians in 4000 B.C. In the first half of the 19th century the main opium alkaloids were isolated and prescribed in Europe and North America. *Today opium-based medicines (mainly morphine, codeine and related medicines.) play a fundamental role in the global treatment of pain in four key clinical settings: cancer pain, HIV/Aids-related pain, acute post-operative pain and general chronic pain.* Although global consumption of morphine is rising, the need for adequate and sustained pain relief in these clinical settings is far from being met.

The growing world crisis in pain relief

The use of opium based pain medicines remains dominated by rich countries. This is largely due to highly regulated and inflexible market structures that keep prices for these medicines high, combined with the low proportion of health spending on pharmaceuticals in developing countries. *The International Narcotic Control Board, part of whose mandate is to oversee the adequate balance in global medical opium supply and demand, in cooperation with the World Health Organisation, has recognised the insufficient import and/or export manufacture of opium-based medicine as constituting a contributing factor to their under-consumption.* Following this, the INCB noted that 54 percent of world's governments had experienced some form of opium-based

medicines shortage, and that the most commonly cited reason for this shortage was insufficient imports

It is clear from current data that not only does this imbalance persist today, but that its effects are exacerbated by changes in global demographics and in terms of the ever rising global levels of HIV/AIDS and cancer prevalence. In 2004, for example, Western European countries accounted for close to 90 percent of all medical morphine consumed throughout Europe as well as the Russian Federation. This is particularly alarming when it is considered that prevalence rates for HIV and cancer Eastern Europe and Central Asia are the fastest growing in the world. In 2002 alone, unmet morphine needs for HIV/AIDS and cancer treatment in this region was just over 3.9 tons.

An insufficient opium supply for medicine production that has led to a global pain crisis

The global *shortage* of opium-based raw material exists due to significant *unmet demand* for opium-based medicine such as morphine and codeine in patients with moderate to severe pain. *It is shown that only 24 percent of the need for opium-based pain killers is met and even then, only in the seven major markets namely: the US, UK, Japan, Germany, France, Italy and Spain.* The percentage of currently fulfilled pain relief demand in rich countries is a ceiling figure for all other countries, and it is clear that developing countries are far below this. *On the basis of this initial investigation, the shortage of opium-based medicines is in fact so large and extensive, that it requires more than market regulation corrections, it calls for addition supply in opium products.*

Full disclosure of the world opium markets to address world pain crisis and real production requirements

- The reality of large unmet pain relief in the world requires further and in-depth investigation.
- International institutions and opium market operators should therefore fully disclose the pain relief market and distribution systems.
- This would be key to addressing the global shortage of opium-based pain killers.
- Opium for medicine production in Afghanistan is therefore part of the solution to the global shortage of opium-based painkillers. Developing an adequate opium licensing system tailored to Afghanistan is one of the answers to the global pain relief crisis.
- There is an urgent need to develop a licensing system for such a production in Afghanistan, allowing it to contribute actively and positively to the escalating global pain crisis.



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Opioid Analgesic Medications: A Mapping of Global Demand, Supply and the Pharmaceutical Industry

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Opioid Analgesic Medications: A Mapping of Global Demand, Supply and the Pharmaceutical Industry

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1 Opioid-Based Medications World Needs Assessment

1.1 Introduction

The role of opium in the management of pain relief has a long past, one that extends back perhaps as long as humans have lived in organized societies¹. Opium is the name for the latex (also referred to as gum or resin) produced within the pods of the opium poppy, *Papaver somniferum*. The plant is believed to have evolved from a wild strain, *Papaver setigerum*, which grows from the coastal areas of the Mediterranean Sea, through to the barren terrain of the Middle East². Through millennia of cultivation and breeding for opium, the species *somniferum* evolved. Today, *P. somniferum* is the only species of *Papaver* used to produce pure opium, though genetically varied mutations of the plant have been created which produce other dominant alkaloid content within it. These other alkaloids, notably thebaine, have various commercial medicinal uses, such as the production of codeine.

¹ Hamilton, G. R. & Baskett, T. F. 2000, "History of Anesthesia: In the arms of Morpheus: the development of morphine for postoperative pain relief", *Canadian Journal of Anesthesia*, vol. 47, no. 4, pp. 367-374

² Ibid.

Opium contains morphine, codeine, noscapine, papaverine, oripavine and thebaine; all but thebaine are used clinically as analgesics (pain relief) to reduce moderate to severe pain. Thebaine is without analgesic effect but is of great pharmaceutical value due to its use in the production of semi-synthetic opioid morphine analogues such as oxycodone (Percodan), dihydromorphenone (Dilaudid), and hydrocodone (Vicodin).

The analgesic effects of opium are thought to have been known to the ancient Sumerians (circa 4,000 B.C.) whose symbol for poppy was *hul*, “joy” and *gil*, “plant”: The plant of joy, or happiness³. The plant was known in Europe at least 4,000 years ago as shown by fossil remains of poppy seed cake and poppy pods found in the Neolithic Swiss Lake Dwellings. The ancient Egyptians as well as the Ancient Greeks also most likely consumed opium for medical as well as ritualistic purposes⁴. It was with these civilizations that the need for pain relief (pain, being an innately cultural interpretation of biological trauma or harm) was first conceived and fulfilled in ways regulated by their own standards of pain relief.

The opium poppy is thought to have reached China about the fourth century A.D. through Middle Eastern traders who promoted its use for medicinal purposes. By the late-1700s the British East India Company controlled the primary Indian poppy growing regions and dominated the Asian opium trade. By 1800, the British East India Company had a monopoly on opium through the control, supply and setting of opium prices⁵.

In 1805, the German pharmacist Friedrich W. SertYrner isolated and described the principal alkaloid and powerful active ingredient in opium: Morphine, after Morpheus, the Greek god of dreams. Not long after, the discovery of other alkaloids derived from opium was made: codeine in 1832 and papaverine in 1848. By the 1850s these pure

3 Ibid.

4 Ibid.

5 Gerritsen, J. W. 2000, *The Control of Fuddle and Flash: A sociological History of the Regulation of Alcohol and Opiates* Brill, The Netherlands.

alkaloids were being commonly prescribed for the relief of pain, cough, and diarrhoea in Europe, England as well as North America⁶.

In the United States during the 19th century, patented opium preparations such as paregoric (camphorated tincture of opium) and laudanum (deodorized opium tincture) became widely available. In the 1860s morphine was used extensively a painkiller for wounded soldiers during the American Civil War. In the 1870s, chemists synthesized a supposedly non-addictive, substitute for morphine by acetylating morphine. In 1898 the Bayer pharmaceutical company of Germany was the first to make available this new drug, 3,6-diacetylmorphine, in large quantities under the trademarked brand name Heroin. 3,6-diacetylmorphine is two to three times more potent than morphine, due to its increased lipid solubility, meaning it entered the central nervous system far more quickly and with more potency than morphine⁷.

Heroin was initially used as a cough suppressant for patients with tuberculosis in order to treat the pain associated with violent coughing. Ironically, a second use of heroin was to combat morphine addiction - just as morphine was originally used to combat opium addiction. Soon after its introduction, however, heroin was recognized as having narcotic and addictive properties far exceeding those of morphine.

The chemical structure of opium is very similar to that of naturally produced compounds called endorphins and enkephalins. These compounds are derived from an amino acid pituitary hormone called beta-lipotropin which when released is split to form met-enkephalin, gamma-endorphin, and beta-endorphin⁸. Opium molecules, due to their similar structure, engage many of the endorphins' nerve-receptor sites in the brain's pleasure centres and bring about similar analgesic effects. In the human body, a pain stimulus usually excites an immediate protective reaction followed by the release of endorphins to relieve discomfort and reward the mental learning process. Opium

6 Hamilton, G. R. & Baskett, T. F. 2000, "History of Anesthesia: In the arms of Morpheus: the development of morphine for postoperative pain relief", Canadian Journal of Anesthesia, vol. 47, no. 4, pp. 367-374

7 Ibid.

82004, Principles and Practice of Pain Medicine, 2 ed, McGraw-Hill, United States

mimics high levels of endorphins to produce intense euphoria and a heightened state of well-being.

Today, opium plays a fundamental role in the treatment of pain. While there are many conditions that at times invoke the need of pain relief through the use of opium, this paper will focus on four main clinical scenarios in which opium-based analgesics are prescribed: Cancer pain, HIV/AIDS pain, acute post-operative pain and, chronic pain generally.

1.2 Cancer Pain

The WHO has created a three-step approach to the selection of drugs needed for the treatment of pain due to symptoms of cancer. The WHO's three-step analgesic ladder promotes the sequential use of drugs in accordance with increasing need for pain relief. The first step utilizes non-opioid analgesics and adjuvant drugs (i.e. those that speed up or improve their action) for the relief of mild pain. If pain symptoms persist or increase, an opioid analgesic may be used in the treatment of moderate pain. If pain still persists or increases and pain is deemed severe, a stronger dose of opioid may be given until the patient experiences complete relief from pain. Patients' response to opioid medications varies, but there is no "ceiling effect" (maximum dose beyond which no medical improvement is possible) for pure agonist⁹ opioids such as morphine, hydromorphone and fentanyl.

According to the World Health Organization there are 11 million new cases of cancer and 7 million deaths annually due to cancer. Currently it is estimated that over 24 million people are living with cancer worldwide, perhaps as many as 50% living in pain. Further, the global burden of cancer is expected to double within the next 20

⁹ An agonist drug increases neurotransmitter activity by stimulating the dopamine receptors directly

years, and the incidence of cancer will shift to developing countries as the developed world finds more successful prevention strategies against cancer¹⁰.

Morphine use for cancer pain is considered to be the most reliable indicator reflecting opioid availability in any given country. It is recommended and used not only by the WHO, but also in the world literature as a yardstick indicating the availability of opioid analgesics generally. ***However, the use of morphine in the treatment of cancer pain, though increasing, is not meeting need.*** A very basic assessment of the overall need for morphine can be created to show the lack of need fulfilment for cancer patients.

To begin, it is possible to derive the upper-bound limit to morphine need in cancer patients using WHO mortality statistics as a proxy for the number of people suffering pain in end-stage cancer. This number gives us a rough approximation of the total need in terms of population. In 2002, over 7 million people died of cancer worldwide.

Secondly, it is necessary to find the average length of time cancer patients spend in end-stage cancer. According to medical literature¹¹⁻¹², the average length of time per patient spent in end-stage cancer is approximately 6 months, or 180 days.

Thirdly, it is necessary to find the amount of morphine given to end-stage cancer patients in order to effectively relieve pain. According to the same medical literature as above, the average maintenance level of morphine given to patients for cancer pain is 30 mg every 3 to 4 hours, or approximately 120 mg per day. However, it must be kept in mind that there is no “standard” dose for opioid drugs. Neither is there a ceiling for the maximum amount of opioids taken. The “right” dose is that dose that relieves a patient’s pain. For example, oral morphine dosage levels can range from as little as 5mg to more than 1000 mg every four hours.

10 World Health Organization. “Global Action Against Cancer – updated version” 2005, available at www.who.int/entity/cancer/media/GlobalActionCancerEnglfull.pdf.

11 den Daas, N. 1995, "Estimating Length of Survival in End-Stage Cancer: A Review of the Literature", *Journal of Pain and Symptom Management*, vol. 10, no. 7, pp. 548-555.

12 Hough, S. W. & Portenoy, R. K. 2004, "Medical Management of Cancer Pain," in *Principles and Practice of Pain Medicine*, 2 ed, C. A. Warfield & Z. H. Bajwa, eds., McGraw-Hill, pp. 465-476

Therefore, in its upper-bound limit, if it is assumed that the total number of people who died of cancer in 2002 (7 120 765) received palliative care at the average maintenance level of morphine (120 mg per day) for the average length of survival of end stage cancer (180 days), 153.8 tons of morphine would have been needed for the treatment of end-stage cancer pain alone.

However, this number is no doubt high for various reasons. First, not all end-stage cancer patients are in moderate to severe pain thus needing opioid treatment. Secondly, not all cancer patients receive the average dosage level of morphine for an 180 day period. Because some patients receive more morphine than others, and because some patients receive opioid therapy for longer or shorter periods of time, a sensitivity analysis must be conducted so as to get a range of total morphine need in cancer patients.

Therefore, if at its medium bound limit only 45% of end-stage cancer patients experienced moderate to severe pain (3 204 344 patients) and received that average maintenance level of morphine (120 mg per day) for the average length of survival of end stage cancer (180 days), the medium bound need of morphine for the treatment of cancer would be approximately 69.2 tons worldwide.

At its lower bound limit, if only 30% of the total number of people who died of cancer in 2002 (1 110 870 people) received palliative care at the average maintenance level of morphine (120 mg per day) for the average length of survival of end stage cancer (180 days), 46.1 tons of morphine would have been needed. It must be remembered that this number applies to only end-stage cancer patients and would therefore be greater if applied to all stages of cancer.

CANCER NEED ASSESSMENT

	<i>Length of Treatment</i>	<i>Dosage Level</i>	<i>Population</i>		<i>Need in Tons</i>
<i>Scenario 1 - Upper limit morphine need</i>	180 days	120 mg per day	7120765		153.8
	90 days	120 mg per day	7120765		76.9
	30 days	120 mg per day	7120765		25.6
<i>Scenario 2 - Medium level</i>			45%		
	180 days	120 mg per day	3204344		69.2
	90 days	120 mg per day	3204344		34.6
	30 days	120 mg per day	3204344		11.5
<i>Scenario 3 - Lower limit morphine need</i>			30%		
	180 days	120 mg per day	2136229		46.1
	90 days	120 mg per day	2136229		23.1
	30 days	120 mg per day	2136229		7.7

According to the INCB, while 376 tons of morphine was manufactured in 2003, only 27.8 tons of morphine was consumed for medical and scientific purposes worldwide¹³. This number is up only slightly from the year previous, where 27.4 tons of morphine was consumed for medical and scientific purposes. Most of the morphine manufactured in 2003 was converted into other narcotics, mainly codeine. 76%, or 293.9 tons of all morphine manufactured in 2003 was converted into codeine¹⁴.

Therefore, even at its lower bound limit, 18.7 tons of morphine was still needed for the treatment of cancer pain alone in 2002. At its upper bound limit, the morphine shortage could be as high as 126.4 tons for the treatment of cancer pain worldwide, provided that morphine is the gold-standard in analgesic treatment.

13 International Narcotics Control Board 2005, Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003, United Nations, New York.

14 Ibid.

Using a different set of numbers from *Theta Reports' "Pain Management: World Prescription Drug Markets"* one can obtain roughly similar numbers for seven major pharmaceutical markets. Beginning with the fact that moderate to severe pain is experienced by 30 to 40% of patients when cancer is diagnosed, by 30 to 40% of patients with intermediate stages of the disease, and by up to 72% in terminal stages of the disease, as well as using 5-year prevalence and mortality figures for the US, it is possible to derive an approximation of the number of cancer pain patients in the seven major markets, under the assumption that cancer prevalence and death rates are the same in these markets as in the US.

According to the *Theta Report*, the 5-year prevalence for cancer in the US was 1,211.4 per 100,000 in 1999. For the same year the mortality rate was 202.8 per 100,000. The number of terminal cancer patients can therefore be approximated using the mortality rate of 202.8 per 100,000. Then, deriving the number of newly diagnosed and intermediate-stage patients with cancer by taking the difference between the 5-year prevalence figure and the terminal cancer patients, a figure of 1,008.6 per 100,000 results.

When *Theta Reports* applied these calculations to the US population for 2002, it was found that there was a population of 1.4 million people suffering from cancer pain (in all stages of its duration) within the US alone. Using the same calculations and applying them to other countries (UK, Germany, France, Spain, Italy and Japan), the total cancer pain market totalled approximately 3.5 million patients.

Having derived populations in need of morphine treatment for these major countries, it is possible to get an idea of total morphine need within these major pharmaceutical markets by using the same length of treatment and dosage level numbers as above.

For the US, the number of cancer patients in pain has been estimated at approximately 1.4 million. If this population were to have received morphine treatment for the average length of treatment (180 days) at the average dosage level (120 mg per day), the US would have to have consumed 30.2 tons of morphine in 2002. However, according to

the INCB, the US only consumed 13 tons of morphine for medical and scientific purposes for that year¹⁵. *Therefore, within the US alone, 17.2 more tons of morphine was needed for the treatment of cancer pain alone in 2002.*

Using the same calculations for all 7 countries (total number of patients x average length of treatment x average dosage level) the total morphine need amounts to 75.6 tons. However, within these same 7 countries the INCB reports that combined they only consumed 21 tons of morphine for medical and scientific purposes. This amounts to 77% of all morphine consumed in the world for 2002. *Therefore, within the seven major pharmaceutical markets, there is a total unmet demand for morphine of approximately 54.6 tons.*

Cancer Pain in Major Markets, 2002

	No. of Patients	Length of Treatment	Dosage Level	Need in Tons
US	1400000	180 days	120 mg per day	30.2
Japan	600000	180 days	120 mg per day	13
Germany	400000	180 days	120 mg per day	8.6
UK	300000	180 days	120 mg per day	6.5
France	300000	180 days	120 mg per day	6.5
Italy	300000	180 days	120 mg per day	6.5
Spain	200000	180 days	120 mg per day	4.3
Total	3500000	180 days	120 mg per day	75.6

In 2002, there were approximately 27 million cancer patients worldwide. Only 13% of these, however, were located within the seven major markets discussed above. This 13% consumed 77% of the world's morphine in 2002. This left only 23% of the remaining morphine for 87% of the world's cancer population. Making the imbalance more striking, this equates to only 6.4 tons of morphine for the treatment of pain in 23.5 million cancer patients, largely found in developing countries.

15 International Narcotics Control Board 2005, Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003, United Nations, New York

1.3 HIV/AIDS Pain

In a time of highly effective antiretroviral therapy, HIV-infected patients are now, in most cases, living longer and healthier lives, making relief of pain associated with the complications of HIV infection an important factor in the improvement of quality of life.

According to the WHO, as of December 2004, the total number of people living with HIV was approximately 39.4 million with 4.9 people newly infected in 2004 alone. AIDS related deaths in 2004 were totalled at 3.1 million¹⁶.

The same need assessment as was done for cancer pain can be derived for the treatment of pain for HIV/AIDS.

As with cancer, WHO mortality statistics from 2002 can be used as a proxy for the number of people suffering pain in end-stage HIV/AIDS.

According to medical literature, the average length of time per patient spent in end-stage HIV/AIDS is 20 months¹⁷. The prevalence of pain in HIV-infected patients range from 40 to 60%¹⁸. Further, according to medical literature, the average maintenance level of morphine given to patients for HIV/AIDS pain is also 30 mg every 3 to 4 hours, or 120 mg per day¹⁹.

Therefore, at its upper bound limit, assuming that the total number of people that died of HIV/AIDS in 2002 (2 777 175) received palliative care at the average maintenance level of morphine (120 mg per day) for the average length of survival of end-stage HIV (AIDS) (600 days), 200 tons of morphine would ideally have been consumed.

16 UNAIDS. "AIDS Epidemic Update 2004".

available at: <http://www.unaids.org/wad2004/report.html>

17 Lefkowitz, M. & Breitbart, W. 1998, "Chronic Pain Associated with Aids," in Pain Management: A Practical Guide for Clinicians, 5 ed, vol. 2 R. S. Weiner, ed., St. Lucie Press, Boca Raton, Florida, pp. 541-614.

18 Ibid.

19 2004, Principles and Practice of Pain Medicine, 2 ed, McGraw-Hill, United States.

At its lower bound limit, if only 40% of the total number of people who died of HIV/AIDS in 2002 (1 110 870) received palliative care at the average maintenance level of morphine (120 mg per day) for the average length of survival for HIV/AIDS (600 days), 80 tons of morphine would have been needed.

HIV/AIDS NEED ASSESSMENT

	<i>Length of Treatment</i>	<i>Dosage Level</i>	<i>Population</i>	<i>Need in Tons</i>
<i>Scenario 1 - Upper limit morphine need</i>	780 days	120 mg per day	2777175	259.9
	600 days	120 mg per day	2777175	200
	420 days	120 mg per day	2777175	140
<i>Scenario 2 - Medium level morphine need</i>	780 days	120 mg per day	1388587	130
	600 days	120 mg per day	1388587	100
	420 days	120 mg per day	1388587	70
<i>Scenario 3 - Lower limit morphine need</i>	780 days	120 mg per day	1110870	104
	600 days	120 mg per day	1110870	80
	420 days	120 mg per day	1110870	56

Applying a median HIV prevalence rate of 50% to the US HIV patient population in 2002, *Theta Reports* estimates that the number of patients with HIV/AIDS-associated pain totalled 450,000. Applying the same rates to the seven other pharmaceutical market countries, the total number of patients with HIV/AIDS-associated pain totalled 658,500 for 2002.

Carrying out the same simple equation as used above (number of patients x average length of treatment x average dosage level) it can be estimated that the total US need for morphine for the palliation of HIV/AIDS-related pain for 2002 was 32.4 tons. For all seven countries, total morphine need for HIV/AIDS-related pain was 47.2 tons.

HIV/AIDS Pain in Major Markets, 2002

	<i>No. of Patients</i>	<i>Length of Treatment</i>	<i>Dosage Level</i>	<i>Need in Tons</i>
US	450000	600 days	120 mg per day	32.4
Japan	65000	600 days	120 mg per day	4.9
Germany	50000	600 days	120 mg per day	3.6
UK	50000	600 days	120 mg per day	3.6
France	20500	600 days	120 mg per day	1.5
Italy	17000	600 days	120 mg per day	1.2
Spain	6000	600 days	120 mg per day	0.4
Total	658500	600 days	120 mg per day	47.4

1.4 Post-Operative (acute) Pain Symptoms

Estimating need in post-operative patients is a more complicated due to insufficient data. This makes need estimates for specifically opiate-based medications slightly more uncertain. However, what is known is that all post-operative patients generally experience pain. Using this as a starting point, the *Theta Report* approximates the postoperative pain population by equating it directly with the total number of postoperative patients, justifying such a number by conceding that since a large number of out-patient procedures are also likely to result in pain this number must be a low estimate.

Post-Operative Pain in Major Markets, 2002

	No. of Patients	30% moderate to severe pain	Length of Treatment	Dosage Level	Need in Tons
US	25000000	7500000	14 days	120 mg per day	12.6
Japan	11100000	3330000	14 days	120 mg per day	5.6
Germany	7200000	2160000	14 days	120 mg per day	3.6
UK	5200000	1560000	14 days	120 mg per day	2.6
France	5200000	1560000	14 days	120 mg per day	2.6
Italy	5000000	1500000	14 days	120 mg per day	2.5
Spain	3500000	1050000	14 days	120 mg per day	1.8
total	62200000	18660000	14 days	120 mg per day	31.3

Therefore, it follows that if in 1998 there were approximately 23.8 million surgical procedures performed in the US, this gives an equivalent rate of 870.6 per 10,000 of the population. Using an incidence rate of 8.7% for postoperative pain in the US, the incident population in 2002 was 25 million²⁰. However, this number includes all forms of pain following a surgical procedure, from mild to severe. According to Ashbrun *et al*, “opioids remain the mainstay for the management of postoperative pain. NSAIDs can be effective in the treatment of mild to moderate pain, but opioids are the first-line drugs for the treatment of moderate to severe pain.” According to a 2002 study published in the *British Journal of Anesthesia*, 30% of postoperative patients experience moderate to

20 Seget, Steven. 2003, *Theta Reports: Pain Management: World Prescription Drug Markets*, PJB Medical Publications Inc., New York.

severe pain following surgery²¹. The duration of postoperative pain, while highly variable in accordance with the procedure undertaken, on average spans 6 to 20 days. For moderate to severe pain, the average length of postoperative pain can be held at 14 days. Using these numbers, total morphine need for postoperative patients within the US equals approximately 12.6 tons. ***Applying the same numbers to all seven pharmaceutical markets 31.3 tons of morphine would have been needed for the palliation of postoperative pain.***

In total, using morphine as a standard for the palliation of moderate to severe pain in Cancer, HIV/AIDS and Postoperative procedures, 154.3 tons of morphine (or any equalanalgesic quantity thereof) would have been ideally needed in the seven major markets for sufficient and humane treatment of pain according to very modest estimates.

1.5 Moderate to Severe Chronic Pain

A final set of numbers can be derived to get a very general picture of total opiate-based medicine need. By looking at populations with chronic pain (pain which includes back, cancer-related, HIV/AIDS-associated, arthritic and neuropathy pain), it is possible to get a more complete understanding of the need for opiate-based medications.

In 1999, Ortho-McNeil Pharmaceuticals conducted a US National Pain Survey consisting of 1,000 patient and 500 physician interviews. The study showed that approximately 48 million people within the US alone suffered from chronic pain. Extrapolating these results using trends in population growth and demographics, *Theta Reports* estimates the number of people in the US which chronic pain at 49.7 million for 2002, increasing to 52.1 million by 2006. These figures, however only take into account population-based growth and demographics and do not address any increases in diagnosis or treatment rates.

21 Dolin, S. J., Cashman, J. N., & Bland, J. M. 2002, "Effectiveness of acute postoperative pain management: I. Evidence from published data", *British Journal of Anaesthesia*, vol. 89, no. 3, pp. 409-423.

Statistics released in 2004 by the International Association on the Study of Pain (IASP) and the European Federation of the IASP Chapters (EFIC) indicate that as many as one in five people worldwide suffer from moderate to severe chronic pain²².

The most common types of chronic pain, according to the survey, were arthritis (31%), lower back pain (25%), other types of bone or joint pain (17%), muscle pain or stiffness (13%) and fibromyalgia (12%). The *Theta Report* elucidates that while pain is ultimately a subjective occurrence within individuals which may cause different patient in different countries to experience, report and receive treatment for pain in different ways, the assumption can be made that there are no significant difference in underlying causes of pain across national boundaries. Demographics are a key determinant of country differences in pain prevalence. When incidence and prevalence rates for chronic pain are applied to the six other countries there is an estimated total population of 130 million people suffering from chronic pain²³. Of these, only 30% may be experiencing moderate to severe pain and in need of some sort of opioid-based therapy. Using this as a base estimate, if the minimum length of treatment is six months, or 180 days and the average dosage level for the treatment of chronic pain is 120 mg of morphine per day, the total need of morphine in the seven major countries amounts to 842.4 tons for 2002.

22 http://www.efic.org/about_pain.htm

23 Seget, Steven. 2003, *Theta Reports: Pain Management: World Prescription Drug Markets*, PJB Medical Publications Inc., New York.

Chronic Pain in Major Markets, 2002

	<i>Nb. of patients</i>	<i>30% moderate to severe pain</i>	<i>Length of Treatment</i>	<i>Dosage Level</i>	<i>Need in Tons</i>
US	49800000	14940000	180 days	120 mg per day	322.7
Japan	24200000	7260000	180 days	120 mg per day	156.8
Germany	15600000	4680000	180 days	120 mg per day	101.1
UK	10800000	3240000	180 days	120 mg per day	70
France	10800000	3240000	180 days	120 mg per day	70
Italy	11100000	3330000	180 days	120 mg per day	71.9
Spain	7600000	2280000	180 days	120 mg per day	49.2
total	130000000	39000000	180 days	120 mg per day	842.4
World Total	1500000000	450000000	180 days	120 mg per day	9,720

By adding total acute and chronic pain populations together it is possible to produce an estimate of total opiate-based medicine need in terms of morphine analgesia. Adding both of these numbers together gives us a total need of morphine of approximately 873.7 tons for the seven major countries.

Total Acute and Chronic Pain in Major Markets, 2002

	<i>Acute Need in tons</i>	<i>Chronic Need in tons</i>	<i>Total Need in tons</i>
US	12.6	322.7	335.3
Japan	5.6	156.8	162.4
Germany	3.6	101.1	104.7
UK	2.6	70	72.6
France	2.6	70	72.6
Italy	2.5	71.9	74.4
Spain	1.8	49.2	51
total	31.3	842.4	873.7

However, morphine is only our standard and is not the sole narcotic available for the treatment of pain. The total weight of morphine in terms of need derived through the use of a simple average population estimate and average dosage requirement does not reflect actual morphine need. This would only be the case if morphine were the only

available opioid medication worldwide. Codeine, hydromorphone, oxymorphone, hydrocodone, oxycodone and their derivatives are all opioids prevalent in the treatment of moderate to severe pain. However, as morphine is the standard in terms of therapeutic efficacy, the palliative standard of all other drugs can be measured in accordance with the therapeutic effects of morphine. By using morphine as a gold-standard for pain relief, all other principal narcotic medications can be “equalanalgesically” compared with that of morphine. For example, it is standard knowledge according to medical literature that 30 milligrams of oral morphine is equivalent in its palliative effects as is 200 milligrams of codeine. Thus, when approximating the therapeutic efficacy of opioid medications, it is generally assumed that 30 milligrams of morphine equals 200 milligrams of codeine.

Of course, this does not take into account individual patient response and tolerances to opioid medications, nor in itself the total amount of medication needed in specific patient populations according to disease or illness. However, by using morphine as a standard for overcoming the disconnection between total opioid medication utilization (since it is recorded by the INCB by weight rather than any measure of therapeutic effectiveness) and the therapeutic capacity of these opioid medications, it is possible to derive total world palliative availability. The weight of each opioid can therefore be converted into a “morphine equivalent therapeutic weight”, by deriving a conversion factor between each opioid and morphine based on their therapeutic equivalence points. Finding the equivalent therapeutic dose for all principal narcotics as recorded by the INCB gives us a palliative ceiling for the treatment of pain worldwide, or total world palliative availability in terms of opioid medications.

1.6 World Palliative Availability

When matched against synthetic and non-synthetic consumption totals morphine consumption is quite low. In fact, synthetic opioid medications produced entirely within laboratories make up over half of the total opioid market. Of the seven major countries only Japan uses significantly more non-synthetic opioid-based medications than synthetic opioid-based medications.

Opioid Medication Consumption, 2002 (in Tons)

	Morphine	Non-Synthetic	Synthetic	Total	Synthetics as % of total
US	13	86.6	126	212.6	59.3
Japan	2	14.4	0.05	14.5	0.3
Germany	1.5	10.2	17.8	28	63.6
UK	1.2	45	40.8	85.8	47.5
France	2.5	24.2	54.8	79	69.4
Italy	0.1	0.9	3.3	4.2	78.6
Spain	0.3	5.6	5.9	11.5	51.3
Total	20.6	186.9	249.3	436.2	57.2
World	27.4	291	375	666	56.3

When compared with the total need of morphine analgesia, total opioid consumption (both synthetic and non-synthetic) is about 50% less than it should ideally be within the seven major markets alone. ***Total need of morphine analgesia for the seven major countries stands at approximately 873.7 tons, whereas actual consumption of all opioid-based medications is only 436.2.*** However, this is only in terms of weight, and not therapeutic effectiveness. Therefore it is necessary to derive total morphine equivalent weight in order to fully appreciate unmet demand for opioid-based medications.

The INCB records consumption estimates of the principal narcotic drugs by country, by weight. In the chart below, all synthetic, non-synthetic and semi-synthetic medications (or the starting materials for their medical derivatives, i.e. oxycodone is the starting material for such banded products as oxycontin, percocet and percodan) are listed. For 2002, the total weight of opioid-based medications consumed was 626.7 tons. However, the total weight of these narcotic drugs says nothing of their therapeutic effects. When

the principal narcotic medications are individually converted in terms of equivalent therapeutic weight to that of morphine, world palliative availability is only 207.4 tons. Thus 207.4 tons was consumed the same year that total need for morphine equivalent medicine totalled 873.7 tons. This suggests that as of 2002, only 24% of moderate to severe palliative need was being met within the seven major pharmaceutical markets.

World Palliative Availability

	<i>2002 World Consumption (kg)</i>	<i>Conversion Factor</i>	<i>Morphine Equivalent Therapeutic Weight (kg)</i>
Morphine	27369	1	27369
Codeine	180207	0.15	27031
Dihydrocodeine	29186	0.3	8755.8
Oxycodone	27592	1	27592
Hydrocodone	19105	1	19105
Ethylmorphine	1294	1	1115
Hydromorphone	1035	4	4140
<i>Synthetic opioids</i>			
Dextropropoxyphene	317133	0.075	23785
Tilidine	18737	0.1	1873.7
Pethidine	15217	0.1	1521.7
Methadone	16550	1.5	24825
Alfentanil	18.1	10	180.7
Fentanyl	488.9	80	39115
Piritramide	168.9	0.1	16.9
Remifentanyl	7.9	5	39.5
Sufentanil	1.6	600	986.6
Total	626741.4		207451.9

These numbers run counter to the INCB's estimates of opium demand. In its 2004 Annual Report, the INCB noted that most governments of countries involved in the production of opium rich in both morphine and thebaine had reduced the amount of raw materials produced to reflect global demand for these raw materials. The report went on to predict that for 2004, global production of both types of opium would be slightly higher than the level of global demand. This, as well as the correlative increase in world stocks of opium, were claimed to be "sufficient to cover the global demand for opium for one year."

However, as governments are not compelled to report demand of opium as they are their production and stocks, the INCB measured demand for opium in two ways:

1) in terms of the utilizations of opium, in order to reflect demand from manufacturers;
and

2) in terms of global consumption of all opium controlled under the 1961 Convention.

Using these two variables, the INCB concludes that global production of opium rich in morphine considerably exceeded global demand in both 2002 and 2003.

However, as shown above, opium consumption data as provided by the INCB does not include the very serious issue of unmet demand for opioids in patients with moderate to severe pain. There is a larger population of patients in need of opioid medication that has gone unrecognized by the INCB and national governments alike. The analysis above, however, tries to capture this vast, and often ignored, section of global health care need.

1.7 The Situation in Central Asia and Eastern Europe

Countries located within Central Asia and Eastern Europe are at the focal point of future trends in opioid-based medical need. The growing need for opioid medications in Central Asia and Eastern Europe highlights a circular, and tragic irony of the poppy plant of Afghanistan, one that highlights the conflict within modern paradigms of drug regulation. Because opium cultivation and production has been declining in recent years in Myanmar and Laos, Afghanistan opium has increasingly been used to fill the demand²⁴. In Myanmar and Laos, the combined cultivated area of these two countries was above 160,000 hectares and opium production was above 1,400 hectares throughout the 1990s²⁵. However, during the late 90s, in both countries the production of opium

24 Townsend, Jacob. 2005. "China and Afghan Opiates: Assessing the Risk", Central Asia-Caucasus Institute Silk Road Paper, June 2005.

25 Ibid.

declined by over 70% because of strict counter-narcotics policies²⁶. As a result, Afghanistan's share of the world opium market grew to over 90% by the end of 2004²⁷. According to the United Nations Office for the Coordination of Humanitarian Affairs, central Asia's proximity to Afghanistan as well as the closure of traditional drug routes through the Balkans has made it an increasingly popular transit point for heroin bound for markets in Russia and Europe.

The tragic irony is that the opium poppy of Afghanistan is now the main source of heroin for injection drug users in Central Asia and Eastern Europe²⁸; at the same time, injection drug use is now the leading cause of HIV/AIDS infection in this part of the world²⁹. According to the World Bank, officially reported cases of HIV infection in the five countries of Central Asia – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan – increased from around 500 in the year 2000 to over 12,000 in 2004³⁰. However, the Center for Disease Control and Prevention in Central Asia estimates that unreported cases of people living with HIV/AIDS could be as high as 90,000 in Central Asia alone³¹. While the HIV prevalence remains low (less than 0.3%) in most of Central Asia, the World Bank reports that the epidemic is growing rapidly in Uzbekistan and Kazakhstan³². In Uzbekistan specifically, almost 91% of all of the country's 2,500 reported cases of HIV were diagnosed between 2001 and mid-2003³³.

In both Eastern Europe and Central Asia an estimated 1.4 million people are living with HIV; 210,000 people were infected with HIV in 2004 alone³⁴. According to UNAIDS, the HIV/AIDS epidemic is growing faster in this region than in any other region in the

26 Ibid.

27 United Nations Office on Drugs and Crime, "World Drug Report 2005", available at: http://www.unodc.org/unodc/world_drug_report.html.

28 Ibid.

29 UNAIDS. 2004 "The Changing HIV/AIDS epidemic in Europe and Central Asia", available at:

http://www.unaids.ru/site_admin_predpr/fjc1038_changingepidemic_en_pdf.pdf.

30 <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/EXTECAREGTOPHEANUT/EXTECAREGTOPHIVAIDS/0,,contentMDK:20445006~menuPK:571178~pagePK:34004173~piPK:34003707~theSitePK:571172,00.html>.

31 UNAIDS. "AIDS Epidemic Update 2004", available at: <http://www.unaids.org/wad2004/report.html>

32 <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/EXTECAREGTOPHEANUT/EXTECAREGTOPHIVAIDS/0,,contentMDK:20445006~menuPK:571178~pagePK:34004173~piPK:34003707~theSitePK:571172,00.html>.

33 UNAIDS. "AIDS Epidemic Update 2004", available at: <http://www.unaids.org/wad2004/report.html>.

34 UNAIDS. "AIDS Epidemic Update 2004", available at: <http://www.unaids.org/wad2004/report.html>.

world. The worst affected areas are the Russian Federation, Ukraine, and the Baltic states of Estonia, Latvia and Lithuania. An estimated 1 million people aged 15-49 are living with HIV in the Russian federation and the Russian government claims that 85% of people living with the disease acquired it through injection drug use³⁵⁻³⁶. In the Ukraine, 25% of those diagnosed with HIV are younger than 20³⁷. In Kazakhstan and Kyrgyzstan over 70% of HIV-positive persons are under 30 years of age³⁸. Overall, more than 80% of people who are HIV-positive in Central Asia and Eastern Europe are under the age of 30, where in Western Europe only 30% of the reported cases are among people under the age of 30³⁹.

The alarming proliferation of HIV/AIDS in this part of the world, as well as the demographic within which it is spreading, will mean that opioid-based medications will increasingly be needed to curb the painful symptoms associated with the disease. However, the use of opioid medications within Central Asia is extremely low. In the five countries of Central Asia – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan where incidences of HIV infection rose 2300% in less than five years (2000-2004) – total utilization of all morphine amounted to under 10 kg in 2002⁴⁰, with no indication of any significant increase in the coming years to combat increasing palliative need. Within the Russian Federation, only 89 kg of morphine was used in total in 2002⁴¹, despite the fact that the HIV epidemic is more prolific here than in any other region in Europe, accounting for 70% of all HIV infections officially registered in Eastern Europe and Central Asia⁴².

35 UNAIDS. "AIDS Epidemic Update 2004" available at: <http://www.unaids.org/wad2004/report.html>

36 United States Embassy, Moscow Russia. "Russia International Narcotics Control Strategy Report", Bureau for International Narcotics and Law Enforcement Affairs. March 2005, available at:http://moscow.usembassy.gov/embassy/section.php?record_id=report_narcotics_2004.

37 UNAIDS. 2004 "The Changing HIV/AIDS epidemic in Europe and Central Asia". available at: http://www.unaids.ru/site_admin_predpr/t/jc1038_changingepidemic_en_pdf.pdf.

38 Ibid.

39 Ibid.

40 International Narcotics Control Board 2005, Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003, United Nations, New York.

41 Ibid.

42 UNAIDS. 2004 "The Changing HIV/AIDS epidemic in Europe and Central Asia". available at: http://www.unaids.ru/site_admin_predpr/t/jc1038_changingepidemic_en_pdf.pdf.

Despite this growing epidemic, according to INCB data, Western European countries accounted for close to 90% of all medical morphine consumed throughout Europe as well as the Russian Federation⁴³. According to the Council of Europe, Western European countries have consistently exceeded the rest of the region in medical opioid use over the past 15 years⁴⁴.

In 2002, within the WHO Euro B and C region and mortality stratum (these regions include the main Central Asian transitional countries as well as Russia and the Ukraine)⁴⁵ just over 29 900 people died of HIV/AIDS. For cancer, just under 795 000 people died in this same region. However, total morphine utilization, according to the INCB, amounted to only 681 kg in 2002⁴⁶. Using the same medium level estimates as used above for length of palliative treatment for HIV/AIDS (420 days) as well as dosage levels (120 mg per day), for half the population which may be in moderate to severe pain, the total need for morphine equivalent palliation is estimated at being 750 kg for end stage HIV/AIDS alone. For cancer (using the exact same variables as above – 90 days of treatment at 120 mg per day for 45% of the total cancer population in moderate to severe pain), the total is 3.9 tons of morphine need. Thus, in 2002 alone, unmet palliative need for HIV/AIDS as well as cancer was just over 3.9 tons. It should be remembered that this number is strictly for these two diseases and does not include the other acute and chronic conditions that could be treated with opioid medications.

43 International Narcotics Control Board 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

44 Council of Europe. Recommendation (2003) 24 of the Committee of Ministers to Member States on the Organization of Palliative Care. available at: <http://www.eolc-observatory.net/>.

45 All countries within these regions include: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Poland, Republic of Moldova, Romania, Russian Federation, Serbia and Montenegro, Slovakia, Tajikistan, The former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, Uzbekistan.

46 International Narcotics Control Board 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

Pain in WHO Regions Euro B and Euro C, 2002

	No. of Patients mod - sev Pain	Length of Treatment	Dosage Level	Estimated Need
HIV/AIDS	149,500	420days	120mg/day	750 kg
Cancer	357750	90 days	120mg/day	3.9 tons

With prevalence rates increasing so very quickly in this part of the region, unmet palliative need will only grow more severe. Aids deaths in Central Asia and Eastern Europe have jumped from 40,000 in 2002 to 60,000 in 2004⁴⁷. For cancer, the number of new cases per year is projected to rise from just under 11 million in 2002 to close to 16 million in 2020, translating into almost 10 million cancer-related deaths per year worldwide⁴⁸. As a result pain relief medications will only increase in demand, here as in other countries throughout the world

47 UNAIDS. 2004 "The Changing HIV/AIDS epidemic in Europe and Central Asia". available at:

http://www.unaids.ru/site_admin_predpr/f/jc1038_changingepidemic_en_pdf.pdf

48 World Health Organization. "Global Action Against Cancer – updated version" 2005. available at: www.who.int/entity/cancer/media/GlobalActionCancerEnglfull.pdf

2 Opioid-based Pharmaceuticals: Supply and Demand

2.1 Global Supply of Opium

Many organizations monitor illegal crop production throughout the world. These include the United States Department of States' Bureau for International Narcotics and Law Enforcement Affairs (INLEA) as well as the United Nations Office on Drugs and Crime's (UNODC) Illicit Crop Monitoring Programme (ICMP). However, information on the legal production, manufacture, and trade of opioids and their derivatives are not easily accessible to the public other than through the data compiled and published by the International Narcotics Control Board (INCB).

On one hand, there is access to the statistical data revealing the production of opium and poppy straw as the raw materials from which opium-based medications are produced. On the other, there is retail pharmacy and hospital consumption data from various health data collection agencies. *Between the production of opium and their conversion into narcotics for medical and scientific use, there is a large grey area of which little is known. At the site of the individual pharmaceutical manufacturer data secrecy is often an aspect of competitive advantage. Further, individual firm involvement in the pain management market can only be extrapolated from specific product sales, which in itself is based on data collection methods unavailable to the public.*

The INCB has a dual role within international narcotics control. As an independent monitoring body of the United Nations Office of Drug Control (UNODC) it is supposed to ensure the adequate supply of narcotic drugs for medical and scientific purposes without their diversion into illegal channels of distribution. According to the 1961 Single Convention on Narcotic Drugs, the aims of the INCB are to limit the use of narcotic drugs to legitimate medical and scientific purposes while at the same time propounding the belief that the medical use of narcotic drugs is "indispensable for the relief of pain and suffering" and therefore continued effort should be made to ensure access to these drugs.

In view of this goal, the INCB administers a system of estimates for narcotic drugs whereby all production, distribution and trade of narcotics used for medical and scientific purposes are recorded through a statistical returns system. Governments are expected to submit annual and quarterly statistical reports on the manufacture, utilization, import and export of narcotic drugs so as to ensure the worldwide supply of narcotic drugs does not greatly exceed demand, nor fall significantly below.

However, there are some problems of governments' methods for estimating medical need. Governments submit annually to the INCB estimates of the next year's requirements for narcotic drugs. However, if medical demand exceeds the estimates, governments have to submit supplementary estimates, a phenomenon which has increased significantly due to unforeseen increases in the demand for morphine, fentanyl and pethidine⁴⁹. When, in 1989, the INCB requested governments to critically examine their methods of assessing domestic medical need of opioid-based medicines and to make the required changes to ensure accuracy of future estimates, it was found that by 1995, nearly 60% of responding governments had not done so⁵⁰.

According to the advice of the INCB, if past consumption trends for narcotic drugs are stable, averaging the amount consumed in recent years and adding a margin for unanticipated increases, is a suitable method for estimating future need. ***However, this unanticipated increase is arbitrary in nature and often dependent upon political rather than medical factors.*** Further, even previous years estimates do not take into account already unmet domestic need for pain relief, an issue which will be taken up in the second half of this paper. The INCB also suggests that if medical demand for one or more drugs is increasing in response to unmet needs, the method of estimation should take into account the extent of unmet needs and the potential effects on future demand of efforts to improve the "rational use of narcotic drugs".

49 International Narcotics Control Board 1996, Availability of Opiates for Medical Needs, United Nations, New York

50 International Narcotics Control Board 1996, Availability of Opiates for Medical Needs, United Nations, New York

However, as has been shown, and has been commented on in many places⁵¹⁻⁵², the estimation of actual need is sufficiently lower than actual fulfilment to cause concern. In the same survey, while 72% of responding governments indicated that their method of estimating future consumption reflected actual medical need for opium, only 45% indicated that they were satisfied with the method they used, whether these be previous years estimates, information from health care professionals or consultation with pharmaceutical manufacturers⁵³.

Production of opioid-based pharmaceutical products begins with opium and poppy straw – the raw materials from which alkaloids such as morphine, thebaine and codeine are extracted for use by the pharmaceutical industry. The raw materials are obtained from the poppy plant *Papaver Somniferum*. It is the conversion of alkaloids into their medical, branded products that remains unclear due to data unavailability.

What is known is the statistical data reported by the INCB on the production of these raw materials. Besides opium and poppy straw, there is also concentrate of poppy straw – a product obtained in the process of extracting alkaloids from poppy straw – which is also monitored and statistically recorded by the INCB. However, concentrate of poppy straw is controlled as a separate drug under the 1961 Single Convention.

Demand for alkaloids such as morphine and codeine has increased over the last 20 years. Global morphine use, low and stable for many years through the 1970s, began to increase in the mid 1980s with the creation of the WHO cancer pain relief programme which encouraged the “rational medical use of opioids” – particularly morphine – for the treatment of moderate to severe cancer pain⁵⁴. Further, the WHO began to use morphine consumption as an indicator of adequate palliation of cancer pain throughout the world. Since the mid 80s and the initiation of WHO cancer pain relief efforts, global

51 2004, Principles and Practice of Pain Medicine, 2 ed, McGraw-Hill, United States

52 Sepulveda, C., Marlin, A., Yoshida, T., & Ullrich, A. 2002, "Palliative Care: The World Health Organization's Global Perspective", Journal of Pain & Symptom Management, vol. 24, no. 2, pp. 91-96

53 International Narcotics Control Board 1996, Availability of Opiates for Medical Needs, United Nations, New York.

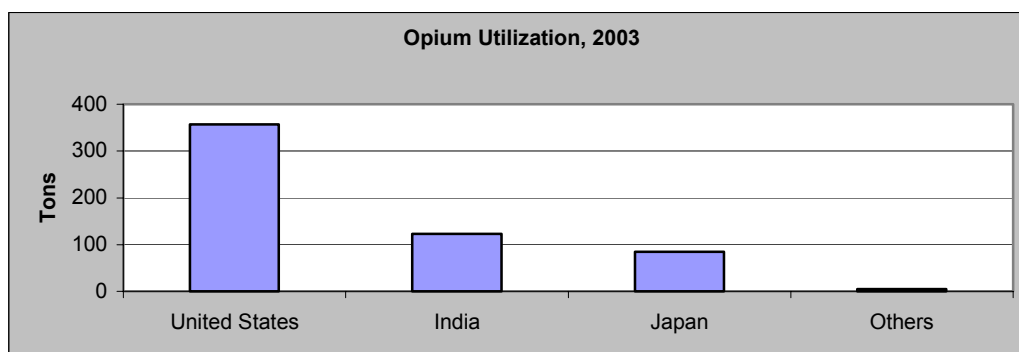
54 Joranson, D. E. 1993, "Availability of Opioids for Cancer Pain: Recent Trends, Assessment of System Barriers. New World Health Organization Guidelines, and the Risk of Diversion", Journal of Pain & Symptom Management, vol. 8, no. 6.

morphine consumption has increased by over 500% over 1984 levels⁵⁵. Poppy straw has been the raw material that has mainly been used to cover this increased demand. In 2003, approximately 82% of the morphine and almost 90% of the thebaine manufactured worldwide was obtained from poppy straw, the rest being obtained directly from opium⁵⁶.

a. Supply of raw materials

i. Opium

The total amount of legally produced pure opium used worldwide for the extraction of alkaloids has fluctuated over the last twenty years. Global utilization peaked in 1997 at 928 tons⁵⁷, due in part to rising demand for thebaine, the main alkaloid used in the production of various pain-relief medications, the most popular of which is Purdue Pharma's sustained released formula for Oxy-Contin. In 2003, total opium utilization declined to 570 tons (or 63 tons in morphine equivalent)⁵⁸.



55 Joranson, D. 1996, "New International Efforts to Ensure Availability of Opioids for Medical Purposes", *Journal of Pain & Symptom Management*, vol. 12, no. 2.

56 International Narcotics Control Board. 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

57 International Narcotics Control Board. 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

58 Ibid.

India, Japan and the United States have consistently been the main users of opium for the extraction of alkaloids during the last ten years. In 2003, 357 tons of opium (63% of global utilization) was used in the United States, 123 tons (21.5%) in India and 85 tons (15%) in Japan. Together, these three countries accounted for more than 99% of the global utilization of legally produced opium for the extraction of alkaloids in 2003⁵⁹.

For several decades, India has been the main legal producer and sole supplier of opium to the world market. After following a downward trend for over a decade, the production of opium in India increased from 346 tons in 1993 to almost 1,330 tons in 2000. Production then declined to 519 (or 57 tons of morphine equivalent) in 2003⁶⁰.

Poppy Straw

Poppy straw consists of all parts of the opium poppy after mowing except the seeds. Concentrate of poppy straw is used as an intermediate product for the manufacture of morphine, codeine, thebaine and other alkaloids. Some varieties of poppy straw, in addition to the main alkaloids found within it, can contain other alkaloids that can be extracted. Codeine and thebaine can be obtained from some varieties of poppy straw rich in morphine. Correlatively, codeine, morphine and oripavine can be extracted from some varieties of poppy straw rich in thebaine. The concentration of alkaloids in poppy straw varies significantly among the producing countries.

⁵⁹ Ibid.

⁶⁰ Ibid.

ii. Morphine-rich Poppy Straw (M)

Global production of poppy straw (M) has followed a generally increasing trend during the last twenty years. Global production reached just under 280 tons of morphine equivalent in 1999, rising to 450 tons in 2003⁶¹.

Australia produced 151 tons of poppy straw (M) (measured in terms of morphine equivalent), or 33.5% of worldwide production, followed by Turkey at 145 tons, or 32% of worldwide production. France and Spain accounted for 15 and 10% of worldwide production respectively, having produced 68 and 44 tons⁶².

According to the INCB, the increase in 2003 in global production of poppy straw (M) was mainly due to the increase in production in Turkey. Here, the total quantity of poppy straw (M) harvested reached a record high of 47,618 tons, up 170% from 2002 (17,529 tons)⁶³. Most of this poppy straw was added to existing stocks.

Poppy straw (M) harvested in Australia totalled 8,518 tons, and in France totalled 5,428 tons in 2003⁶⁴.

The Czech Republic, where poppy straw is harvested mainly for its seeds, was the leading exporter of poppy straw (M) in 2003, exporting a total of 5,090 tons exclusively to Slovakia and Macedonia⁶⁵. However, the concentration of morphine in such poppy straw is significantly lower than in poppy straw obtained from the opium poppy cultivated for the production of alkaloids. Spain was the leading exporter of poppy straw (M) for the extraction of alkaloids at 306 tons in 2003, down from 1,415 tons in 2002⁶⁶.

61 Ibid.

62 International Narcotics Control Board. 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

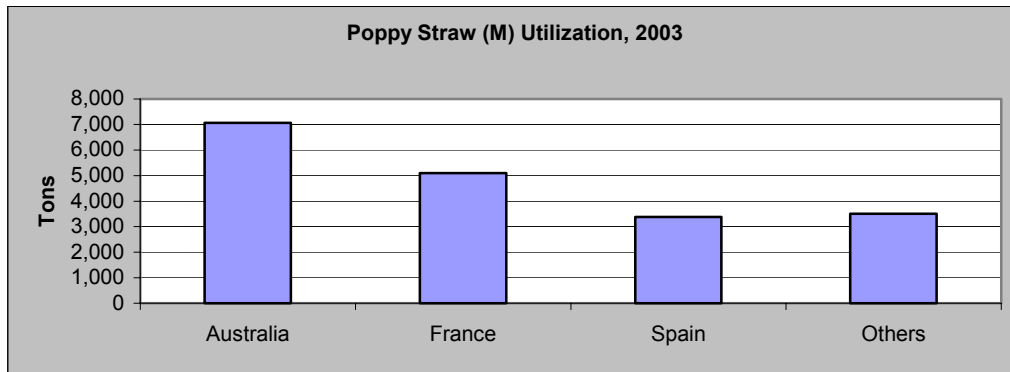
63 Ibid.

64 Ibid.

65 Ibid.

66 Ibid.

In 2003, the quantity of poppy straw (M) utilized for the extraction of alkaloids (that is, converted into concentrate of poppy straw (M)) amounted to 7,062 tons in Australia, 5,101 tons in France, and 3,377 tons in Spain⁶⁷.



Source: International Narcotics Control Board

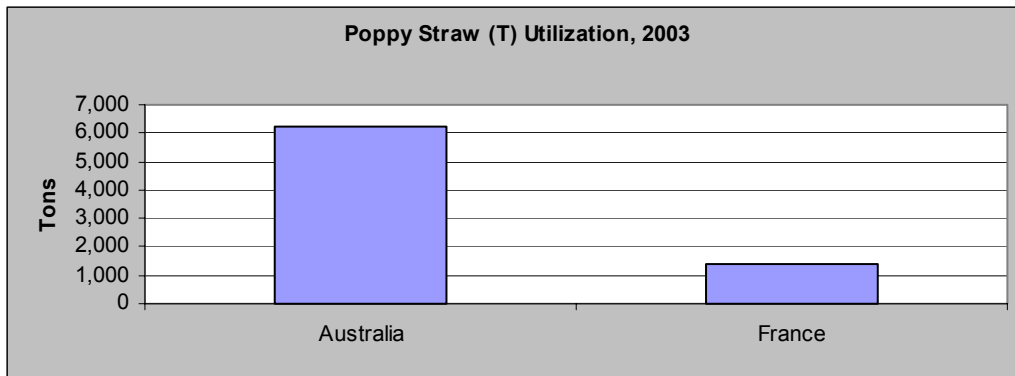
iii. Thebaine-rich Poppy Straw (T)

The commercial cultivation of opium poppy with high thebaine content started in Australia and France in 1998 in response to increasing demand for the thebaine alkaloid. However, not until 1999 did these countries begin reporting statistical data on poppy straw (T) to the INCB.

Global production of poppy straw (T) increased rapidly from 31 tons of thebaine equivalent in 1999 to 108 tons in 2002. Production then declined by 30% to 74 tons in 2003. Australia accounted for 77% of global production, producing 58 tons of poppy straw (T) in 2003⁶⁸.

⁶⁷ Ibid.

⁶⁸ Ibid.



Source: International Narcotics Control Board

iv. Concentrate of Poppy Straw

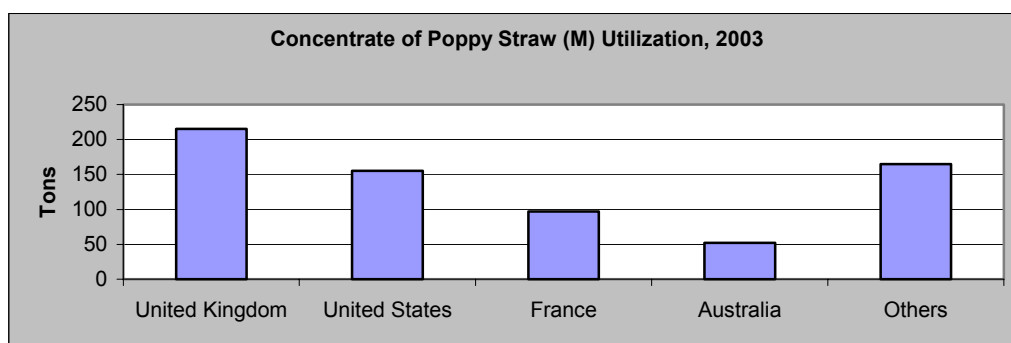
Before extracting alkaloids from poppy straw, most countries first manufacture an intermediate product called concentrate of poppy straw. Concentrate of poppy straw is the dried residue obtained through the extraction of alkaloids from poppy straw. Until the late 1990s, only concentrate of poppy straw containing morphine as the main alkaloid was manufactured. However, with recent advances in plant genetics, Australia and France have begun manufacturing concentrate of poppy straw containing mainly thebaine. Australia has also developed methods for manufacturing concentrate of poppy straw containing oripavine, an alkaloid that is also obtained from some varieties of opium poppy rich in thebaine, but is not under international control. Oripavine is mainly used for the manufacture of thebaine.

v. Concentrate of Poppy Straw (M)

Concentrate of poppy straw is used as an intermediate product for the manufacture of morphine. It can also be used in continuous manufacturing processes for the manufacture of other alkaloids, such as codeine, of which morphine can henceforth be converted.

Australia, France, The United Kingdom and the United States are the main users of concentrate of poppy straw (M) for the extraction of alkaloids, accounting for 75% of

global utilization in 2003. Global utilization of concentrate of poppy straw (M) totalled 664 tons, an increase of almost 25% over 2002⁶⁹.



Source: International Narcotics Control Board

Manufacture of poppy straw (M) has followed an upward trend for nearly twenty years, rising dramatically in the late 1990s. In 2003, global manufacture reached a record amount of 705 tons⁷⁰.

Australia, France, Spain and Turkey are the main manufacturers of concentrate of poppy straw (M), together accounting for close to 87% of global manufacture in 2003⁷¹. This comes as little surprise since they are also the main producers of poppy straw (M). In 2003, Australia accounted for 39% of total worldwide manufacture, producing a total of 274 tons of concentrate of poppy straw (M). Turkey and France were the second and third primary manufactures, producing 138 and 123 tons respectively⁷².

In 2003, worldwide exports of concentrate of poppy straw (M) increased by nearly 47% to a record level of 478 tons, up from 326 tons in 2002. Australia made up 42% of

69 International Narcotics Control Board. 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

70 Ibid.

71 Ibid.

72 Ibid.

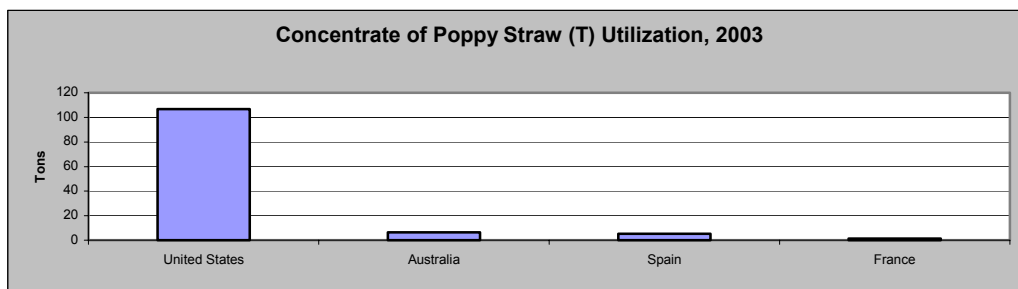
global exports, exporting a total of 201 tons in 2003. Accounting for 33% of total exports, Turkey tripled its exports to 159 tons in 2003⁷³.

The United Kingdom (at 178 tons) and the United States (at 165 tons) are the principal importers of concentrate of poppy straw (M), together accounting for 73% of worldwide imports⁷⁴.

Since 1998, global stocks of concentrate of poppy straw (M) have grown eight-fold, to 351 tons in 2003⁷⁵.

vi. Concentrate of Poppy Straw (T)

Concentrate of poppy straw (T) is used as an intermediate product for the manufacture of thebaine. The manufacture of concentrate of poppy straw composed of thebaine as the main alkaloid was first reported to the INCB by Australia in 1998. Australia and France are the only countries producing significant quantities of concentrate of poppy straw (T)). As of 2003, global manufacture was totalled at 120.5 tons. Most of the concentrate of poppy straw (T) is exported to the United States, which imported 107 tons in 2003. The United States is also the main user, accounting for 89% of global utilization at 106.7 tons. Stocks are primarily held in Australia (48%, or 31.2 tons), and totalled 64.7 tons in 2003⁷⁶.



Source: International Narcotics Control Board

73 Ibid.

74 Ibid.

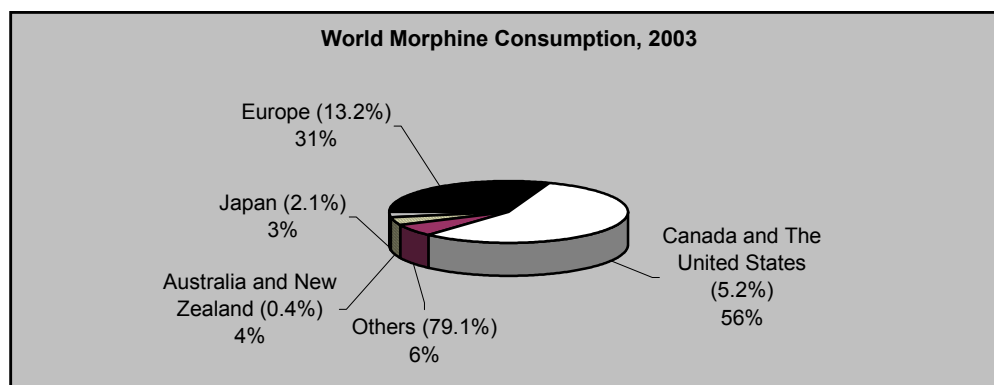
75 Ibid.

76 International Narcotics Control Board. 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

vii. Morphine

According to the INCB, in 2003 about 18% of the morphine manufactured worldwide was obtained from opium, while 82% was extracted from poppy straw either using concentrate of poppy straw as an intermediary or directly. Most of the morphine used in 2003 was converted into other narcotics drugs (82%), mainly codeine, which accounted for 76% of the total quantity used. Only about 10% of the total amount of morphine utilized in 2003 was consumed for medical purposes⁷⁷.

Global manufacture, consumption and utilization have all followed generally upward trends over the last ten years. Throughout the late 80s and early 90s global manufacture of morphine hovered at just over 200 tons per annum. By 1999, this number totalled 320 tons. In 2003 total manufacture of morphine stood at 376 tons⁷⁸⁻⁷⁹. The United States was the leading manufacturer of morphine, manufacturing 99 tons in 2003 - an increase of 26% over 2002⁸⁰.



Source: International Narcotics Control Board (percentages in parentheses indicates country or region's share of global population)

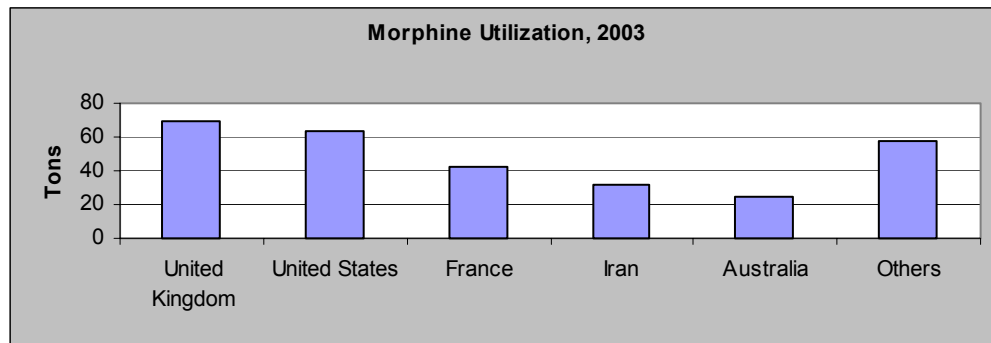
77 Ibid.

78 International Narcotics Control Board. 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

79 Joranson, D. 1996, "New International Efforts to Ensure Availability of Opioids for Medical Purposes", *Journal of Pain & Symptom Management*, vol. 12, no. 2.

80 International Narcotics Control Board. 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

2003, total worldwide export of morphine amounted to only 19.2 tons⁸¹, a much smaller number than concentrate of poppy straw (M) (478 tons exported in 2003) because most countries involved in converting morphine into other drugs prefer to import concentrate of poppy straw (M) in order to avoid diversion.



Source: International Narcotics Control Board

The main exporter of morphine in 2003 was the UK, exporting a total of 7.2 tons (or 37% of global exports)⁸².

The total number of countries reporting imports of morphine has increased as a result of its growing medical use. In 1990, 113 countries reported the importation of morphine; by 2003, the number of countries increased to 159⁸³. Global consumption of morphine (excluding schedule III preparations outlined in the 1961 Single Convention) steadily increased between 1984 and 2003. Between 1984 and 1993, consumption increased more than fourfold from 3 to 12.5 tons. By 2003, that amount had more than doubled, reaching 27.8 tons⁸⁴.

In 2003, the US was the leading consumer of morphine at 13.6 tons (or 48.8% of global consumption)⁸⁵. World morphine consumption is shown in the figure above. The percentage within parentheses indicates that country or region's share of the world

81 Ibid.

82 Ibid.

83 International Narcotics Control Board. 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

84 Ibid.

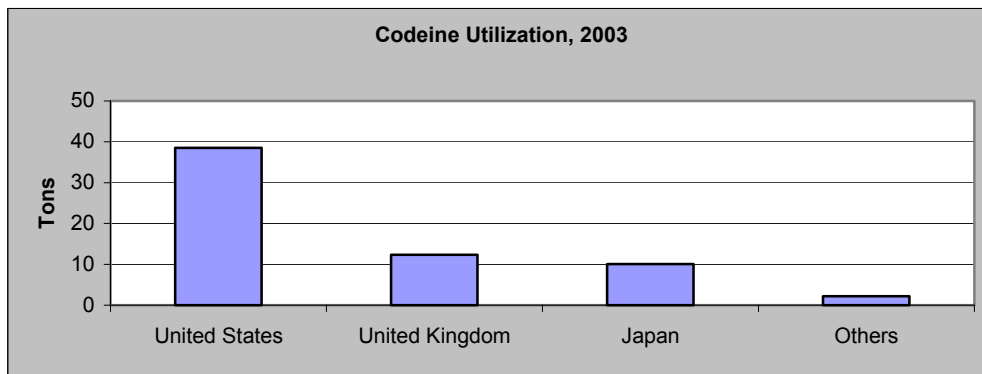
85 Ibid.

population. It is clear that the share of morphine use is heavily in favour of the developed world.

The majority of morphine, however, is used for conversion into other opiates, mainly codeine. Historically, the amount of morphine converted into other opioids has remained fairly stable at 200 tons per annum. However, since the early 1990s this amount has increased, reaching 293.9 tons in 2003⁸⁶.

viii. Codeine

Codeine is a natural alkaloid found within the opium poppy. However, according to the INCB most of the codeine manufactured (85-90%) for medical and scientific use is obtained through the use of morphine. The manufacture of codeine has followed a generally upward trend since the early 1990s. In 2003, codeine manufacture reached record heights totalling 289 tons. The principal codeine manufacturer in 2003 was the US, accounting for 67.0 tons (or 25%) of worldwide manufacture⁸⁷.



Source: International Narcotics Control Board

Exportation of codeine totalled 77.8 tons in 2003, with Australia the largest single exporter, accounting for 23.8 tons (or 30%) of world exports. Canada was the main importer of codeine in 2003, importing a total of 17.8 tons⁸⁸.

⁸⁶ Ibid.

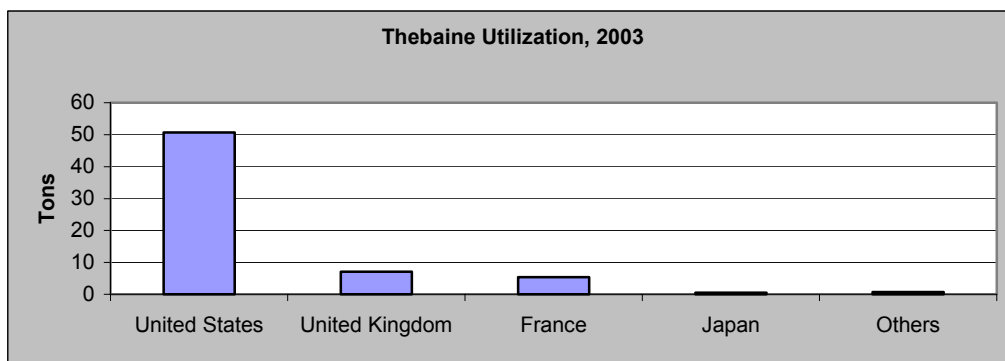
⁸⁷ Ibid.

⁸⁸ Ibid.

Though the consumption of codeine has fluctuated between 160 and 200 tons over the last two decades, codeine consumption peaked in 2003 to a total of 201.3 tons⁸⁹.

ix. Thebaine

Thebaine, while not used itself for pain-relief therapy, is a starting material for the manufacture of a number of opioids including codeine, dihydrocodeine, hydrocodone and oxycodone. The main source of thebaine, since 1999, has been the poppy straw produced by France and Australia containing high thebaine content. Before the productive know-how was implemented, opium had been the main source for thebaine extraction. The manufacture of thebaine has increased correlatively with the popularity of its main medical derivative, oxycodone.



Source: International Narcotics Control Board

Global manufacture of thebaine reached 77.4 tons in 2003. The United States is the leading manufacturer, producing 56.8 tons in 2003, or 73% of worldwide total⁹⁰.

Since the early 90's, Australia has been the leading exporter of thebaine (exporting 11.3 tons in 2003). The UK was the main importer of thebaine in 2003, importing 5 tons⁹¹.

⁸⁹ Ibid.

⁹⁰ International Narcotics Control Board. 2005, *Narcotic Drugs: Estimated World Requirements for 2005; Statistics for 2003*, United Nations, New York.

⁹¹ Ibid.

b. World Stocks of Raw Materials

Global stocks of opium reached 1,829 tons (or 201 tons of morphine equivalent) in 2003. This was almost a 5% decline from its peak level in 2002 of 1,932 tons⁹².

All quantities of opium produced that were not used in India or exported were added to stocks held within India. The stocks of opium in India increased from less than 400 tons in 1998 to 1,705 tons in 2002, declining 6% to 1,599 tons (or 176 tons of morphine equivalent) in 2003⁹³.

In 2003, Japan held 168 tons of stocked opium, followed by the United States at 24.6 tons and the United Kingdom at 18.6 tons⁹⁴.

Global stocks of morphine declined from 62 tons in 1999 to 54.5 tons in 2002. However, in 2003, stocks of morphine increased to 64.4 tons – 50% (32.2 tons) of which was held within the US⁹⁵.

Global stocks of codeine decreased from 115.5 tons in 2002 to 106 tons in 2003, with the US the largest holder of stocks at 20.7 tons⁹⁶.

In 2003, global stocks of thebaine totalled 37.3 tons⁹⁷.

92 Ibid.

93 Ibid.

94 Ibid.

95 Ibid.

96 Ibid.

97 Ibid.

c. Role of the Pharmaceutical Industry

i. Organization

The array of players involved in the manufacture, distribution and sale of pharmaceutical products makes the pharmaceutical market as a whole a very diverse and segmented industry.

The pharmaceutical market is not like other commodity markets for a number of reasons. To begin, pharmaceutical products are not interchangeable at the consumer level. Branded products are designed to treat a specific medical indication in a way different from other treatments within the same therapeutic class. Further, when a patient visits a doctor, they are prescribed a specific medication that is to be dispensed by a licensed pharmacist. The patient cannot choose between products based on economic calculation; they are informed by the professional opinion of their doctor. Because the end payer of the cost of the medication – usually insurance plans or governments, but often in developing countries the patient themselves – is not the chooser of the product, there is no direct “market regulation” of the cost of pharmaceuticals. Pharmaceutical markets are not self-regulating; more often than not governments are needed to intervene in the equitable distribution of its products.

One can only arrive at an understanding of the opioid pharmaceutical market by way of a general analysis of the pharmaceutical market as a whole. There is no reason to believe that even with the strict regulations around the production, manufacture and prescribing of opioids that the opioid market differs significantly from the rest of the pharmaceutical market. ***On this basis, the blatant disparity in access of essential medicines (of which morphine and codeine are categorized by the WHO) between developing and developed countries is just as certain with regard to opioids.*** According to Oxfam, a poverty relief organization based in the UK, less than 10% of world pharmaceutical sales are to developing countries, and only one% of all sales in 2002 went to fulfil medical need in Africa⁹⁸. Spending on research and development is

98 Oxfam. 2002. “Beyond Philanthropy,” available at:
http://www.oxfam.org.uk/what_we_do/issues/health/downloads/beyondphilanthropy.pdf.

also disproportionately distributed throughout the world at the expense of the developing world. Only 10% of the global research and development expenditure is put toward diseases accounting for 90% of the world's disease burden⁹⁹.

What factors control the level of availability of medications in a country? A product is available in a market if there is a manufacturer prepared to make the product, and willing to sell it in that market; as well as a purchaser who is able to pay for that product. All of these factors are variables that are relevant to the access to essential medications in developing countries. In many situations, for instance, the healthcare infrastructure needed to make effective use of these medications is simply lacking. But for the most part academics and scholars have concentrated on supply rather than demand side factors influencing the availability of essential medications.

The two principal features on the supply side are the price of essential medications - especially HIV/AIDS drugs - in developing world markets, as well as barriers to entry into the manufacture of such drugs. Prices in markets are normally fixed by two factors – the willingness of the suppliers to supply goods at varying price levels, and the willingness of purchasers to buy the goods at varying price levels¹⁰⁰. However, where there are few, or only one, suppliers of a good, the purchasers will have relatively little influence over the price set, and the manufacturer will choose whatever level of price best reflects their ability to manufacture the goods in question and the level of profit they can expect at that price. ***In non-competitive markets, suppliers have freedom to choose the level of profit they take.*** And the level of manufacture they choose will vary according to the other alternative markets they can enter, the other goods they can manufacture, and the overall business requirement to maximize profits (or shareholder value). In these conditions, buyers have little *economic* power to vary the price, beyond threatening to withdraw from the market altogether, or to cut the quantity of goods they purchase dramatically. Where a good is “essential”, and where the purchaser is a State, acting as a proxy for a group of end-users, whose interests are in purchasing the good if at all possible, this threat is more formal than actual.

99 Ibid.

100 Bale, Harvey E. Jr. 2001. Consumption and Trade in Off-Patented Medicines World Health Organization.

States can vary the quantity of drugs they purchase only within certain constraints, set by national income (taxes, trade and loan capital), and other claims on government expenditure. In many States in Africa for example, assuming the prices remain at current levels, making HIV/AIDS medication the highest budgetary priority would make some progress into universal coverage, but would still not get close to achieving that aim¹⁰¹. An important factor influencing price and purchase of drugs are therefore the chosen level of profit of the drug companies, and the barriers to entry to drug manufacture. Amongst these are international regulatory standards on quality and purity of manufacture and the enforcement of intellectual property rights.

ii. Value of the Pain Management Market

The pain management prescription drug market can be categorized into four major drug classes: Nonsteroidal anti-inflammatory drugs (NSAIDs); Cyclooxygenase (COX)-2 specific inhibitors; Opioids; and Other pain management drugs (aspirin and acetaminophen formulations). The largest drug class in 2001 was the traditional NSAID class, which produced global sales of US \$6.5 billion. This was followed in size by COX-2 inhibitors, generating total worldwide sales of US \$5.7 billion in 2001¹⁰².

The opioid analgesics market totalled US \$5.6 billion in 2001, followed by other pain therapies at US \$5 billion¹⁰³.

Natural, semi-synthetic and synthetic opioids are used across a broad spectrum of therapeutic indications (that is, on the Anatomical Therapeutic Chemical Classification System (ATC System) which is designed by the WHO to classify all drugs according to the organ or system on which they act or their therapeutic and chemical characteristics), making analysis of the real market value of opioid alkaloids difficult. However, it is clear that the global pain management market is among the largest pharmaceutical markets by indication. IMS Health, one of the largest pharmaceutical data collection

101 Schüklenk, Udo and Richard E Ashcroft 2001. "Affordable access to essential medication in developing countries: conflicts between ethical and economic imperatives" in *Journal of Medicine and Philosophy*, 27(2) available at: <http://www.wits.ac.za/bioethics/access.htm>

102 Seget, Steven. 2003, *Theta Reports: Pain Management: World Prescription Drug Markets*, PJB Medical Publications Inc., New York

103 Ibid.

firms in the world, estimated the sales volume of the global analgesic market at US \$23 Billion in 1998, which is equivalent to 5% of the world total pharmaceutical market. However, the pain management market has a higher than average annual growth rate of 17% (the global pharmaceutical market annual growth rate is 7-8%)¹⁰⁴.

The value of the opioid analgesic market was US \$4.8 Billion (21% of the total analgesic market) and morphine preparations amounted to approximately US \$1 Billion in 1998¹⁰⁵.

iii. Market Trends

The opioid and COX-2 inhibitor classes were the fastest growing classes of drugs, growing 24.5% and 18.7% respectively in 2001 over 2000¹⁰⁶. The large growth in popularity of opioids was largely driven by sales of the extended-release drug Oxy-Contin. Further, while the COX-2 inhibitor class of drugs was driven primarily by sales of Celebrex and Vioxx, the subsequent removal of these products from the market in 2004 due to safety concerns has significantly damaged its reputation for the safe and effective treatment of pain symptoms. NSAIDs suffered a decline in growth of 3% while other pain therapies grew by 3.1% in 2001¹⁰⁷.

The largest pain management market region is North America, which generated total sales of \$12 billion in 2001. Europe, the second largest market, totalled \$5.5 billion. Asia, Australia and Africa combined for a total of \$3.1 billion in drug revenues in 2001. Finally, the Latin American market was worth \$2.2 billion¹⁰⁸.

104 International Narcotics Control Board 2005, *the Relative Merits of Different Methods of Producing Opioid Raw Materials*. United Nations, New York.

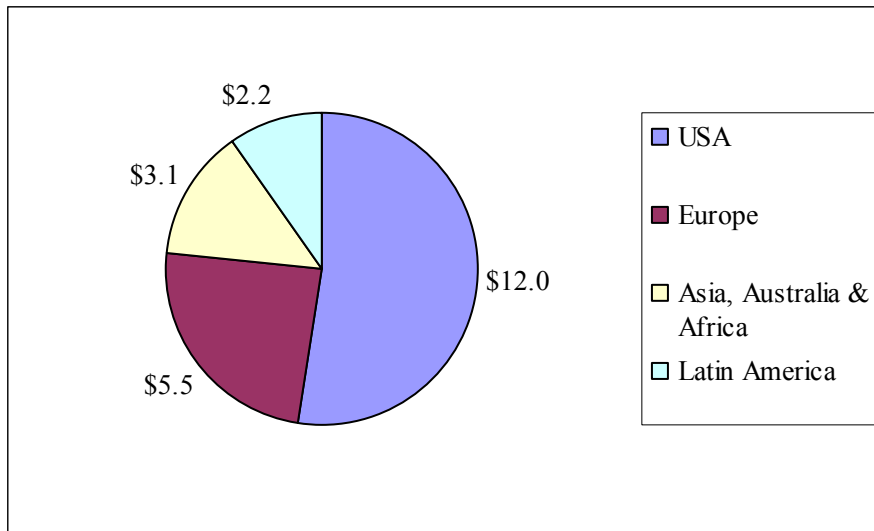
105 Finkelstein, S. N., Sinsky, A. J., & Cooper, S. M. 2003, *Getting Personal with Pain*, PharmaGenomics.

106 Seget, Steven. 2003, *Theta Reports: Pain Management: World Prescription Drug Markets*, PJB Medical Publications Inc., New York.

107 Ibid.

108 Ibid.

Pain management market sales by regions, in 2001(US\$ billions)



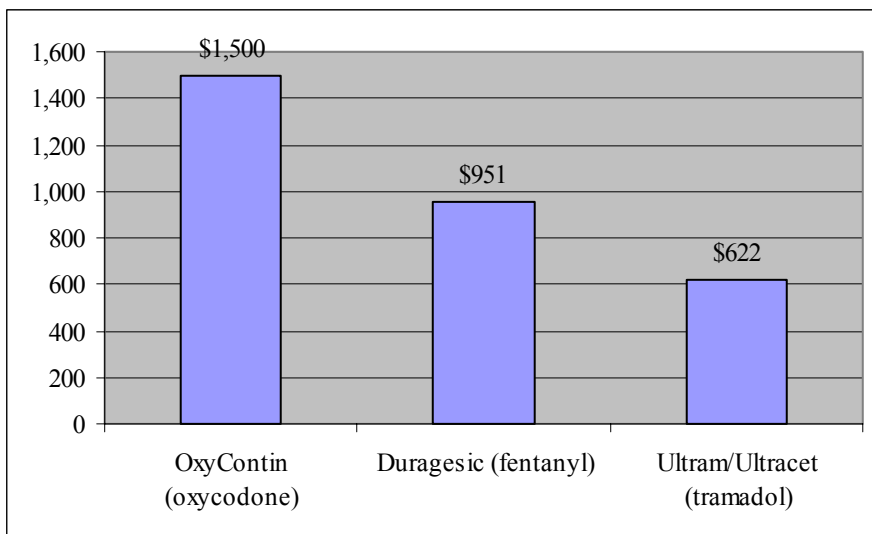
North America also generated the largest market growth in 2001 reaching 12.2%. Growth in Europe was significantly lower at 2.1%¹⁰⁹.

The total global market for opioids in the treatment of pain was estimated at \$6.2 billion in 2003 and is projected to increase to \$6.5 billion by 2006. Global sales of the three leading products OxyContin (oxycodone), Duragesic (fentanyl) and Ultram/Ultracet (tramadol) were \$1.5 billion, \$951 million and \$627 million respectively¹¹⁰.

109 Ibid.

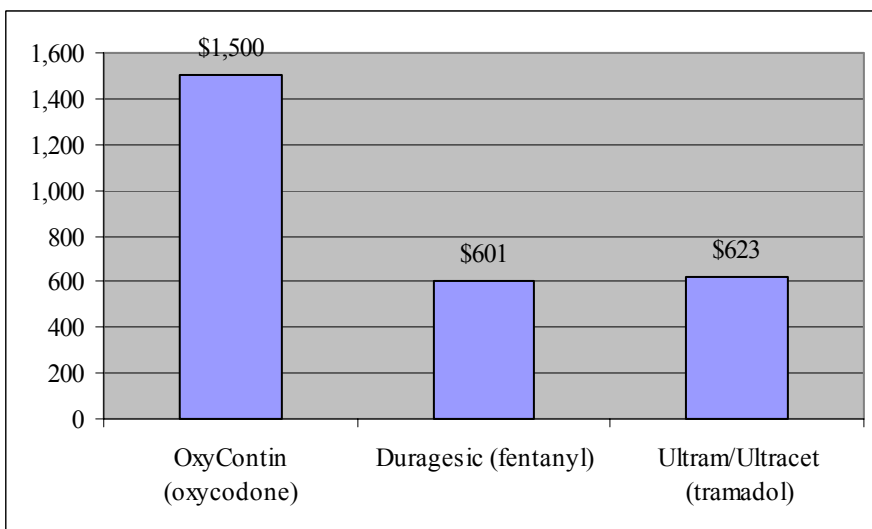
110 Ibid.

Global sales of the three leading opioid medicines in 2003 (US\$ millions)



As with other therapeutic classes, North America was the number one consumer of opioid medications, with sales totalling \$4.4 billion in 2001, a 26.4% growth over the year previous. US sales of OxyContin, Ultram/Ultracet and Duragesic totalled \$1.5 billion, \$623 million and \$601 million respectively in 2001¹¹¹.

North American sales of the three leading opioid medicines in 2003 (US\$ millions)



111 Ibid.

3 The WHO Analgesic Method and the Global Strategy against Pain

The WHO Expert Committee on Essential Drugs considers morphine and codeine as “essential drugs”, these being defined as “those [drugs] that satisfy the health care needs of the majority of the population; they should therefore be available at all times in adequate amounts and in the appropriate dosage forms.”¹¹²

In 1989, the INCB, in cooperation with the WHO issued a special report entitled “Demand and Supply of Opiates for Medical and Scientific Needs” which concluded that the medical needs for opium, particularly those related to the relief of cancer pain, were not being fully satisfied. A number of factors were listed as accounting for this situation: absences of national drug policies dealing with opioid availability and use, lack of healthcare resources, inadequate facilities for storage and distribution of drugs, insufficient training of health professionals, fears of addiction and dependence as well as overly restrictive laws regulating the availability of opioids.

The WHO report recommended that national governments as well as their health agencies should examine their current methods of assessing domestic medical needs for opium and of collecting and analyzing data. WHO recommended such actions so as to ensure that future estimates would accurately reflect actual population needs. The report also recommended that governments should examine the extent to which their health care systems and laws and regulations permitted the use of opium for medical needs as well as identifying impediments to its use.

In the report of the International Narcotics Control Board for 1995 entitled “Availability of Opiates for Medical Needs”, which was initiated to monitor the implementation of the recommendations given in the 1989 report, the board concluded that **“the medical need for opiates is far from being fully satisfied in both less developed and developed countries,”**¹¹³ even though consumption of morphine and other narcotics drugs had increased in most countries.

112 World Health Organization 2000, Achieving Balance in National Opioids Control Policy, World Health Organization

113 International Narcotics Control Board 1996, Availability of Opiates for Medical Needs, United Nations, New York. Pg. iii

The board surveyed governments and collected information pertinent to the issues raised in the 1989 report. The survey found that 48% of responding governments deemed opioids as “indispensable” for the delivery of adequate healthcare.

The greatest impediment to the medical use of opium, according to 72% of respondents, was a concern with addiction and misuse of these drugs. The second leading factors cited as impediments to the medical use of opium were insufficient education of healthcare professionals as well as restrictive narcotics laws and regulations (both accounting for 59% of all respondents). Other factors contributing to the under use of opiate-based medications were a general reluctance to prescribe opium for fear of theft or robbery, the administrative burden of government regulatory requirements as well as insufficient import or export manufacture of needed opium.

Another important discovery of the INCB report was that the number of supplementary estimates placed to the INCB for narcotic drugs increased significantly with a correlative increase in requests for morphine, fentanyl and pethidine. 60% of governments reported that in the preceding five years they had submitted supplementary estimates to the INCB because of unforeseen increases in medical need¹¹⁴. This directly contributes to the prevalence of shortages reported by responding governments. ***In total, the INCB found that 54% of governments had experienced some form of narcotic drug shortage either seldom (25%), occasionally (25%) or often (3%). The most common reasons cited for narcotic drug shortage were insufficient importation (29%), delays in shipping or distribution (23%) as well as increases in medical demand (20%)¹¹⁵.*** In general, it was observed that governments least concerned about diversion were more likely not to have shortages and to have morphine available in most community pharmacies.

Most respondents replied that they anticipated increases in consumption of up to 25% within the next several years.

114 Ibid.

115 Ibid

However, a division has been growing between the developed and developing worlds in opioid use. As of 1991, the ten countries with the highest consumption of morphine (Australia, Canada, Denmark, Iceland, Ireland, New Zealand, Norway, Sweden, the UK and the US) used 57% of the world's supply¹¹⁶. By 2003, according to the INCB annual report, these ten countries together accounted for 87% of the global consumption of morphine¹¹⁷. The trend is the same for other leading opioid-based medications such as Hydromorphone, Fentanyl and Oxycodone mainly due to the higher costs of these medications. According to INCB President Hamid Ghodse, developing countries, representing roughly 80% of the world's population accounted for only 6% of the global consumption of morphine in 2003¹¹⁸.

3.1 Other Growth Drivers

With an increase in the average age of country populations, the growth of palliative and hospice care in developed countries' national health systems has contributed to the direct increase in the use of pain relief medications.

Throughout the world birth rates are declining, life expectancies are increasing, and populations are ageing. For example, in the 1950s, the expected number of children a woman would bear over a lifetime was six; today, the total birthrate has fallen to three. In addition, over the last century, life expectancy has increased by 30 to 40 years in developed countries¹¹⁹. Longer lives are due, in part, to advances in medical science and technology, but also are because of successful public health and development efforts during the past 100 years.

One consequence of these changes in world demographics is an accompanying increase in the incidence and prevalence of chronic health problems. As infant mortality declines,

116 Joranson, D. E. 1993, "Availability of Opioids for Cancer Pain: Recent Trends, Assessment of System Barriers. New World Health Organization Guidelines, and the Risk of Diversion", *Journal of Pain & Symptom Management*, vol. 8, no. 6.

117 International Narcotics Control Board, 2003 Annual Report, United Nations.

118 International Narcotics Control Board, Press Release: May 26 2005.

119 WHO Website: <http://www.who.int/dietphysicalactivity/publications/facts/chronic/en/>

and life expectancies and the possibility of exposure to risks for chronic health problems rise, chronic conditions become more pervasive, thus creating the need not only for successful curing of disease but suitable palliation of chronic pain conditions where no cure is available. Not only does this apply to the rising number of people living with HIV/AIDS and cancer, but to other pain conditions common to ageing such as arthritis and acute back pain.

Lifestyle and behaviour are primary determinants of chronic conditions such as heart disease, cerebrovascular disease, diabetes, HIV/AIDS, and many types of cancers. Tobacco use, prolonged and unhealthy nutrition, physical inactivity, excessive alcohol consumption, unsafe sexual practices, and unmanaged psychosocial stress are major causes and risk factors for chronic and potentially painful conditions. At some point, it is possible that opioid therapy for the advanced stages of the consequences of such activities may be needed.

According to the WHO, between 1950 and 1985, the urban population of industrialized countries doubled, and in developing countries the urban population quadrupled. Cities in developing nations, which already have enormous squatter settlement populations, added an additional 750 million people between the years 1985 and 2000¹²⁰. The problem with such rapid growth is the lack of facilities and services for the "urban poor" that are essential to good health. Correlative with the shift in population from rural to urban areas is a dramatic increase in advertising and promotion of unhealthy products in developing countries. These regions are particularly attractive markets for industries selling health-threatening goods. The tobacco, alcohol, and food industries have identified countries in which national regulation and public health education programmes are weak, or in many cases non-existent. These factors combined have led, and will continue to lead, to the need for opioid-based pharmaceutical products.

There has also been a slow paradigm shift in attitudes toward pain. While the incorporation of advances in pain medicine and the rational use of narcotic drugs into mainstream medicine and public awareness has taken some time, continued efforts by

¹²⁰ Ibid

national governments, WHO and other health organization to improve pain relief will continue to positively influence demand for opium. ***This is particularly evident in the framing of the debate around relief from pain as being a fundamental human right. This has established pain management as a unique and separate health care issue for policy makers to enact policy on, rather than including it as part of larger healthcare issues.***

The shift from injectionable to oral dosage sustained release and transdermal pharmaceutical preparations for the treatment of moderate to severe pain will require a higher concentration of opioid drug products. This is due to the fact that this shift from injectionable to oral dosage forms requires 3-6 times that amount to obtain similar therapeutic results¹²¹. Because of this shift away from injectionable opioid (largely morphine-based) preparations, pharmaceutical companies are diversifying their pain management product lines to include many different kinds of opioid-based medications.

3.2 Growth Driver Differences in First World and Third World Availability

According to the WHO's publication "The World Medicines Situation", which gives a broad overview of the global production, research and development, trade and consumption of pharmaceuticals, among the 104 developing countries identified by WHO, only 25% have a drug policy in place ensuring access to essential medications. 41% of the developing countries listed by WHO are in the process of developing, or improving, policies committed to the enhancement of essential medication availability and the remaining 34% of developing countries are considering the implementation of some form of drug policy, or are not considering it at all¹²².

Due to exorbitant pricing, developing countries access to new, patented medicines is, and will certainly continue to be limited. Currently, the developing world accounts for

121 World Health Organization 2000, Achieving Balance in National Opioids Control Policy, World Health Organization

122 World Health Organization 2004, The World Medicines Situation. World Health Organization.

no more than 10% of worldwide pharmaceutical consumption¹²³. Over the last two decades there has been much international debate about developing countries access to new – though highly expensive – HIV/AIDS treatments as well as anti-malarial preparations. For millions, these drugs provide hope against the growing burden of disease. ***However, a much less discussed – almost unrecognized – problem surrounding pharmaceutical availability concerns developing world access to older, non-patented essential medications which do not carry the financial burden of patent law upon them, such as the painkillers morphine and codeine.***

As discussed in the first half of this paper, the need for pain relieving medicines throughout the world is far from being adequately met. In addition, this need is growing significantly in the developing world, where access to opiate-based medicines are most often inhibited by the issue of availability .

Afghanistan is no exception – indeed, the country represents the tragic irrationality of developing world access to essential medicines. Afghanistan – with its illegal opium cultivation rising 64% in 2004 over 2003 as well as total opium harvested reaching over 130,000 hectares¹²⁴ – has only very limited access to opiate-based medicines.

According to Dr Mohammed Arzomand MD, DHC MSc, founding member of Child Advocacy International and Afghan Medical Association UK, as well as Honorary Chairman for the Health section of Reform & Development Council in the Khost Province, Afghanistan, opiate-based analgesics are primarily available only when smuggled from Pakistan, the black market playing an increasingly important role in Afghanistan's ability to access these drugs. According to Dr Arzomand, two main factors contribute to the lack of opiate-based medicines in Afghanistan: quality and price. While opiate-based medicines from large Western companies are of high quality, they are too expensive to be purchased in any mass quantity; while those coming from neighbouring countries such as Pakistan are much cheaper, they are of suspicious

123 Ibid.

124 United Nations Office on Drugs and Crime, Afghanistan: Farmers' Intentions Survey 2003/2004.

quality. *Issues of cost, affordability and access of opiate-based medicines within Afghanistan merit serious further examination.*

Perhaps because so much attention has been placed on the developing world's need for blockbuster pharmaceutical products has the lack of access to older – though just as vital – drugs been neglected. Since not all pharmaceutical preparations are about curing disease but mainly the treatment and relief of symptoms, pharmaceuticals should be thought of as agents in the improvement of quality of life. Though such diseases as malaria, TB, measles and various diarrhoeal diseases are largely curable and preventable though the use of off-patented, inexpensive medicines or vaccines, these afflictions remain major sources of mortality and morbidity in developing countries. *Because the modern pharmaceutical industry is largely research-based and profit-oriented with an overriding concern with the return on the large amounts of investment placed into R&D, the problem of accessing older-medicines has not gained the recognition it should in the attempts for improving the quality of life of peoples within developing countries. This is especially the case in regard to opioid pharmaceuticals.*

According to the WHO, an estimated one-third of the world's population still lacks regular access to essential medicines. In the poorest areas of Africa and Asia, this number is greater than 50%¹²⁵. However, with the wide variety of generic, less expensive versions available of older drugs, it is clear that drug price, in itself, is not the sole barrier to accessing essential medications such as morphine and codeine. *Other factors, perhaps even more important than affordability, such as inadequate healthcare infrastructure, poor drug legislation and regulation, lack of financing and insufficient political commitment to provide sustainable and necessary healthcare all contribute to the inability of many people in the developing world to access these medicines.*

Lack of financing of pharmaceuticals is a major impediment to the issue of drug access. Spending on pharmaceuticals represents 15-30% of health spending in transitional economies and 25-60% in developed countries. However, for developing countries

¹²⁵ Ibid.

pharmaceutical spending represents less than 20% of total public and private health spending¹²⁶. In 2001, UN Secretary General Kofi Annan stated, regarding access to HIV/AIDS medicines: “the solution does not lie with [the pharmaceutical industry] alone. I am calling for a major mobilization – of political will and significant additional funding – to enable a dramatic leap forward in prevention, education, care and treatment [of disease and illness]”¹²⁷. Overall health spending in the least developed countries is as low as US \$2 per capita per year¹²⁸.

Cost and affordability, though related, must also be distinguished from one another. Cost includes much more than the cost of production. The absolute cost of a drug consists of several factors including financing of the drugs production, distribution and shipment costs, local or national tariffs, duties and taxes. Ultimately, ex-manufacturer prices – or the prices paid to the pharmaceutical firm that produced the drug – may only constitute a small fraction of the actual end-user, consumer price. On the other hand, there are three components of affordability: cost of the drug itself; the costs of effectively distributing, administering and monitoring the drug’s use; as well as the financing to pay for the first two elements. Of these, the price of the drug can often be the least significant. For example, the WHO found that the cost of the drug Nevirapine (used in the treatment of HIV/AIDS in South Africa) was about 0.1% the cost of administering South Africa’s drug programme¹²⁹.

In non-competitive markets, suppliers usually price their products according to the level of profit they wish to extract from the consumer pool concerned. When discussing issues of the price of medications it is important to realize the amount of the purchasers’ economic power to vary the price of a consumer good in the circumstance of little to no competition.

While WHO recommends that medicines on a country’s essential medication list should not be subject to tariffs, many developing countries see tariffs as a source of government

126 Bale, Harvey E. Jr. 2001. Consumption and Trade in Off-Patented Medicines World Health Organization.

127 UN/UNAIDS/WHO Press Release 5 April 2001.

128 World Health Organization 2004, The World Medicines Situation. World Health Organization.

129 Bale, Harvey E. Jr. 2001. Consumption and Trade in Off-Patented Medicines World Health Organization

revenue and so continue to impose import duties on needed imported medicines. While almost all high-income countries do not have tariffs on imported medicines, many developing countries have import duties and tariffs. While tariffs may provide some marginal revenue for poorer nations, ultimately tariffs can impede trade and inflate the final price of medicines above the ability of the majority of its population's ability to purchase them. Some estimates hold that tariffs raise the price of a drug in developing countries up to 30%¹³⁰. Tariffs can be imposed on imported active ingredients themselves or on the completed pharmaceutical product. According to Harvey Bale, director general of the International Federation of Pharmaceutical Manufacturers Associations, of the top 10 developing countries with the highest tariffs imposed on medications, the average tariff on active ingredients was 22.7% and 12.3 for completed products¹³¹. Some of the poorest countries impose the highest tariffs on pharmaceuticals. For example, for active ingredients Burkina Faso, where life expectancy is 45 years, imposes the highest tariff rate, ahead of Pakistan, the United Republic of Tanzania, India and Kenya. And for end products, Tunisia, Nigeria, Mauritius and the Congo all impose significant tariffs on the importation of end products.

Other forms of domestic price mark ups such as import, wholesale and retail margins, are often more substantial components of a pharmaceutical's final price. These add-ons often combine to compose 50 – 80% of the factory gate or landed import price of the pharmaceutical product.

In order to combat the burden of illness in developing countries, these countries need to develop local capacity to ensure access to essential medications. For improved access to essential medicines and the development of new drugs, developing countries need to 1) acquire relevant technologies and know-how to develop and produce essential medications and 2) develop local capacity both directly through the delivery of necessary medicines and indirectly via improved wealth.

130 World Health Organization 2004, The World Medicines Situation. World Health Organization

131 Bale, Harvey E. Jr. 2001. Consumption and Trade in Off-Patented Medicines World Health Organization

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The Global Opium for Medicine Market

Executive Summary

Licensed Opium Cultivation and Production Worldwide

Opium production for Medicine: a global industry

Opium cultivation first came under international control in 1912 when the Opium Convention came into force. Numerous successive treaties superseded this Convention up until 1961 and the adoption of the 1961 UN Single Convention on Narcotic Drugs.

Licensed opium poppy cultivation for medical purposes currently takes place in 12 countries around the world. *The four main producers are India, Australia, Turkey and France. In each case, variables are adapted to national circumstances, and in each case there are clear differences in production scale, yield and economic and social importance.* India, for example, is the only country in the world to produce licensed opium for export. Australia, Turkey and France, use the poppy straw method and thus export Concentrate of Poppy Straw (CPS).

A tightly regulated market by international treaties and special trade agreements

The control system laid down in the 1961 Convention seeks to regulate the international market on which licensed opium and opium-based products for medicine are traded; and aims to create a balance between the global demand and supply of narcotic raw materials. In order to achieve this balance, the control system limits the quantities of opium and CPS that any country may produce for export. *In accordance with a resolution adopted by the United Nations Commission on Narcotic Drugs in 1979 to guarantee the market for India and Turkey producers, the United States decided to implement the so called “80-20 rule” in 1981. This rule obliged the United States to purchase at least 80% of its opium from the se two countries.*

Because the United States is one of the main opium-based product consumers, the “80-20 rule” currently plays a central role in structuring the world markets for opium-based products. However, France and Australia are not affected by this because they produce thebaine rich poppy straw (used to produce codeine) which is exempt from this rule.¹

The Importance of International Support in the case of licensed opium production in Turkey

The important role that the international community has to play in the effective implementation of opium licensing schemes is illustrated in the case of Turkey. Both the United States’ and the United Nations’ support for the Turkish government’s efforts to eliminate diversion of opium to the illegal drug trade was invaluable to their success. At the same time, Turkey also aimed to switch from opium to poppy straw production and both the United States and the United Nations provided financial and expert support to Turkey during this period. *In addition, in order to achieve the phasing-out of illegal opium production in Turkey, the government actually increased the farm-gate price by 66 percent in order to compensate the farmers who had been growing unlicensed opium for the loss of income, thus avoiding high levels of diversion into the illegal market.*

¹ Thebaine: one of the opium alkaloids. Of great pharmaceutical value due to its use in the production of semi-synthetic opioid morphine analogues such as oxycodone and buprenorphine.

Opportunities for developing a competitive licensed opium industry in Afghanistan, with international support

- The possibility of cultivating a high thebaine/low morphine poppy variety such as the *Norman* in Afghanistan should be investigated further. This would have the effect of decreasing the risk of diversion of licensed crops into the illegal market because thebaine is not used to produce heroin, only codeine.
- The history of Turkish opium cultivation provides a useful precedent for Afghanistan in its successful transition from opium production to poppy straw production. The structural factors, particularly the support from the US and the UN, which have enabled this transition, will be key aspects for further research..
- The review of the United States' "80-20 rule" scheduled for January 2006 by the US Congress presents the opportunity to include a special trade agreement with Afghanistan for the compulsory purchasing of a define Afghan opium materials for medicine in the US market.

Feasibility Study on Opium Licensing in Afghanistan
for Production of Morphine and Other Essential Medicines



Licensed opium cultivation and production in the main producing countries

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The Senlis Council

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Introduction

A number of countries currently cultivate the opium poppy for medical purposes. These are Australia, China, Czech Republic, France, Hungary, India, Japan, Slovakia, Spain, Macedonia, Turkey, and the United Kingdom. Different systems operate in each of these countries to control opium cultivation and production. This chapter will examine the opium industries of the four principal opium-producing countries; India, Australia, Turkey and France. It will describe the history of the poppy cultivation in these producing countries, the purpose and significance of the production, and examine the relevant national control systems.

1 A brief history of the licensing system

The Hague Opium Convention of 23 January 1912 was the first international instrument to control the production of opium. Article 1 of the Convention placed on the contracting states an obligation to enact "effective laws or regulations for the control of the production and distribution of raw opium".¹

The next attempt at the control of opium was the International Opium Convention, signed at Geneva on 19 February 1925, which introduced a system of statistical control. Article 22 imposed an obligation on contracting states to send annually to the Central Board statistics relating to the production of raw opium and coca leaves, including:

- (a) stocks held by wholesalers or held by the government for consumption in the country for other than government purposes;
- (b) consumption other than for government purposes; and
- (c) amounts confiscated on account of illegal import or export.²

The Limitation Convention of 1931³ first introduced a system of limitation based upon estimates. Each contracting party undertook to provide estimates of the quantities of drugs required during the ensuing year, whether in the form of alkaloids or preparations of alkaloids. The estimates were required to demonstrate:

- (a) the quantity necessary for medical and scientific needs (including the quantity required for the manufacture of preparations for which export authorizations were not required, whether intended for domestic consumption or not);
- (b) the quantity necessary for conversion whether for domestic consumption or export;

1 From: International Opium Convention Signed At The Hague January 23, 1912 Available at:

<http://www.tc.edu/centers/cifas/drugsandsociety/background/OpiumConvention.html>

2 From: United Nations. Bulletin on Narcotics (1953) Historical Survey Issue 3. Available at:

http://www.unodc.org/unodc/en/bulletin/bulletin_1953-01-01_3_page003.html

3 League of Nations, Conference for the Limitation of the Manufacture of Narcotic Drugs. (Geneva, May 27th-July 13th, 1931) (C. 455. M.193. 1931. XI.)

- (c) the amount of the reserve stocks which contracting parties wished to maintain; and
- (d) the quantity necessary for the establishment and maintenance of any governmental stocks.

However, this Limitation Convention did not restrict the production, use or storage of substances but merely established a system by which they were quantified.

Before 1931, the issue of limiting the production of the raw materials for the manufacture of narcotic drugs had not been substantively addressed. In January of that year, the Advisory Committee on Traffic in Opium and other Dangerous Drugs began to collect material to serve as a basis for the discussions at the 1938 Conference on the Limitation of the Production of Opium.⁴ In 1938, this Committee submitted to the Council of the League of Nations a special report which included a survey of the essential principles which might form the basis of a convention for the limitation and control of poppy cultivation, the production of opium, and the control of other raw materials (such as poppy straw) used for the manufacture of opium alkaloids.⁵ This was the first time poppy straw was to be officially regulated, but the initiative was interrupted by the Second World War.

Having assumed the functions of the League of Nations relating to the international control of narcotic drugs, the ECOSOC, at its first session in April 1946, established a Commission on Narcotic Drugs which held its first session in December 1946.

At its 1949 session, the Commission on Narcotic Drugs appointed a Sub-Committee, composed of the representatives of opium-producing countries⁶, and of China, to devise an interim agreement for limiting the production of opium to medical and scientific needs.

4 United Nations. Bulletin on Narcotics (1953) Historical Survey Issue 3. Available at:

http://www.unodc.org/unodc/en/bulletin/bulletin_1953-01-01_3_page003.html

5 Ibid.

6 India, Iran, Turkey, the Union of Soviet Socialist Republics and Yugoslavia

The Sub-Committee recommended the formation of an *ad hoc* committee⁷, which was indeed established and subsequently convened in Turkey. The participating States, in an interim agreement, resolved to:

- limit the production of opium to the amount required for medical and scientific purposes;
- allocate to producing countries shares of sales of the opium which they would produce each year individually; and
- reorganise the trade in opium into an international monopoly.

The principal narcotic-producing companies met in Geneva in August 1950 and accepted, in principle, the decisions taken by the ad-hoc Committee. However, it soon became apparent that the interim agreement did not provide for proper control of the raw materials used in the production of morphine. The agreement was altered, and after more than six years of general preparatory work the 1953 Opium Protocol was signed at New York on 23 June 1953.

The 1953 Protocol prohibited consumption of opium for non-medical purposes, and introduced the system of annual estimates of opium production and opium requirements. "With a view to limiting to medical and scientific needs the quantity of opium produced in the world," the 1953 Protocol limited the amounts of stocks of opium that each contracting Party could maintain. The Protocol also required the establishment of national opium monopolies in the opium producing countries, and enumerated seven countries authorised to produce opium for export.⁸ The Protocol also substantially increased the responsibilities of the Permanent Control of Narcotics Board, making it the main international organ charged with the implementation of the 1953 Protocol in the international sphere. Concerning poppy straw, the 1953 protocol required parties to enact such laws and regulations as were necessary to ensure that opium was not produced from the cultivation of poppy straw, and further to ensure that the manufacture of narcotic substances from poppy straw was adequately controlled. Additionally,

⁷ composed of the representatives of the principal opium-producing countries, namely, India, Iran, Turkey, the Union of Soviet Socialist Republics and Yugoslavia

⁸ India, Turkey, Iran, Yugoslavia, Greece, Bulgaria and the USSR

parties were required to furnish annually to the Board statistics of all imports and exports of poppy straw.

2 The 1961 Single Convention on Narcotic Drugs

Before the entry into force of the 1953 Protocol, the Single Convention on Narcotic Drugs was signed at New York on 30 March 1961 coming into force on 13 December 1964. The 1961 Convention extended the system of import certificates and export authorizations to poppy straw, and further extended the estimate system of the 1931 Convention to all narcotic substances. By incorporating the basic provisions of the 1953 Protocol, the 1961 Convention provided for the international control of all opium transactions by what amounted to national opium monopolies, allowing opium production only by *licensed* farmers in areas and on plots of land designated by the national monopoly (Government Agency).

Article 23 of the 1961 convention on Narcotic Drugs sets out the specific requirements for such a national control system:

1. A Party that permits the cultivation of the opium poppy for the production of opium shall establish, if it has not already done so, and maintain, one or more government agencies (hereafter in this article referred to as the Agency) to carry out the functions required under this article.

2. Each such Party shall apply the following provisions to the cultivation of the opium poppy for the production of opium and to opium:

a) The Agency shall designate the areas in which, and the plots of land on which, cultivation of the opium poppy for the purpose of producing opium shall be permitted.

b) Only cultivators licensed by the Agency shall be authorised to engage in such cultivation.

c) Each licence shall specify the extent of the land on which the cultivation is permitted.

d) All cultivators of the opium poppy shall be required to deliver their total crops of opium to the Agency. The Agency shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest.

e) The Agency shall, in respect of opium, have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of opium alkaloids, medicinal opium or opium preparations. Parties need not extend this exclusive right to medicinal opium and opium preparations.

3. The governmental functions referred to in paragraph 2 shall be discharged by a single government agency if the constitution of the Party concerned permits it.

Countries such as the United Kingdom that only produce opium for their home market and not for export; do not need to be licensed with a recommendation by the INCB or an export approval from ECOSOC.

A binding system of *estimates*, administered by the INCB, limits the quantities of opium and schedule I drugs such as morphine that can be traded around the world.

The Estimate System

- Every year, national drug regulatory authorities prepare an estimate of the amount of Schedule I opioids that will be needed in the country during the following year.⁹ The estimate must be submitted to the INCB six months in advance of the period to which it applies. Under the 1961 Single Convention, the quantity of opioids manufactured in or imported into a country must not exceed the official government estimate of the amounts needed.
- The 1961 Convention requires the INCB to confirm the national estimate before the national government may permit the import or manufacture of opioids. In this way, excessive manufacture or import can be monitored and the risk of diversion to non-medical use is minimized.¹⁰

⁹ 1961 Single Convention on Narcotics Drug, Article 19

¹⁰ World Health Organization (1996) A Guide to Opioid Availability, Cancer Pain Relief, 2nd Edition., ,

3 India



Opium poppy has been cultivated in India since the 15th century. As early as the Moghul empire (1556-1857) there was a valuable trade in opium with China and other Asian countries. During the second half of the 16th Century, the production of opium became a state monopoly and, aside from a short period when the East India Company controlled production (1757-1773), opium production has remained under government control.

In November 1950, shortly after India's independence, the Indian government established the Narcotics Commission to reorganise the system of opium production.

This Commission laid the foundations for the Central Bureau of Narcotics (CBN) which currently controls the licensed cultivation of opium poppy in India. When the 1961 Convention was adopted, India's entitlement to cultivate opium poppy was not considered contentious, given its long history of opium poppy cultivation.

Globally, India is the fourth largest producer of opiate raw materials world (after Australia, Turkey and France), and in 2003, India provided 12 percent of the global production. In that year India produced nearly 520 tons of opium from a cultivated area of 12,320 hectares.¹¹

3.1 Purpose

Consumption of morphine and other opiates is very low in India; just 16 daily doses¹² per million in habitants per day¹³ between 2001-2003, compared to the global average of 1962 daily doses per million inhabitants per day in 2003¹⁴. This is principally due to the stringent regulations established by the Narcotic Drugs and Psychotropic Substances Act 1985 which are designed to avoid diversion and misuse. To be able to prescribe opioids, hospitals must obtain a special license, which requires large amounts of paperwork, and the prescribing of morphine entails an even more complicated process. The bureaucracy associated with opium-based painkillers has resulted in many pharmacists not stocking

11 INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003, table 1 p. 142

12 The presented information on the average consumption is “expressed in defined daily doses for statistical purposes (S-DDD) per million inhabitants per day, excluding preparations in Schedule III of the 1961 Convention, in the three-year period 2001-2003. Average consumption levels of additional narcotic drugs, for which S-DDD were adopted by the Board, are reflected in under “Others”. S-DDD are technical units of measurement for the purpose of statistical analysis and are not recommended prescription doses. Their definitions are not free of a certain degree of arbitrariness. Certain narcotic drugs may be used in certain countries for different treatments or in accordance with different medical practices and therefore a different daily dose could be more appropriate”. INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003, part IV table XI available at

<http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4_tables.pdf>

13 INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003, part IV table XI available at

<http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4_tables.pdf>

14 Derived from: INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003, part IV table XI available at

<http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4_tables.pdf>

opioids, for fear of administrative errors that would lead to severe penalties.¹⁵ As a result, the use of opioids has drastically decreased since 1985. In 2003, India consumed only 5.8 tons of opium, including the opium derivatives used in cough and diarrhoea medicines (Schedule III of the '61 Convention on Narcotic Drugs).

Approximately 70% of opium is exported out of India for medicinal purposes. Table I below shows the amounts imported by the most significant purchasers of Indian opium.¹⁶

Table I *Opium exported in 2003 (INCB 2004).*

Importer	Opium Exports
USA	368,827 kg
Japan	112,827 kg
France	3000 kg
Thailand	500 kg
Switzerland	165 kg
Sri Lanka	200 kg
Belgium	75kg
TOTAL	485,595 kg

The USA is the principal importer of Indian opium. The US authorities apply the so-called 80:20 rule to the import of opium and morphine rich concentrated poppy straw (CPS (M)). Under the 80:20 rule, 80% of the opium imported into the United States must come from the traditional producer countries - India and Turkey. The remaining 20% can be bought from 'new' producer countries such as Australia or France.

15 Rajagopal MR, Joranson DE, Gilson AM. Medical Use, Misuse, and Diversion of Opioids in India.(The Lancet.2001;358:139-143).Available at: <http://www.medsch.wisc.edu/painpolicy/publicat/01lancet/lancet1.pdf> [Accessed 1 July 2005]

16 INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003, part IV table XIII available at <http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4_tables.pdf>

The 80:20 Rule

- In 1979, the United Nation's Commission on Narcotic Drugs passed a resolution to address the problem of over production of opium gum, unprocessed poppy straw and excess stocks in India and Turkey. *Inter-alia*, the Resolution sought to restore the demand and supply balance by calling on manufacturing countries to purchase their narcotics raw material from India and Turkey.
- The United States gave legislative effect to the CND resolution through the extension of special protected market status to India and Turkey under the Drug Enforcement Administration Regulation, commonly known as the '80:20 Rule'. Accordingly, law 1312.13 defining the issuance of import permits for controlled substances states that: *At least eighty (80) percent of the narcotic raw material imported into the United States shall have as its original source Turkey and India. Except under conditions of insufficient supplies of narcotic raw materials, not more than twenty (20) percent of the narcotic raw material imported into the United States annually shall have as its source Yugoslavia, France, Poland, Hungary and Australia.*
- Some believe the US government had political motives to apply the 80:20 rule: to have Indian the US side during the Cold War and to ensure Turkey's participation to NATO.
- The Thebaine-rich CPS that Australia produces is exempt from this rule.
- US pharmaceutical companies have lobbied for a change in the rule because they fear the traditional producers will not be able to answer the rising demand for opiates in the US.
- The US State Department and the DEA have announced a review of the 80:20 rule on several occasions. The 80:20 rule will be reviewed again in January 2006.

India maintains stocks of opium, and in 2002 the amount of opium in stock came to 1,599 tons. At the time this was at the largest stockpile in the world,¹⁷ but by 2003 Turkish stock levels had superseded those of India.

In India the by-products of opium poppy cultivation provide another source of income to farmers. After the seed pods are lanced and the opium has been removed the poppy seeds can be separated. In recent years the price of poppy seeds has been very high and the seeds are more profitable to the farmers than the actual opium. Some sources say farmers receive around US\$2 per kilogram of seeds, with a yield of between 500-1000kg of seeds per hectare. Poppy seed paste is used in curries and ground poppy seeds are used to thicken sauces. The seeds are believed to relieve digestive disorders and the skin, when ground with the seeds, is said to be a cleanser for the digestive system. Additionally, the stalks and stems of the poppy plants can be sold under a special licence to be used in Ayurvedic medicines, or they can be used as livestock fodder.

3.2 Structure

India is the only country in the world that produces licensed opium to export and does not use the poppy straw method for the production of opiate raw materials. The lancing of the poppy pods and the collection of the opium is a very labour intensive process and provides income to 130,000 licensed opium farmers.

The Central Bureau of Narcotics (CBN) exclusively controls the licensed cultivation of opium poppy and issues licenses for the manufacture of narcotic drugs. It also oversees the import and export of narcotic drugs, psychotropic substances and precursor chemicals. At the same time the CBN plays a major role in the survey of, detection and

¹⁷ INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003, available from: http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4.pdf.

destruction of illegal poppy cultivation as well as the suppression of illegal drug trafficking

The Narcotic Drugs and Psychotropic Substances (NDPS) Act 1985 sets out the legal framework for Drug Law Enforcement in India. The Narcotics Control Board defines the main elements of the Act as follows:¹⁸

a) The cultivation, production, manufacture, possession, sale, purchase, transportation, warehousing, consumption, inter-State movement, transshipment and import and export of narcotic drugs and psychotropic substances is prohibited except for medical or scientific purposes and in accordance with the terms and conditions of any license permit or authorization given by the Government (Section 8)

b) The Central Government is empowered to regulate the cultivation production, manufacture, import, export, sale, consumption, use etc of narcotic drugs and psychotropic substances (Section 9).

c) State Governments are empowered to permit and regulate possession and inter-State movement of opium, poppy straw, the manufacture of medicinal opium and the cultivation of cannabis excluding hashish (Section 10).

d) All persons in India are prohibited from engaging in or controlling any trade whereby narcotic drugs or psychotropic substances are obtained outside India and supplied to any person outside India except with the previous authorisation of the Central Government and subject to such conditions as may be imposed by the Central Government (Section 12).

¹⁸ Indian Narcotics Control Bureau: available at <<http://narcoticsindia.nic.in/drug1985.html>>.

e) The Central Government is empowered to declare any substance, based on an assessment of its likely use in the manufacture of narcotics drugs and psychotropic substances as a controlled substance (Section 9-A).

f) Assets derived from drugs trafficking are liable to forfeiture (Chapter V-A).

g) Both the Central Government and State Governments are empowered to appoint officers for the purposes of the Act (Sections 4, 5 and 7).

The Narcotics Commissioner of India regulates and controls the licensed cultivation of opium in India as defined in the provisions of Sections 5, 8 and 9 of the NDPS Act. Each year the Central Government announces the areas where cultivation shall be allowed, the prices at which the opium crop shall be purchased by the Government and the Minimum Qualifying Yield (see section 11.2.4) for a license in the ensuing crop year (see Annex I for an example of such an announcement). The establishment of a Minimum Qualifying Yield increases the quality of the poppy cultivated and serves as a deterrent of illegal diversion through a complex centralised system of quality control and authorised poppy uprooting.

The crop cycle runs from September to May and farmers alternate in two annual cycles, planting poppy in one and other crops such as wheat or sugar in the next. In India 16 different varieties of *Papaver Somniferum* are cultivated. The opiate yields differ within each variety, and within individual plants; dry Indian opium has an average morphine yield of 11.37%, and a codeine yield of 3.26%.

The CBN uses the following schedule of activities for the production of licensed opium:¹⁹

- *Opium Policy to be issued by mid September;*
- *Licensing of farmers and settlement of previous season accounts to start by the last week of September or the first week of October at the latest;*
- *Measurement and test measurement of licensed fields from December to February;*
- *Lancing of opium poppy bulbs starts in late February;*
- *Checking of Preliminary Weighment Register entries made by Lambardar (village opium headman) starts in February along with physical verification of actual produce;*
- *Intensive preventative checks, road patrolling and surveillance during harvesting till collection of opium by the Government;*
- *Field analysis, weighment, and procurement of opium starts in early April;*
- *From May onwards the collected opium is sent to the two Opium factories at Ghazipur and Neemuch for final analysis, drying and processing.*

Opium poppy cultivation is permitted in three states: Madhya Pradesh, Rajasthan, and Uttar Pradesh. The amount of land on which farmers are licensed to cultivate poppy is limited. In the early 1990's the plots were standardized at one-tenth of a hectare. Since 1997 the Narcotics Commissioner has granted a license for larger acreage to the highest producers²⁰.

¹⁹Central Bureau of Narcotics , Operations, Licit Cultivation Available at: <http://cbn.nic.in/html/operationscbn.htm> [Accessed July 1, 2005]

²⁰ Burger, A.S. Opium production in India Available: http://www.uwmc.uwc.edu/political_science/opiumprod.html

Opium Production Process in India

- The poppy seeds are hand-sown.
- The poppy flowers, then the petals fall off, revealing a large seed head.
- Farmers use a small, sharp instrument to make a number of shallow incisions in the seed head, from which the opium bleeds.
- Overnight, the opium dries and is scraped off, and the farmer then makes further incisions; this process is repeated up to 7 times.
- The farmers take the opium to a local ‘weighment centre’ and receive the announced farm gate price from the government.
- The opium is transported under surveillance to the alkaloid factories where the opium is then dried to be sold to the pharmaceutical industry (mainly export).

Table II *Number of cultivators, area licensed and area harvested in hectares 1995-2002 (India Central Bureau of Narcotics, 2005).*

Crop Year	No. of cultivators	Area licensed/harvested in hectares
1995-96	78670	26437 / 22593
1996-97	76130	29799 / 24591
1997-98	92292	30714 / 10098
1998-99	156071	33459 / 29163
1999-2000	159884	35270 / 32085
2000-2001	133408	26683 / 18086
2001-2002	114486	20477 / 18488

The Narcotics Commissioner issues licenses to individual cultivators for specified tracts of land. In 2001/2002 **114,486 cultivators were licensed to grow opium poppy, most of them in Madhya Pradesh and Rajasthan**. 3,066 decided not to grow, 2,794 of which from Madhya Pradesh. Together the cultivators planted 20,477 ha of which 2,029 ha was uprooted and 18,448 ha actually harvested²¹. In all a yield of 90 tons of opium was produced.

The national control system is supported by strict enforcement including the measurement of fields, periodical crop surveys and physical checks to prevent diversion. Failure to sell the entire yield to the Government is treated as a serious offence. Any farmer who misuses or otherwise illegally disposes of the opium produced by him will be punished with imprisonment for a period up to 20 years and fines of a maximum of Rs. 200,000 (US\$4600). The farmer will also lose his license to cultivate poppy.

²¹ Ibid.

Since the 2002/03 crop year the CBN has used satellite imagery to estimate the actual acreage under licensed opium poppy cultivation. These images are then compared to the actual field measurements. Satellite imagery is also used to survey weather conditions to determine potential crop yields and determine whether opium has been diverted.

There are two government-run factories processing opium: Neemuch in Madhya Pradesh and Ghazipur in Uttar Pradesh, which extracts other alkaloids in addition to morphine. These factories are under the independent control of the Chief Controller of Factories whose headquarters are situated in Gwalior.

3.3 Economic importance of poppy cultivation

As described earlier the economic importance of poppy cultivation to India is considerable. Each year there are, on average, 130,000 licensed opium farmers, each with a family of four to six people. This means that opium cultivation alone feeds at least

650,000 people additionally thousands of people are employed to control the production and to process the opium. Unfortunately no figures are available on the total number of people involved in the industry chain.



(Indian Central Bureau of Narcotics)

According to Gunaah India²² the government periodically raises the official price paid to farmers to increase incentives to licensed cultivators for declaring and selling to the government all licensed opium. This price escalation is related to the export price the United States and other countries are willing to pay on the international market for Indian opium. The Indian government has been increasing the procurement price of licensed opium by 20 to 25 percent annually in each of the last three years.

According to the Indian Government, opium growers were paid a total of 13,243 lakh Rs (US\$30,458,900) for the 2003/2004 season.²³

Nonetheless, there are indications that the diversion of opium from licensed cultivation also provides substantial income to the farmers. If one looks at the income that is gained from licensed poppy cultivation, diversion into the illegal market seems to be almost inevitable. The UNODC Country Profile on India (2003)²⁴ also mentions the likelihood of diversion driven by the price difference between the legal and the illegal market:

Although an elaborate system of regulatory and preventive controls has been established to prevent the diversion of opium, certain quantities do flow into Illegal channels. This is evidenced by seizures in opium growing areas although the extent of diversion is almost impossible to determine.

However, the Indian government is adamant that if diversion does take place, it is on a small scale and is restricted within India's borders.²⁵ .

The prices of opium and profits from opium sales on the international market are highly confidential. Some figures are available nonetheless; in 1999/2000, India exported 649

22 Opium trading in India; almost a century old, Gunaah India, October 16, 2003 Available at <http://www.poppies.org/news/106654023229420.shtml> [Accessed August 18, 2005]

23 Government of India, Ministry of Finance, Department of Revenue Narcotics control (N.C.) – I section Available at: http://finmin.nic.in/the_ministry/dept_revenue/revenue_headquarters/nc-I/

24 UNODC (2003) Country Profile on India

25 Watson, P, Los Angeles Times (2005), A People's Pain; A Bitter Pill for a Poor Nation; India is the largest producer of opium for use as painkillers, but red tape and illegal trade leave patients to suffer without, The Los Angeles Times, 7 July 2005

metric tons of refined opium, worth US\$56.8 million (\$87.5/kg), but only 368 metric tons worth US\$39 million from the 2004/2005 growing season (US\$106/kg)²⁶.

3.4 Efficiency of production

The Minimum Qualifying Yield is fixed on the basis of the previous year's yield. It is clear that in the last decades the average yield per hectare has improved, from little over 42kg per hectare in 1980-1981, to almost 55 kg per hectare in 2001-2002²⁷. It is likely that the development of several hybrid varieties over the past decades has contributed to this increase in yields.

3.5 Economic and social impact of restructuring opium poppy cultivation

The United States is pressuring the Indian government to abandon opium cultivation for opium and switch to the poppy straw method.²⁸ So far the Indian government has not succumbed to this pressure. Still, there are signs that the government is seeking to change the production system in its current form. At the moment India processes approximately only 13.5% of its own opium into alkaloids in its two national processing plants. Plans are underway to increase the production, so that up to 20% can be processed. One measure under consideration to help increase productivity is a possible partial switch to the cultivation of poppy straw for the production of opium alkaloids.

26 The Deccan Herald (2005) MP Farmers suffer backdraft after slashed opium prices Available at: <http://www.deccanherald.com/deccanherald/jun252005/national145452005624.asp>

27 Central Bureau of Narcotics , Operations, Licit Cultivation Available at: <http://cbn.nic.in/html/operationscbn.htm> [Accessed July 1, 2005]

28 Burger,A.S.,Opium Production in India Available at: http://www.uwmc.uwc.edu/political_science/opiumprod.html [Accessed August 31, 2005]

4 Australia

The Australian poppy cultivation industry is located in Tasmania. Australia had experimented with the cultivation of *Papaver Somniferum* as early as the 1940s. It was after the morphine shortage experienced during the second world war that Australia embarked upon a pilot project in Tasmania in 1964²⁹. With the help of two pharmaceutical companies the production of opiates was developed into an A\$200 million (US\$150 million) industry. Australia, like all other opiate-producing countries other than India, uses the poppy straw method of opiates production.

²⁹ GlaxoSmithKline , A History of Poppy Production.. Available at
http://www.gsk.com.au/gskinternet/publishing.nsf/Content/Poppy_History

Tasmania

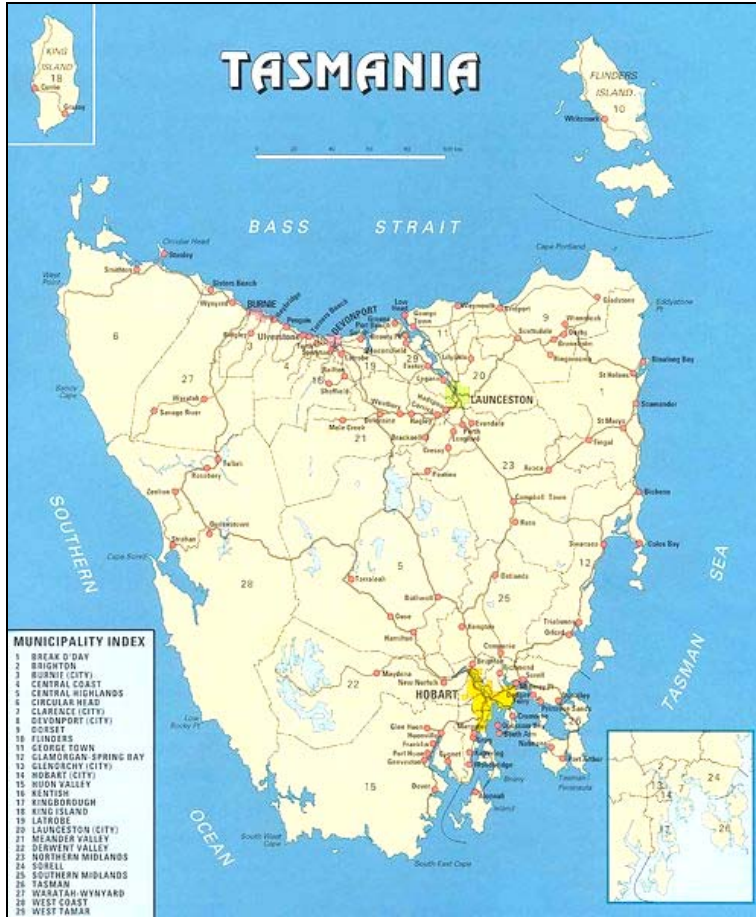


Figure II
Map of Tasmania
(DPIWE 2003)

The Poppy Straw Method

- The poppy straw method for the licensed production of opiate alkaloids differs significantly from the traditional, ‘lancing’ method practised in India.
- ‘Poppy straw’ means all parts of the opium poppy (except the seeds).
- The straw can be harvested before the poppy pods have ripened and are ready to be lanced.
- The opiate alkaloids are extracted from the plant itself, using a chemical extraction process to make concentrate of poppy straw (CPS).
- CPS can be rich in morphine CPS (M); oripavine CPS (O) or thebaine CPS (T).
- CPS is then processed into morphine, thebaine or codeine.

In 2003 around 1400 farmers in Australia cultivated a total of almost 20,000 hectares of opium poppy.³⁰ This yielded nearly 151 metric tons of morphine-rich poppy straw, equivalent to 33.5% of the global morphine production that year, and 58 metric tons of thebaine-rich poppy straw (77% of global thebaine production).³¹

30 Fist, A.J., The Tasmanian Poppy Industry: A Case Study of the Application of Science and Technology Proceedings of the 10th Australian Agronomy Conference 2001 Available at: <http://www.regional.org.au/au/asa/2001/plenary/1/fist.htm>

31 INCB Annual Report 2004, table 1 p. 142

4.1 Purpose

In terms of narcotic drugs consumption, Australia is among the top ten countries, with a total of 6769 daily doses per million inhabitants³². From 1971 the poppy cultivation in Australia has been sufficient to provide for its own national opiates demand. Australia is one of the largest users worldwide of CPS(M), with 62.9 tons in 2003 and 6.6 tons of CPS(T)³³.

In Australia poppy is grown to produce all three of the main alkaloids found in opium; thebaine, morphine and codeine. In 1994, Tasmanian Alkaloids Pty Ltd (a subsidiary of Johnson & Johnson) established a research project to develop a high-thebaine poppy variety. A plant named *Norman* was developed which produces the alkaloids thebaine and oripavine instead of morphine³⁴. Oripavine concentrate is used for the manufacture of thebaine. Thebaine can be used to produce oxycodone, a popularly prescribed drug in the United States. Thebaine is exempt from the 80:20 rule that the United States uses to determine its sourcing of raw opiate materials, and in 2003 the US imported a total of 107 tons of CPS(T). There is no visible difference between thebaine-rich and morphine-rich poppy.

32 INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003, part IV table XI available at <http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4_tables.pdf>

33 INCB Annual Report 2004, p.77, paragraph 40

34 Fist,A.J., The Tasmanian Poppy Industry: A Case Study of the Application of Science and Technology Proceedings of the 10th Australian Agronomy Conference 2001 Available at: <http://www.regional.org.au/au/asa/2001/plenary/1/fist.htm>

Table IV *CPS exports by Australia in 2003 (INCB 2004)*¹

Importing country	CPS (morphine) exports	CPS (orapavine) exports	CPS (thebaine) exports
USA	22,826 kg	9,962 kg	90,484 kg
UK	107,088 kg		
The Netherlands	25,194 kg		
South Africa	16,794 kg		
Norway	10,942 kg		
Brazil	8,644 kg		
Switzerland	2,844 kg		
Slovakia	3,966 kg		
The form. Yug. Rep. of Macedonia	3,194 kg		
Others			4 kg
TOTAL	201392 kg	9,962 kg	90,488 kg

Two pharmaceutical companies are licensed by the State to extract the medicinal products from the poppy straw: Tasmanian Alkaloids Pty Ltd and GlaxoSmithKline Australia.

Poppy seeds are a by-product of the opiate alkaloids production in Australia, and are sold for culinary purposes. The seeds are marketed under the name of Australian Blue Poppy Seed. Half of those poppy seeds that are exported go to Europe the other half to the United States. The seeds from the thebaine-rich poppy variety cannot be used for culinary purposes but instead are used as fuel.

4.2 Structure

The cultivation of opium poppy cultivation and the manufacture of opiate alkaloids are tightly controlled in Australia. The Poisons Act of 1971 made provision for “the regulation, control, and prohibition of the importation, making, refining, preparation, sale, supply, use, possession, and prescription of certain substances and plants and matters incidental thereto.”³⁵. In 1972 Australia ratified the 1961 UN Single Convention on Narcotic Drugs and its amendments. The licensed cultivation of opium poppies was strictly confined to the Australian State of Tasmania by a joint decision of the Commonwealth and State Governments in the same year³⁶ and in the early 1970s Australia established the Tasmanian Poppy Advisory Control Board (PACB) to fulfil its obligations under the 1961 Convention. The role of the PACB in the regulation of the poppy industry is clearly defined:

- *To act as a licensing authority for the industry*
- *To advise on all matters relating to the cultivation, production and transport of poppies and poppy material*
- *To collect and collate statistical information and prepare reports*
- *To establish manufacturing quotas; determine levels of reserve stock of raw materials; and determining any matters that may affect the long-term viability of the opiate alkaloid industry*
- *To liaise with Australian Government Departments to fulfil Australia's obligations under the International Drug Conventions*
- *To oversee security matters for Tasmanian crops.*

The Australian opium industry is confined to the island state of Tasmania, which significantly limits possibilities for diversion. The PACB liaises with the Tasmanian Police force, whose Poppy task Force regularly patrol crops. Trespassing on poppy

35 Tasmanian Legislation, Tasmania’s consolidated legislation online, Poisons Act 1971 (No 81 of 1971).. Available at: <http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=,doc_id=81%2B%2B1971%2BAT%40EN%2B20040810100000;histon=:prompt=:rec=:term> [Accessed 21 June 2005]

36 Department of Justice, Poppy Advisory & Control Board. . Available at: <http://www.justice.tas.gov.au/poppy/about_us/history> [Accessed 21 June 2005]

fields is illegal and poppy fields have to comply with very specific fencing requirements. Access to poppy fields is restricted to the licence holders and their employees. The poppy growers are required to clear fields within seven days after the harvest, by destroying the remaining poppy stubble. The possession of poppies and poppy products is illegal, and no diversion has been recorded. Government responsibility concerning the security and law enforcement aspects of the poppy industry is shared between the State and Federal Police, the Commonwealth Health Department and the PACB.

In order to grow poppies, an Australian farmer needs a contract with one of the two manufacturing companies and a licence from the Tasmanian Government is required. The criminal record of all applicants is carried out and particular attention is paid to drug related matters, is carried out for all new growers, and follow-up checks are carried out every five years. At any one time an average of 1100 growers are licensed.

Poppies are grown in a three year rotation cycle; because of their depleting effect on the soil they should not be grown in the same field in consecutive years. Sowing is from early winter to spring (May to September), flowering occurs in early summer (November) and the mature poppy plants are harvested mid to late summer (December to March). The harvest is carried out by large mechanical harvesters with a minimum of manpower.

The opiate alkaloids are extracted from the dry capsules of the mature poppy plant. The heads and part of the stem are mechanically harvested as straw. The opium-free seeds are then separated from the straw, and can be used for culinary purposes. The remaining straw is washed with chemicals to extract the opiates and produce concentrated poppy straw (CPS) and codeine phosphate. The CPS is usually rich in either morphine (CPS(M)) or thebaine (CPS(T)).

In the early 1960s this method used for the production of opiate alkaloids in Australia was quite revolutionary. The main advantages of this ‘poppy straw’ method are that it is less labour-intensive than the traditional ‘bleeding’ method of opium production,

because it can be done mechanically. Additionally, this method bypasses the opium stage; the poppy seed pods never reach the level of maturity at which opium can be extracted. This substantially lowers the risk of diversion of the crops.

The two manufacturing companies employ different production methods. GlaxoSmithKline Australia Ltd. separates the seeds from the poppy straw, cleaning, grading and bagging the seeds for export and producing pellets of poppy straw to transport to their factory on the Australian main land (Port Fairy, Victoria). Tasmanian Alkaloids Pty. Ltd. processes poppy straw and extracts the opiates on-site in Westbury, Tasmania³⁷.

In general the Tasmanian poppy cultivation is confined to the better soils on the northwest coast, northeast coast, the midlands, east coast, Derwent Valley and southeast areas.

4.3 Economic importance for the country

The total value of the Australian poppy crop is approximately A\$200 million (US\$150 million); and is one of Tasmania's major agricultural exports. The principal limitation on Australian opiates production is the 80:20 rule adopted by the US, making Europe the main market for Australian opiate alkaloids. Because thebaine is not restricted under the 80:20 rule the US is a major export destination for Australian CPS (T).

The approximate farm-gate value to growers was approximately A\$65 million³⁸ (US\$49 million) in 2002-2003, giving an average price of nearly US\$3000 per hectare, or \$US3.10 per kilogram of poppy straw. However, according to the Department of Primary Industries, Water and Environment, farmers are earning on average as much as A\$6000 (US\$4500) per hectare, with exceptional crops yielding over A\$8000

37 Department of Primary Industries, Water & Environment Industry Profile – Poppies . Available at: www.dpiwe.tas.gov.au/intertext.nsf/Webpages/EGIL-5HU8V4 [Accessed: 20 June 2005]

38 Department of Primary Industries, Water & Environment : Industry Profile – Poppies . Available at: <http://www.dpiwe.tas.gov.au/inter.nsf/WebPages/EGIL-5HU8V4?open>

(US\$6000) per hectare.³⁹ (See also figure I ‘Approximate farm-gate prices for opiate raw materials (2003)’.

4.4 Efficiency of production

Australia has developed a highly efficient production system. The high alkaloid yields from its poppy cultivars compare favourably to other opiate alkaloids producers. The 2004 INCB annual report states that in the period 2001-2003, an industrial yield of anhydrous morphine alkaloid obtained from poppy straw during the manufacture of CPS (M) averaged 1.61 per cent in Australia, 1.15 per cent in France and 0.33 per cent in Turkey.⁴⁰

On average 1 hectare yields approximately 2.5 tonnes of poppy straw⁴¹. The efficiency of the Australian opiates industry is largely attributable to the efficiency of the opiates production systems both Tasmanian Alkaloids and GlaxoSmithKline employ.

4.5 Economic and social impact of restructuring opium poppy cultivation

It is clear that the application of science and technology has substantially improved Australian production efficiency and has made poppy cultivation a profitable industry. In the industry’s early years, poppy was not a preferred crop amongst farmers owing to the high risk of crop failure. In addition, because the price of a poppy crop is determined by the alkaloid content of the poppy, it took some time before farmers came to understand that a healthy looking crop did not necessarily mean high yields.⁴²

³⁹ Ibid.

⁴⁰ INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003 p. 73, footnote 10, Available at: http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4.pdf

⁴¹ Department of Justice , Poppy Advisory & Control Board. . Available at: http://www.justice.tas.gov.au/poppy/the_industry/Who_Can_Grow_Poppies?> [Accessed 21 June 2005]

⁴² Fist, A.J. (2001), The Tasmanian Poppy Industry: a Case Study of the Application of Science and Technology. Available at: <http://www.regional.org.au/au/asa/2001/plenary/1/fist.htm> > [Accessed 20 June 2005]

New harvesting methods, new high-alkaloid poppy varieties, irrigation and the emergence of best practices in irrigation, disease and weed control have increased the popularity and profitability of poppy cultivation. It is due to such improvements that the area on which poppies are grown has increased from less than 4000 hectares in 1987 to almost 20,000 hectares in 2003.

5 Turkey

Figure III Map of Turkey (CIA 2005)



Turkey has cultivated opium poppy for medical and food supplies for thousands of years, and the traditional opium production method of ‘scoring’ the poppy seed heads has been used for at least two thousand years. The main region for cultivation is Anatolia.

In 1933 the Turkish government adopted a limitation law to limit production to thirteen provinces.⁴³ Reported diversion of authorised opium production led to heavy international pressure on Turkey to ban all opium production which it in fact did in 1972. This ban was heavily enforced. In 1974 it was established that all illegal cultivation had ceased and in September of that year the Turkish Government announced it would allow poppy cultivation using the poppy straw method. Poppy seed heads were not to be lanced, and no opium was to be produced. *As a result of the resumption of poppy cultivation, the Turkish Government asked, and the United*

43 Bulletin on Narcotics, 1950, The Cultivation of opium Poppy in Turkey. Available at:
http://www.unodc.org/unodc/en/bulletin/bulletin_1950-01-01_1_page004.html [Accessed 21 June 2005]

Nations granted,⁴⁴ technical assistance dealing with such problems as the construction of a factory for the manufacture of opium alkaloids as well as training assistance, and equipment for the law enforcement agencies.⁴⁵

In 2003 Turkey cultivated an area of almost 100,000 hectares, yielding 145 tons of CPS(M), which was 30% of the global morphine production⁴⁶.

5.1 Purpose

In Turkey an average of 206 daily doses of narcotic drugs per million inhabitants a day are consumed⁴⁷. Use of morphine within Turkey is low only 6 statistical daily doses compared to 36 on average globally. Traditional uses of the opium poppy, such as infusions to treat coughs and opium resin as a children's medicine, have been abandoned because of strict government regulation.

The poppy cultivated in Turkey is morphine-rich, and about 95% of the opiate alkaloids produced are exported. Turkey is considered to be one of the *traditional* opium growing countries for the purposes of the 80:20 rule, and the US is the main buyer of Turkish CPS(M) (see table below).

44 The ECOSOC granted this help in resolution 1934 (LVIII) on Measures to reduce illicit demand for drugs

45 Bulletin on Narcotics, 1975 issue 3, 26th Session of the Commission on Narcotic Drugs Available at: http://www.unodc.org/unodc/en/bulletin/bulletin_1975-01-01_3_page004.html [Accessed 31 August 2005]

46 INCB (2005) Report of the International Narcotics Control Board 2004, p. 141 and 142 table 1.

47 INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003, part IV table XI available at <http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4_tables.pdf>

Table V *CPS exports by Turkey in 2003 (INCB 2004)¹*

Importing country	CPS (morphine) exports
USA	146,482 kg
Iran	12,000 kg
Switzerland	172 kg
Total	158,654 kg

In 2003 Turkey had the highest levels of morphine-rich raw materials stocks, at 207 metric tons of morphine equivalent (both poppy straw and CPS (M)), accounting for 40% of reported global stocks.⁴⁸

Poppy seed and poppy oil are valuable and popular by-products of poppy cultivation in Turkey, being used significantly for culinary purposes.

5.2 Structure

The Turkish cultivation is centred around Afyon (which means opium in Turkish) in central Anatolia. This is also where Bolvadin, the home of the national factory for the extraction of alkaloids from the poppy straw, is located. This factory processes 20,000 tons of opium straw and produces 75 tons of morphine each year.⁴⁹ The factory is owned by the Ministry of Agriculture.

The relevant control body is the Turkish Grain Board (TMO) Opium Poppy and Alkaloid Chamber. Their mission statement outlines their role in the control of opium. They:

⁴⁸ INCB Annual Report 2004, p77, paragraph 37

⁴⁹ Gecin, G., Hakbilen, S. (2005) Opium Poppy's income to Turkey \$60 million, Zaman Online. Available at: <http://www.zaman.com/?bl=economy&alt=&hn=20096> Accessed [22 June 2005]

“give permission documents to the persons who will cultivate opium poppy at the areas determined by the Council of Ministers, control the cultivation of opium poppy, opium and capsule production and buy these product at the prices to be determined by the Council of Ministers. The TMO also establishes plants, which will produce opium poppy capsule, alkaloids and narcotic substances and their derivatives from the opium poppy and herbs, and institutions related to them and operate the established plants; Make domestic and foreign market of the narcotic substances, import scientific and medical narcotic substances and research the poppy varieties for developing the seed, opium, morphine and alkaloids included in the capsule and join other institutions who have research permission in this matters.”⁵⁰

The TMO is responsible for the licensing of the farmers, the control over the cultivation, processing and marketing. The Drugs Pharmacy General Directorate of the Ministry of Health supervises the next production phase, which includes every step from the extraction of the narcotics through the production of morphine.

Each year, year the Turkish authorities also decide on the number of hectares to be cultivated, based on the INCB estimates of the annual global needs for narcotics. **Every year different farmers are licensed and different zones of cultivation are selected.** The farmers who would like to cultivate poppy apply to the local organisations of the TMO. These applications are reviewed by the TMO and only farmers without a criminal record are given a permission certificate⁵¹.

Before sowing, the selected poppy fields are surveyed thoroughly to determine the surface area and estimate the yield. The authorities physically check the details received. The poppy seeds are planted in September, they flower in April and May, and are harvested in June-July upon receipt of a harvesting certificate handed out by the TMO. After the seeds have been separated, all of the plants are delivered to the local the TMO

50 See: <http://www.tmo.gov.tr/en/index.php?_plugin=SitePages01&id=49>.

51 Questionnaire answered by TMO, August 2005

organisation, which is the only buyer. The straw is then transported to the factory in Bolvadin. If the crop is damaged by adverse weather, this has to be reported to TMO, and can be verified as well.

Widespread in Turkey is the impression that the increase in opium poppy cultivation in countries such as Australia and France is having a negative effect on the price of opiates on the international market⁵². According to the head of the alkaloid factory in Bolvadin smugglers pay up to 1000 times more than the price morphine base has on the licensed market.⁵³

To date, only very limited diversion from licensed cultivation in Turkey has taken place⁵⁴.

In an effort to prevent diversion, Turkish police visit the poppy farmers three times a year; one of these visits is carried out just before the harvest. The TMO has over 350 officials working on control activities (excluding local administrators). Turkey spends approximately US\$6 million per year on the control of the cultivation⁵⁵.

Article 403 of the Turkish Penal Code No. 765 of 1 March 1926, as amended by law No 3756 of 6 June 1991 defines the penalties for illegal cultivation and trafficking⁵⁶: prison sentences vary from 10 to 20 years for the production of narcotics without a license in addition to a fine of 50,000 liras for each gram. 6 to 12 of imprisonment is the sentence plus a similar fine is used for exporting the illegal drugs (see **Annex II** for the complete text)

52 Observatoire Géopolitique des Drogues (2000), The World Geopolitics of Drugs 1998/1999 Annual Report Available at: http://bbsnews.net/research/ogd99_2en.pdf.

53 Ibid.

54 Ibid.

55 Questionnaire answered by TMO, August 2005

56 Turkey, Penal Code No. 765 Available at: http://www.unodc.org/unodc/legal_library/tr/legal_library_1993-03-01_1992-56.html

Any lancing or scoring of the poppy seed heads is considered to be ‘trafficking’, and is punishable by up to four years imprisonment⁵⁷.

5.3 Economic importance of cultivation in Turkey

It is estimated that Turkey earns \$60 million annually from the export of poppy seeds and morphine⁵⁸. Approximately 95% of total Turkish opium production is exported. In 2003 Turkey harvested a record 47,500 metric tons of poppy straw - a sharp increase from 2002 when just 17,500 tons were harvested. Most of the poppy straw harvested was added to the Turkish stocks.

*Approximately 100,000 farmers are licensed every year. In total it is estimated that about 600,000 people earn their living with poppy cultivation*⁵⁹. Licensed farmers earn most of their money during July and August when they can sell their crops. The Council of Ministers determines the price paid to the farmers for the poppy capsules.

On average one hectare of poppy earns farmers US\$165-420⁶⁰. Turkish poppy seed is relatively lucrative for farmers. The 2001 harvest yielded around 130 metric tons of seed, which the farmers were allowed to keep for their own purposes. The farmers also sell some of it to make poppy oil at \$0.45 USD per kg.

In Afyon, poppy seed oil is sold at US\$1.10 per litre, compared to sunflower oil at US\$0.65.⁶¹ The poppy seed residue left over after the pressing is used as fodder. After drying it is sold in blocks of 7 kg and known as *küspe*. Each *küspe* is very nutritious and is able to feed a buffalo for a day. Milk produced by animals fed on poppy *küspe* is preferred over normal milk.

57 Observatoire Géopolitique des Drogues (2000), The World Geopolitics of Drugs 1998/1999 Annual Report Available at: http://bbsnews.net/research/ogd99_2en.pdf

58 Gecin, G., Hakbilen, S. (2005) Opium Poppy’s income to Turkey \$60 million, Zaman Online Available at: <http://www.zaman.com/?bl=economy&alt=&hn=20096> Accessed [22 June 2005]

59 Questionnaire answered by TMO, August 2005

60 Ibid.

61 The International Herald of Taste (2002), Issue No 25, The Poppy Growers of Ismailkoy

Poppy cultivation in Turkey is not economically important but it also has cultural importance. It is a peasant tradition and many farmers feel they would never renounce it even though the price is very low; since it is fully imbedded in their daily existence.

5.4 Efficiency of production

The Turkish Central Research Institute for Field Crops mentions six different high breed poppy cultivars on their site. However, generally the alkaloid content of the Turkish CPS (M) is low compared to other poppy straw producers (0.33% compared to 1.61% for Australian CPS)⁶². To address this imbalance the US Agricultural Research Service, in cooperation with the Turkish Ministry of Agriculture, the TMO and three Turkish Universities and both the Foreign Agricultural Service and Economic Sections of the US Embassy, Ankara, have initiated a program to upgrade the productivity and competitiveness of the Turkish licensed poppy industry. If the programme is successful, the Turkish Government has announced they will reduce the number of hectares licensed for licensed poppy production. The plan, if adopted, would increase farmers' overall incomes while at the same time the possibilities for illegal opium diversion would be reduced⁶³.

5.5 Economic and social impact of restructuring opium poppy cultivation

At the twenty-fourth session of the UN Commission on Narcotic Drugs in 1971, Turkey announced its decision to prohibit opium poppy cultivation and the production of opium on its territory as of autumn 1972⁶⁴. During the session the representative of Turkey informed the Commission that traditional cultivators of opium poppy were starting to

62 INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003 p. 73, footnote 10, Available at:
http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4.pdf.

63 Office of National Drug Control Policy, 2001 Requests Programme Accomplishments. Available at:
<http://www.ncjrs.org/ondcppubs/publications/policy/budget00/partV.html> [Accessed June 21 2005]

64 UNODC, Bulletin on Narcotics (1972) Review of the twenty-fourth session of the Commission on Narcotic Drugs. Available at:
http://www.unodc.org/unodc/en/bulletin/bulletin_1972-01-01_1_page004.html

look for alternative crops. To avoid diversion and compensate the farmers for the loss of income resulting from the ban, the Government had announced a 66 percent increase in the official purchasing price of opium harvest. As a result of this price increase, the amount of opium delivered to the Turkish Soil Products Office more than doubled. Accordingly, government experts expected that very little harvest would enter the illegal market⁶⁵.

In 1974 the Turkish government decided to authorise poppy straw production. This followed the emergence of a worldwide shortage of opium and codeine for medical use that had sparked pressure from traditional opium farmers on the Turkish Government to resume production.

In the report of the 26th session of the UN Commission on Narcotic Drugs it was stated:

“The main new development had been the decision of the Turkish Government to authorize poppy cultivation for the production of unblended poppy capsules. The Government had declared its intention of establishing a system of control which would prevent any appreciable existence of Turkish opium in the illicit traffic. As a result of the resumption of poppy cultivation, the Government had asked, and the United Nations granted, technical assistance dealing with such problems as the construction of a factory for the manufacture of opium alkaloids as well as training assistance, equipment for the law enforcement agencies, etc.”⁶⁶

When discussing the “Poppy cultivation under properly controlled conditions so as to meet the world's requirements of opium for medical and scientific purposes” the Chairman of the 26th session also mentioned the Turkish production as a way to meet

65 Ibid.

66 UNODC, Bulletin on Narcotics (1975) Poppy cultivation under properly controlled conditions so as to meet the world's requirements of opium for medical and scientific purposes Issue 3 Available at: http://www.unodc.org/unodc/en/bulletin/bulletin_1975-01-01_3_page004.html#s120.

the gap between supply and demand of codeine⁶⁷. With the adoption of the Official Report of the 26th session of the CND ECOSOC granted an authorisation to cultivate poppy for medical purposes in Turkey⁶⁸.

The UN was supportive of the Turkish initiative to resume opium poppy cultivation and believed that the poppy straw method guaranteed diversion would be prevented. In the 1983 Bulletin on Narcotics, the UN stated that:

“the invention of the poppy straw process is said to open new ways of preventing opium diversion. It is said to have had a particularly spectacular result in Turkey where poppy straw is extracted and alkaloids are manufactured in a new Turkish factory. This factory had been constructed by the UN as an acknowledgement of the services of the Turkish Government in eliminating the possibilities for opium diversion in that country.”⁶⁹

In 1999 the Turkish government extended the areas of cultivation to areas close to the Mediterranean Sea as well as another area near the Black Sea. This was done without increasing the quantity licensed to be cultivated.⁷⁰

67 Ibid

68 ECOSOC Resolution, E Res 1975/1936(LVIII) Report of the Commission on Narcotic Drugs Available at:

<http://www.unodc.org/unodc/en/resolutions_70s.html> [Accessed August 31, 2005]

69 Bulletin on Narcotics 1983, Issue 4, Elimination of Opium Production Available at:

<http://www.unodc.org/unodc/en/bulletin/bulletin_1983-01-01_4_page002.html>

70 Observatoire Géopolitique des Drogues (2000), The World Geopolitics of Drugs 1998/1999 Annual Report Available at:

http://bbsnews.net/research/ogd99_2en.pdf

6 France



Figure IV
Map of France
(CIA 2005)

In the early twentieth century, opium poppy was grown in Europe primarily for its seeds. It was cultivated both commercially and in domestic plots. *Papaver somniferum* was grown in a great ‘poppy belt,’ which crossed central Europe, extending through the Netherlands, Belgium, northern France, southern Germany, Switzerland, Austria, Hungary, northern Yugoslavia, Czechoslovakia, Poland, Romania and the Ukraine.

It was not until the 1930s that France began to utilise the poppy straw left over from threshing out the seeds. This was used for the direct extraction of morphine and the manufacture of opiate alkaloids. Over time, the process for extracting morphine from poppy straw was refined so that the ‘straw’ consisted only of the seed capsule and a short (10cm) length of the stalk. Previously, France had cultivated poppy seed capsules on a limited scale, which were cut when green and dried for pharmaceutical use. France

produced morphine during the Second World War, and subsequently continued to cultivate opium poppy, albeit at decreased levels.⁷¹

Until 1961, the international conventions concerning narcotic drugs did not regulate the production of poppy straw in any great detail. However, like most countries that used the poppy straw method for the production of morphine, France had regularly declared to the Narcotics Control Board the quantities used in manufacture and the amounts of morphine produced. Even before the 1961 Convention, France clearly had in place an opiate industry control system, complete with a schedule of narcotic drugs.⁷² An article in the 1952 *Bulletin on Narcotics* outlined aspects of the French control system:

‘The Government of France stated that ... all synthetic narcotic drugs appearing on the world market are automatically placed on France's schedule of narcotic drugs (schedule B) ... In accordance with the provisions of the decree of 19 November 1948, anyone wishing to put such a product on the French market must apply for an authorization from the Ministry of Public Health and Population, and no authorizations are granted for either domestic manufacture or import. The only synthetic which may be manufactured in France is pethidine. Orders establishing the limits for the manufacture of narcotic substances are issued annually.’⁷³

France grew opium poppy for medicinal purposes as early as 1932 but only in small quantities. In the 1970s the Minister of Health, Simon Veil, decided that in order to avoid morphine of poor quality, France should be self-sufficient in its production of opiates. Additionally, poppy cultivation was a profitable enterprise.

71 UNODC, *Bulletin on Narcotics* (1949) *Opium Production Throughout the World*. Available at:

http://www.unodc.org/unodc/en/bulletin/bulletin_1949-01-01_1_page005.html

72 UNODC, *Bulletin on Narcotics* (1953) *Evolution in 1951 of National Legislations on Narcotics* Issue 1 – 006. Available at:

http://www.unodc.org/unodc/en/bulletin/bulletin_1953-01-01_1_page007.html

73 UNODC, *Bulletin on Narcotics* (1952) ‘*Evolution in 1950 of National Legislations on Narcotics*’ [Issue 1 – 005]. Available at:

http://www.unodc.org/unodc/en/bulletin/bulletin_1952-01-01_1_page006.html#s0004

1952/01/01

France cultivates *Papaver Somniferum* for poppy straw, rather than for opium. From this it manufactures CPS and extracts various alkaloids for domestic use and export. The entire process, from cultivation to manufacture of narcotics to export of medicines is carried out by pharmaceutical company, Francopia (a subsidiary of Sanofi) and everything is strictly controlled by the Minister of Health, under the Public Health Code and the Ministry of the Interior. France cultivates around 10,000 hectares of opium poppy each year, and is one of the biggest suppliers of opium alkaloids to the world. In 2003 it produced 68 metric tons of morphine equivalent and 10 tons of thebaine equivalent.

6.1 Purpose

In France an average of 39,854 daily doses of narcotics are consumed per million inhabitants;⁷⁴ which is high compared to global average of 1962 daily doses per million inhabitants per day in 2003. France is one of the top 10 morphine consuming countries in the world. The Global Congress on Pain, organised in Paris in 1993, led to a significant increase in the use of narcotics in the French hospitals. Between 1994 and 1995 the use of opium-based painkillers more than doubled, and the cultivation of poppy in France expanded accordingly.⁷⁵

Currently, nearly 10,000 hectares of opium poppy are cultivated each year.⁷⁶ Approximately 80% of the licensed land area is used for morphine-rich poppy straw, much of the remainder being used for thebaine-rich poppy straw. About two thirds of the total opiate alkaloids production is used by the drug manufacturing market within France, and the rest is exported.

74 INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003, part IV table XI available at <http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4_tables.pdf>

75 Daninos, F L'opium légal produit en France Available at www.larecherche.fr/data/386/038606401.html [retrieved 26/7/2005]

76 INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003 Part IV, Table 1 and 2 Available at: http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4.pdf

As one of the world's main poppy straw producers, France is also one of the principle manufacturers of CPS; in 2003 France manufactured 123 tons of CPS, 17% of the worldwide manufacture. Australia and France are the main producers of all three sorts of CPS (morphine, thebaine and oripavine-rich), and since the middle of the 1990s France and Australia have manufactured CPS containing mainly morphine and thebaine⁷⁷.

In 2003 France exported poppy straw to Belgium. This was its first export of poppy straw. The following table shows the French imports and exports of opiates in 2003.

⁷⁷INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003 Table IV Available at:
http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4_tables.pdf.

Table VI *French imports and exports of opiates 2003 (INCB 2004)*

Opium			
Imports	Exporter	Exports	Importer
3 000 kg	India	445 kg	Switzerland
		70 kg	Tunisia
		5 kg	'Others'
3000 kg total		520 kg total	

Poppy Straw			
Imports	Exporter	Exports	Importer
		5 kg	United Kingdom
		125 000 kg	Belgium
		125 005 kg total	

CPS (morphine)			
Imports	Exporter	Exports	Importer
2 733 kg	Belgium	7 kg	United States
		26 030 kg	Iran
2 733 kg total		26 037 kg total	

CPS(thebaine)			
Imports	Exporter	Exports	Importer
		17 961 kg	United States
		5 120 kg	Spain
		23 081 kg total	

France also exported 6017kg of morphine; 3459kg of which went to Belgium, and imported 253kg mainly from the Netherlands. 14660kg of codeine was exported, of which 3412kg to Germany, 2220kg to India and 1221kg to Canada. 311kg was imported, mainly from Germany.

No information is available on the sale or use of poppy by-products (oil and seeds) in France.

6.2 Structure

In France about 900 farmers are currently licensed to cultivate poppies. The farmers have been selected carefully by the pharmaceutical company Francopia and are bound by strict confidentiality laws. The fields are confined and located in three main growing areas: the Champagne–Ardennes, in the central region and the Poitou-Charentes.⁷⁸ This division of growing areas is used to minimise possible crop failure as a result of climatic effects and diseases.

Francopia provides the farmers with the poppy seeds. The sowing takes place in April, the plants flower in June, and the poppy is harvested in August and September. The average plot size is around 11 hectares per farmer, although the plots are said to vary between 5-25 hectares.

The poppy crops are controlled by the police, especially during the flowering and harvesting periods. The harvest takes place under strict control, and is carried out by Francopia. Some of the poppy is harvested as green poppy, when the seed pods are only semi-ripe; this is to avoid potential alkaloid loss caused by rain. The remainder is harvested as normal poppy straw. After harvesting, the straw is taken to a factory in Gard, where CPS is manufactured and the alkaloids are extracted using the continuous solvent extraction process.

78 Daninos, F. L'opium légal produit en France Available at www.larecherche.fr/data/386/038606401.html

The Ministry of Health and Social Security and the Ministry of Internal Affairs oversee the national control system, under the Public Health Code 1988,⁷⁹ and a Commission for Narcotics and Psychotropics informs and advises the Minister with respect to the control system. Some important features of the system include the need for specific authorisations for each step of the narcotics manufacturing process, including the production, transport, import, export, transfer, acquisition, and use.

6.3 Economic importance for the country

Francopia produces about 20-25% of the world's total licensed opiates and total sales are said to be around €60 million (US\$73 million).⁸⁰ In the mid 1990s one hectare of poppy cultivation would earn as much as 8500 FRF (US\$1580)⁸¹.

6.4 Efficiency of production

The quality (morphine content) of the poppy straw has increased considerably in past years. The current reported industrial extraction rates show that the yield averaged 1.15%⁸² anhydrous morphine alkaloid obtained from poppy straw (M) during the manufacture of CPS(M) in the period 2001-2003.

79 Ministère de la solidarité, de la santé et de la protection sociale, Décret N° 88-1232 Du 29 Decembre 1988 relatif aux substances et préparations vénéneuses et modifiant le Code de la santé publique (deuxième partie) E/NL. 1989/5-8 Page 5E/NL. 1989/8 Available at: http://www.unodc.org/unodc/fr/legal_library/fr/legal_library_1989-10-18_1989-8.html

80 Daninos, F L'opium légal produit en France Available at: www.larecherche.fr/data/386/038606401.html

81 Chouvy, P-A, Le Pavot à Opium en France et en Inde. Available at: http://www.pa-chouvy.org/Photos/Pavots_Poppies/pavotspoppies.htm.

82 INCB (2005) Narcotic Drugs, Estimated World Requirements 2005 – Statistics for 2003 p. 73, footnote 10, Available at: http://www.incb.org/pdf/e/tr/nar/2004/narcotics_part4.pdf.

Conclusions

Exposition of the control systems in place in the four key opium producing countries has highlighted significant diversity amongst variables defining cultivation, processing and control. In each case, variables are fine-tuned to national circumstances, and in each case there are clear differences in production scale, yield and economic and social importance.

Owing to the different production systems in place, it is difficult to draw accurate comparisons for farm-gate prices for opium raw materials. In broad terms, the farm-gate value depends on the efficiency of the production method used. The Australian and French industries both have relatively small numbers of farmers cultivating large plots of land. The reverse is the case in Turkey and India, where large numbers of farmers (upwards of 100,000) cultivate comparatively small plots of land. A small industry size, in terms of the number of people involved, is more efficient, resulting in higher yields of raw materials, and higher farm-gate prices.

The January 2006 review of the 80:20 rule by the US Congress is a clear opportunity to include Afghanistan as a preferred supplier of high quality opium to the US market.

Turkey's successful transition from opium poppy to poppy straw cultivation provides an interesting model for Afghanistan. Such a transition would require significant donor support, in terms of infrastructure and capacity building, technical industrial knowledge, and counter-diversion measures. Countries that use the poppy straw method have either little or no diversion, and the international control organs appear to favour poppy straw for this reason.

It is possible that the use of a high-thebaine, low-morphine producing poppy in any licensed system in Afghanistan could provide an effective response to the risk of diversion. This should be further investigated and analysed. Consideration would, for

example, have to be given to issues concerning seed distribution and the avoidance of cross breeding with other cultivars.

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Annex I

TO BE PUBLISHED IN PART II SECTION 3(i) OF THE GAZETTE OF INDIA-
EXTRAORDINARY

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

NOTIFICATION

New Delhi, the 15th October, 2004

1/2004-Narcotics Control-1

G.S.R.679 (E) – In pursuance of rule 8 of the Narcotic Drugs and Psychotropic Substances Rules, 1985, the Central Government hereby notifies the general conditions for grant of licence specified below for cultivation of opium poppy on account of the Central Government during the Opium Crop Year commencing on the 1st day of October, 2004 and ending with the 30th day of September, 2005.

PREAMBLE

The Government of India (hereinafter referred to as the Government)-

CONSIDERING the indispensable medicinal use of opium;

RECOGNISING its role as the sole licit supplier of this raw material to meet requirements of opiates; and being

CONSCIOUS of the necessity to prevent and combat drug trafficking and drug abuse;

HEREBY lays down the following general conditions for grant of licence for opium cultivation for the crop year 2004-05.

1. PLACE OF CULTIVATION

Poppy cultivation may be licensed in any tract as may be notified in this behalf by the Central Government.

2. ELIGIBILITY FOR GRANT OF LICENCE

(a) Cultivators who have tendered an average yield of opium of not less than 54 kg/hectare in the States of Madhya Pradesh and Rajasthan and an average yield of opium of not less than 48 kg/hectare in Uttar Pradesh, shall alone be eligible for licence.

(b) The above-mentioned criterion shall not be applicable to the cultivators of the following categories:

(i) Who ploughed back their entire poppy cultivation during the crop year 2003-2004, under supervision of the Government in accordance with the provisions in this regard. However, the above clause will not be applicable in respect of those cultivators who had fully ploughed back their entire poppy crop during 2001-02 and 2002-03 also.

(ii) Whose appeal against refusal of licence has been allowed after the last date of settlement in the crop year 2003-2004; or

(iii) Who have cultivated poppy in the crop year 2001-02 or any subsequent crop year and were eligible for licence in the immediately following crop year, but did not voluntarily obtain the licence for any reason, or who, after having obtained the licence for the following crop year, did not actually cultivate poppy due to any reason.

3. CONDITIONS OF LICENCE

(a) No cultivator shall be granted licence unless he/she satisfies that:

(i) he/she did not, in the course of actual cultivation, exceed the area licensed for poppy cultivation during the crop year 2003-2004;

(ii) he/she did not at any time resort to illicit cultivation of opium poppy and was not charged in any competent Court for any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Rules made thereunder; and

(iii) he/she did not during the crop year 2003-04 violate any Departmental instructions issued by the Central Bureau of Narcotics/Narcotics Commissioner or did not adulterate the opium procured by him/her before/while tendering the opium to the Government. The opium classified as inferior by the Government Opium Factories, Neemuch/Ghazipur will be treated as adulterated.

(iv) cultivators who had tendered opium during the crop year 2003-04 which has been found to be of a consistency lower than 55 degree will be debarred from licence for the crop year 2004-05.

(b) All cultivators, who had cultivated opium poppy during the crop year 2003-04 in more than two plots but tendered opium in accordance with the required Minimum Qualifying Yield (MQY), and also fulfilled other conditions of licence will be given licence for the crop year 2004-2005.

4. MAXIMUM AREA

(i) All eligible cultivators will be issued licence for 10 are⁸³. However, cultivators can cultivate in any area less than the licensed area according to their capability and availability of water.

(ii) A cultivator can sow opium poppy in not more than two plots.

(iii) Notwithstanding anything stated above, the Government may allow an area more than 10 are to any Agricultural Research Institute or Agriculture University in the opium growing States for research purposes.

5. CONDONABLE LIMIT

The condonable limit in respect of excess cultivation shall not exceed 5% of the licensed area.

⁸³ One hectare is equivalent to 100 ares.

6. FOREWARNING

- (i) A Minimum Qualifying Yield (MQY) of 58 kg/hectare in Madhya Pradesh and Rajasthan and 49 kg/hectare in Uttar Pradesh must be tendered during the crop year 2004-05 to become eligible for opium licence in the next crop year 2005-2006.
- (ii) Cultivators, who had fully ploughed back their entire poppy crop during the crop year 2003-04, would not be entitled for licence for the crop year 2005-06 if they also uproot their crop fully in the crop year 2004-05.
- (iii) Cultivators, whose opium for the crop year 2004-05 is found to be 'water mixed' and of consistency lower than 55 degree, will not be eligible for licence in the next crop year 2005-06.
- (iv) Cultivators, whose opium for the crop year 2004-05 is found to be 'adulterated' and classified as 'inferior' by the Govt. Opium & Alkaloid Works, Neemuch and Ghazipur, will not be eligible for licence in the next crop year 2005-06.

7. MISCELLANEOUS

- (i) These instructions are without prejudice to the rights of the Narcotics Commissioner / Deputy Narcotics Commissioners to issue / withhold a licence whenever it is deemed proper so to do in accordance with the provisions of the Narcotic Drugs & Psychotropic Substances Act, 1985 and the Rules made thereunder.
- (ii) The licence will be subject to the condition that any field may be taken over for Joint Licit Opium Poppy Survey (JLOPS) that may be conducted by the Government or by the Government in collaboration with any specialized institution or agency. The cultivator whose field is selected for Joint Licit Opium Poppy Survey shall be considered for granting licence for the next year provided he has tendered the stipulated MQY for the following year, if otherwise eligible. The area selected for JLOPS experiments will not be taken into account while calculating yield.
- (iii) The licence shall be subject to the further condition that any field may be selected for obtaining poppy straw without extraction of opium. The cultivators whose fields are selected for such use shall be eligible for licence for the next crop year, if otherwise eligible.

(iv) The quantity of opium mentioned above will be calculated at 70 degree consistency, on the basis of analysis at Government Opium and Alkaloid Works, Neemuch and Ghazipur.

(v) Notwithstanding anything stated above, opium cultivation will not be allowed in all such villages where the number of eligible cultivators are 5 or less. However, in respect of such villages, wherever possible, the affected cultivators will be given option to shift to such neighbouring village where opium cultivation is permitted.

(S.K. Singh)

Under Secretary to the Government of India

No.1/2004 F.No.616/1/2004-NARCOTICS CONTROL-I

To

The Manager,

Govt. of India Press,

Mayapuri, New Delhi.

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GOVERNMENT OF INDIA
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DEPARTMENT OF REVENUE
CORRIGENDUM

New Delhi, 3rd December, 2004

4/2004-Narcotics Control-1

G.S.R.784 (E) - In modification of Ministry's Notification vide G.S.R. 679(E) dated 15.10.2004 concerning general conditions for issuance of licence for the crop year 2004-05, the following modifications are made:-

(i) Sub-para 3(a)(iv) relating to debarring of cultivators who have tendered opium of consistency lower than 55 degree is deleted.

(ii) Sub-para 6(i) relating to forewarning of MQY is substituted as follows:- “A Minimum Qualifying Yield (MQY) of 56 kg/hectare in Madhya Pradesh and Rajasthan and 49 kg/hectare in Uttar Pradesh must be tendered during the crop year 2004-05 to become eligible for opium licence in the next crop year 2005-2006.”

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Annex II

1992/56 Articles 403 to 409 of the Turkish Penal Code No. 765 of 1 March 1926, as Amended by Law No. 3756 of 6 June 1991.⁸⁴

ARTICLE 403

1. Whoever manufactures or imports narcotic drugs or psychotropic substances (hereinafter referred to as "drugs") without or in breach of license will be sentenced to imprisonment from 10 to 20 years and to monetary fine of fifty thousand liras for each gram or fraction of the said drug.
2. Whoever exports the drugs mentioned in sub-article 1 will be sentenced to imprisonment from 6 to 12 years and to monetary fine of fifty thousand liras for each gram or fraction of the drug involved.
3. Whoever exports drugs after having manufactured or imported them will, in addition, be sentenced to the penalties specified in sub-article 1.
4. The imprisonment term served in a third country for drugs thus exported from Turkey or pronounced but not served in a third country, will be deducted from the sentence pronounced for the export violation if the crime is likewise punishable in Turkey.
5. Whoever sells, offers for sale, purchases or keeps drugs or gives them to others without remuneration or receives them in the same manner, transports, intermediates for the sale, purchase or acquisition thereof in any matter whatsoever without or in breach of license will be sentenced to imprisonment from 4 to 10 years and to monetary fine of fifty thousand liras for each gram or fraction of the drugs involved.
6. Where the drugs involved in the preceding sub-articles are heroin, cocaine, base morphine or morphine the sentence will be augmented by half.

84 UNODC Legal Library, 1992/56 Articles 403 To 409 Of The Turkish Penal Code No. 765 Of 1 March 1926, As Amended By Law No. 3756 Of 6 June 1991 Available at: http://www.unodc.org/unodc/legal_library/tr/legal_library_1993-03-01_1992-56.html [Accessed 31 August 2005]

7. Sentences to be pronounced on persons who establish, manage or participate in organizations to commit the crimes specified in the previous sub-articles will further be increased by half.

8. Where the crimes mentioned in this Article are committed by two or more persons without the explicit or implicit agreement of those who are engaged in these criminal acts in a professional, trade or habitual way, the sentence to be pronounced will be increased by a third.

9. Sentences to be pronounced on persons who employ for the crimes enumerated in this Article minors under eighteen years of age or those not having criminal liability will be increased by a sixth.

10. Whoever establishes or manages organizations to commit the above crimes or participates in such organizations will be punished by imprisonment from five to 10 years.

11. Any association of two or more persons for the purpose of committing the said crimes will be deemed as an organization in this context.

12. Whoever purchases drugs with false prescriptions will be sentenced to imprisonment from one to three years and to monetary fine of up to five million liras.

ARTICLE 404

1. Whoever facilitates the abuse of drugs by arranging a suitable locale or through other means or distributes such drugs to minors under eighteen years of age, to drug addicts or to persons with a mental defect will be punished with one sixth of the sentences mentioned in sub-articles 5 and 6 of Article 403.

2. Whoever uses drugs or keeps them for this purpose will be punished with imprisonment from one to two years.

3. A drug user will not be prosecuted for abuse of drugs if he applies to State authorities for treatment before the investigation is launched.

4. Where abuse of drugs has attained the degree of addiction, such persons will be referred to a hospital for observation and treatment until fully recovered.

The competent court of law may likewise arrange, at any time during the proceedings, for the referral of said drug users to hospitals for observation and treatment.

ARTICLE 405

Whoever participates in one of the crimes referred in Articles 403 and 404 will be exempted from punishment if he contributes to the apprehension of his accomplices or to the seizure of the places where the narcotic drugs are kept, hidden or manufactured before the authorities learn thereof.

The sentences of persons contributing to the clarification of criminal acts or to the apprehension of the accomplices after these have otherwise come to the knowledge of the authorities will be reduced to one half.

ARTICLE 406

Where the violators of the provisions of Articles 403 and 404 (1) are physicians, veterinaries, chemists, pharmacists, medical dentists, dentists, proprietors or contracted managers of pharmacies, health officials, midwives or nurses, the sentence will be increased by half. The offenders will also be denied ingress to public service for life or performance of profession again for life.

Where the violations enumerated in Articles 403 and 404 (1) are committed in public conveyances or places open to the public or by officials and employees thereof in a manner which constitutes a misuse of their authorities or influence, the sentence will be increased by a third and the offenders will likewise be denied ingress to public service and performance of profession.

ARTICLE 407

Where persons suffer bodily harm or damage to their health or illness as a result of the acts enumerated in the preceding Articles, the punishment will be increased from one third to one half in violations other than those entailing life imprisonment sentences.

Where bodily damage is sustained by several persons, the sentence increase will be no less than twice indicated above.

Where the act entails the death of a person the violator will be punished with life imprisonment.

ARTICLE 408

All goods existing at locations established for the purpose of facilitating the abuse of as indicated in Article 403 will be seized and one half of the value thereof will be paid as award money to those having contributed to the discovery of the violation.

ARTICLE 409

Whoever sells, without permission, narcotic drugs not covered in Article 403 will be sentenced to imprisonment from 15 days to 2 years and to monetary fine from fifteen thousand up to one hundred thousand liras and the said drugs will likewise be subject to confiscation.

The Current Illegal Opium Economy in Afghanistan

Executive Summary

The Opium Poppy Crop: The Economic Engine of Rural Afghanistan

A country reliant on its agriculture and rural activities

The agricultural sector in Afghanistan provides livelihoods for approximately 80 per cent of the active population. Land holding type and size vary both between and within provinces, but the average farm size is relatively small: between one and two hectares. Wheat is the main staple crop, but several types of summer and winter vegetables and fruits are cultivated for the national and international market. Exports of dried fruits and nuts still represent an important source of foreign exchange, but come nowhere near the levels of the 1980s, when Afghanistan was a major player on the world market. *War, civil conflict and severe droughts have seriously damaged the agricultural infrastructure.*

Opium poppy: more than a crop, an economic engine for Afghanistan rural economy

Illegal opium cultivation and production dominates present-day Afghanistan's agricultural sector. It provides a direct livelihood to more than 350,000 rural households, representing a total of 3 million people engaged in its cultivation and production. Although opium poppy cultivation represents only of 7% of total irrigated land; for the first time in Afghanistan's history, cultivation now takes place in all 34 provinces. Yet, the true scale of the impact of opium poppy cultivation is even more important than these figures imply. *The opium cultivation feeds a diverse and extensive supply chain involving farmers, wage labourers, shopkeepers, wholesalers and local power-brokers.* For example, opium cultivation provides farmers and wage labourers with a source of credit, savings and investment. Opium is also used as a form of "currency" and its role as "credit" adds further value to its already relatively-high price compared with legal

alternatives. Cash generated by opium also feeds the growth of local services and goods in rural Afghanistan. For example, even the building sector and other business activities (such as imports) in large cities are partly financed by the opium boom.

The illegality of the opium crop creates a vicious circle for rural communities

The downside of this financial role is that many farmers are dependent on advance payment systems (*salaam* contracts) and thus eradication interventions or a bad harvest will leave them entrenched in ever deeper opium-induced debt. These debts represent an important reason as to why many opium farmers continue to grow opium poppy. A further reason is that in many areas few alternative crops are able to survive due to drought, the lack of irrigation systems or limited access to markets. *On one hand, illegal opium activities drive the Afghan economic growth; whilst on the other, they lock the development of its economy in a vicious circle where the formal/legal economy is reliant on the informal/illegal one.*

Opium Licensing as a transitional instrument to intensify and accelerate alternative livelihood efforts

By their nature, alternative livelihood interventions are both limited in scale and medium - to long-term, requiring time before they can become self-sustaining and profitable. Licensed opium production for essential medicines could circumvent the temporal shortcomings of alternative livelihood programmes. By utilizing existing farmer expertise, know-how and technology to cultivate poppy and produce opium, the establishment of such a system would not take the length of time required for alternative livelihood interventions. *Opium licensing could provide a bridge between counter-narcotic interventions and rural economic development.* As such, it could help create the conditions to facilitate the successful implementation of more medium- and long-term development strategies currently being proposed and pursued. For example, the attractiveness of alternative crops could be strengthened by licensed opium programme by helping to introduce new, yield-increasing technologies such as improved seeds and plant material, fertilizers, pesticides or irrigation. Facilitating access to cheap credit will be one of the major drivers for the successful introduction of technologies and new crops.



An agronomic characterization of poppy cultivation in Afghanistan

Dr Ir Jules Bos

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1 Agro-ecological characteristics

Afghanistan is a landlocked country in Central Asia with a total area of about 652 000 km². It is bordered by Turkmenistan, Uzbekistan and Tajikistan to the north, China to the north-east, Pakistan to the east and south and Iran to the west. About 75% of the territory consists of mountains and hills, while lowlands include river valleys in the northern part, and desert regions in the southern and south-eastern part. The Hindu Kush mountain range bisects Afghanistan from east to west (Figure 1). In the east are the steep high peaks of the Wakhan Corridor at an altitude of 5500 to 7500 metres above sea level (masl). In east-central and central Afghanistan the mountains broaden into wide spurs fanning to the north and south at between 3000 and 4000 masl. To the west they end in the Safed Koh Range north of Hirat and close to the north-western border at some 1100 masl.

According to statistics from the United Nations Food and Agriculture Organization (FAO), land potentially available for crop cultivation totals 8.05 million hectares, corresponding with 12% of the total land area. According to the Afghan Ministry of Agriculture and Animal Husbandry (MAAH), land actually under arable cultivation is currently around 4.55 million hectares.¹ Desertification, particularly in the south-west,

¹ UNODC Afghanistan Opium Survey 2004.

and deforestation are rising at an alarming rate, while some of the pastures are cultivated when rainfall is plenty and left fallow the following year, causing some erosion and loss of grazing land.²

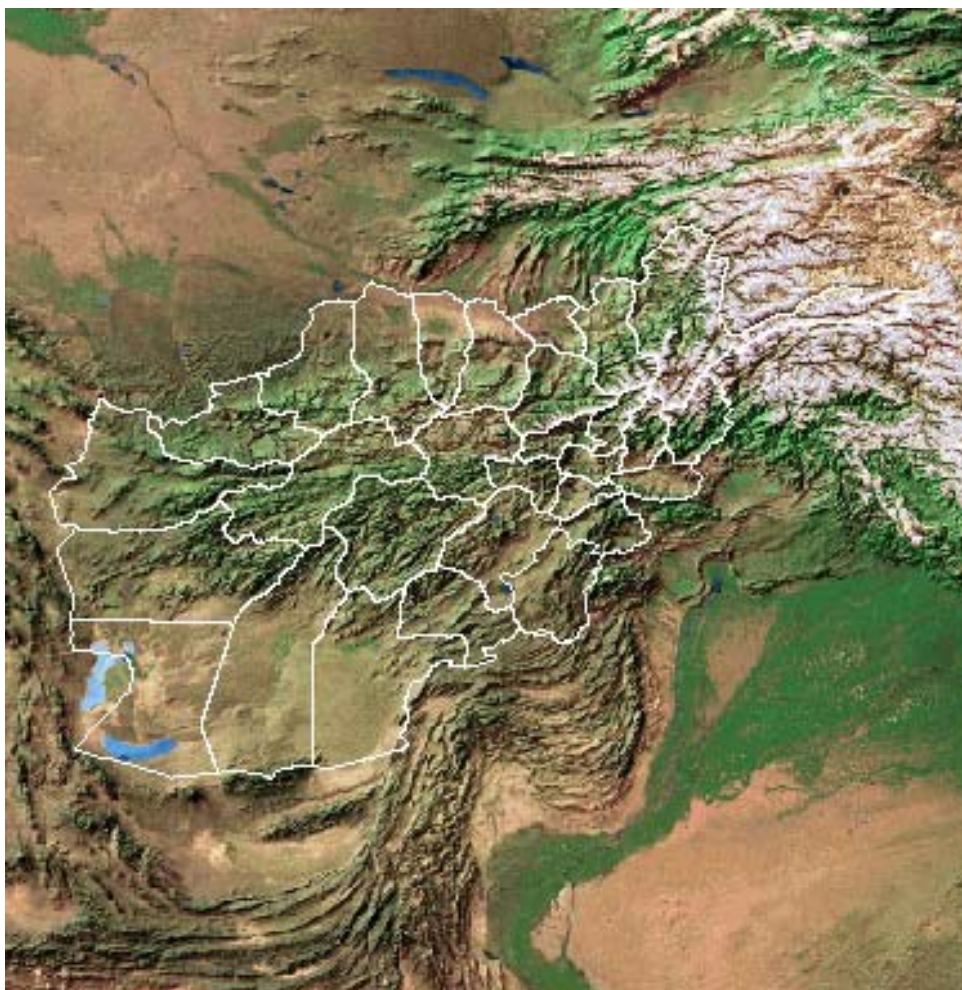


Figure 1 Satellite image of Afghanistan with an overlay of provincial borders.
(Source: FAO.)

² FAO and WFP, 2004. FAO/WFP crop and food supply assessment mission to Afghanistan. Special report. Food and Agriculture Organization of the United Nations, World Food Programme, Rome, 8 September 2004.

1.1 Climate

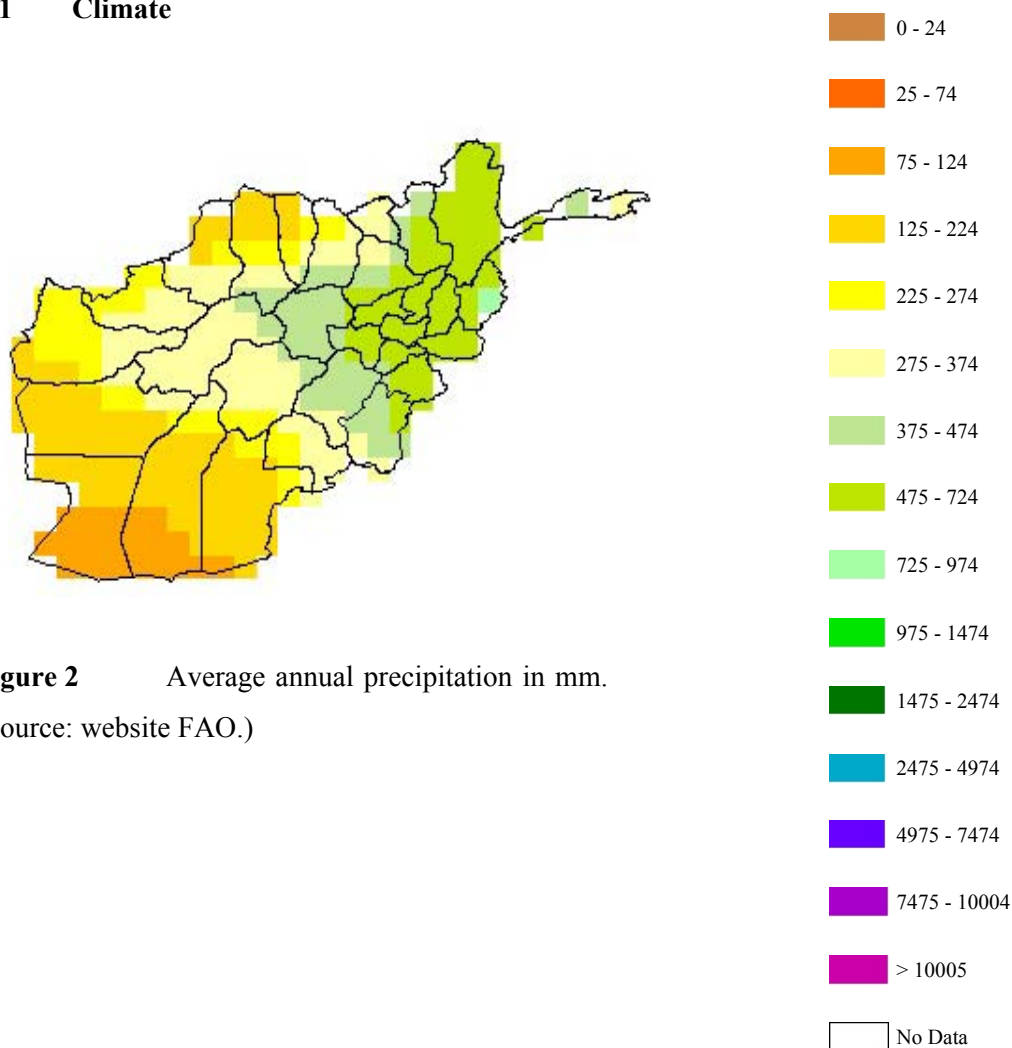


Figure 2 Average annual precipitation in mm.
(Source: website FAO.)

Afghanistan is characterized by a continental climate, though the presence of mountains causes many local variations. Temperatures vary from - 10°C in winter to 34°C in summer. Rainfall is erratic and varies from about 99 mm per year in Farh (West) and 1024 mm in South Salang (Central region).³ More than 50% of Afghanistan receives less than 300 mm of rain per year (Figure 2). With the exception of the eastern border regions, which are at the far edges of monsoon influence, about 50% of the precipitation occurs in winter (January to March), much of which falls in the form of snow in the central mountainous regions. A further 30% falls in spring (April to June). Precipitation is normally not expected after mid May. It is the accumulated winter

³ FAO and WFP, Crop and food supply assessment mission to Afghanistan. 2004.

snow from the high mountains that sustains Afghan agriculture and it is the changing conditions down the length of the snow-fed river valleys which creates the varying production possibilities. In their upper reaches the valleys are steep, the rivers fast-flowing and the valley floors narrow. Here, the winters are cold, but the summers are mild with short yet abundant growing seasons. Further downstream, the valley floors broaden into flat plains with slow-flowing rivers. Here the winters are milder, the summers hotter and the growing seasons longer.

1.2 The role of agriculture in the Afghan economy

The International Monetary Fund (IMF) estimated Afghanistan's Gross Domestic Product (GDP) at about US\$4.7 billion in the financial year 2003, resulting in a per capita GDP of US\$216 using a population estimate of 21.8 million. Agriculture (crop production, horticulture and livestock) accounts for about 52% of GDP and employs an estimated 80% of the economically active population. Industry and services each make up about 24% of GDP (FAO & WFP, 2004). The IMF estimated aggregate exports, including re-export, at about US\$1.65 billion in 2001-2 and US\$2.36 billion in 2003-4 financial year. Principal exports are carpets, dried fruits, fresh fruits, medicinal plants and animal hides.⁴

Physical infrastructure is severely eroded or ruined due to continuous neglect and destruction. Agricultural infrastructure, manufacturing and food processing sectors have also been virtually destroyed or are in very bad condition. Social and economic institutions continue to be void of necessary human capital, while efforts are underway to reform the public sector.⁵

Land holding type and size vary both between and within provinces, with average farm size ranging between 1-2 hectares (between 5 and 10 jeribs). Absentee landlords are

⁴ FAO and WFP, 2004..

⁵ Ibid.

common following emigration of families or family members to neighbouring countries and share-cropping is expanding in most provinces.

Aside from opium, wheat is the main staple crop accounting for about 70% of total cereal consumption in Afghanistan. Other major crops are rice, maize, barley and pulses. Several types of summer and winter vegetables and fruits including potatoes, onions, tomatoes, okra, cauliflower, melons, water melons, apricots, pomegranates, apples and grapes are also produced, both for domestic consumption and export. Export of dried fruits and nuts, mainly raisins, pistachio, almonds and apricots are still a significant source of foreign exchange but they are nowhere near the levels of the 1980s when Afghan dried fruits accounted for a significant share of the world market.⁶ Given the highly variable rainfall and associated variation in production under rain-fed conditions, the irrigated sector traditionally provides the major proportion of total agricultural production.

Cereal production in Afghanistan has not been sufficient to meet consumption requirements since 1976, when production peaked at 4.5 million tonnes. Civil unrest since 1978 has contributed to a steady decline in production through the 1980s, reaching its lowest level in 1990 with only 60% of the 1976 production level. Favourable precipitation and relative peace in much of the country helped a steady agricultural recovery during the early 1990s, with production peaking in 1998, with the largest harvest since 1978. However, severe drought conditions for three consecutive years (1999 to 2001) resulted in total failure of rain-fed agriculture and substantially reduced yields of irrigated crops. In 2003, overall cereal production recovered strongly due to favourable precipitation throughout the country and a larger area cultivated with cereals. In 2004, cereal production was again significantly down throughout the country, particularly in the west, south and east, due mainly to highly reduced precipitation. In the north and northeast of the country the decline in production was mainly due to a

⁶ Ibid.

reduction in cultivated area, sunn pest⁷, un-seasonal rains and shortages of farm power during cultivation.⁸

1.3 Irrigation

Access to water is at the heart of Afghanistan's evolution to a peaceful and stable nation. Lack of water as a result of drought, mismanagement and negligible infrastructure has contributed to massive population displacement, increased opium production, conflicts over land and grazing, the breakdown of traditional socio-economic networks and community ill-health. One of the key issues is the sinking of tube wells. The need to resettle returnees and to mitigate the impact of the drought has led to a proliferation of wells, and anecdotal evidence points to a sharp drop in the water table.

These wells give access to non-renewable groundwater and traditional water rights become the *de facto* property of the person with the most money and biggest pump, increasing the risk of community disintegration.⁹

Irrigation systems present in Afghanistan can be divided into four main categories:

1. Kareze (or qanat) systems. The kareze system is an ancient Iranian method of exploiting groundwater in hilly areas using gravity. It consists of a series of interconnected shafts and tunnels that channel water from deep underground to surface canals, to be used for domestic use or land irrigation. Dug by local craftsmen from shafts at close intervals, tunnels are small in size but may be many kilometres in length.

7 The sunn pest refers to a group of insects representing several genera of the 'shield bug' (Scutelleridae) and 'stink bug' (Pentatomidae) families, with the species *Eurygaster integriceps* being the most important. The sunn pest is one of the most serious pests of wheat and barley in West Asia. Yield loss from its damage is commonly estimated at 20-30% in barley and 50-90% in wheat. University of Vermont, 8 FAO and WFP, 2004.

9 FAO representation in Afghanistan, [online]
www.fao.org/world/afghanistan/prof_en.htm

2. Small-scale informal surface water systems. These are the traditional irrigation systems, many of which have been established for centuries. In the past, maintenance and reconstruction were generally arranged on a traditional informal or communal village basis, and water rights were determined and recognized in a similar manner. Technical knowledge and operational systems were thus dependent on traditional community structures, and were largely retained in the memory of individuals.
3. Large-scale informal surface water systems. These are located mainly in the plains and along the main valleys. Although they are called informal, their operation and maintenance was highly structured. Large parts of these schemes have been abandoned because of land degradation due to waterlogging and salinization, particularly in the Hari Rud, Farah Rud and Hilmand valleys.
4. Formal irrigation schemes. Formally organized large-scale irrigation systems are a relatively recent innovation. However, by the late 1970s three large-scale modern irrigation systems had been built and were in operation: the Hilmand-Arghandab system in the south-west, the Ghaziabad farms near Jalalabad in the east, and the Kunduz-Khanabad system in the northern part of the country. By 2003, most of these schemes were dysfunctional.

The FAO's estimates for 1978 indicate an irrigated area of 2.63 million ha, with just 1.44 million having sufficient water for double cropping (FAO, 1997). Most of the land was irrigated using informal surface water systems (river diversion structures; 50% of total irrigated area). The remainder was irrigated on the basis of informal groundwater systems (wells, seasonal streams and karez systems; 37%) and formal systems (13%). By 2003, total irrigated land in Afghanistan was estimated to amount to only 1.79 million hectares.¹⁰ The potential irrigable area has been estimated at 5 million hectares.¹¹

¹⁰ UNODC Afghanistan Opium Survey 2004.

¹¹ Asian Development Bank, *Rebuilding Afghanistan's Agriculture Sector*, 2003.

1.4 Agro-ecological zones

Many of the crops grown in the lowlands are the same as those in the mountains, though the production systems are different due to different ambient temperatures.¹²

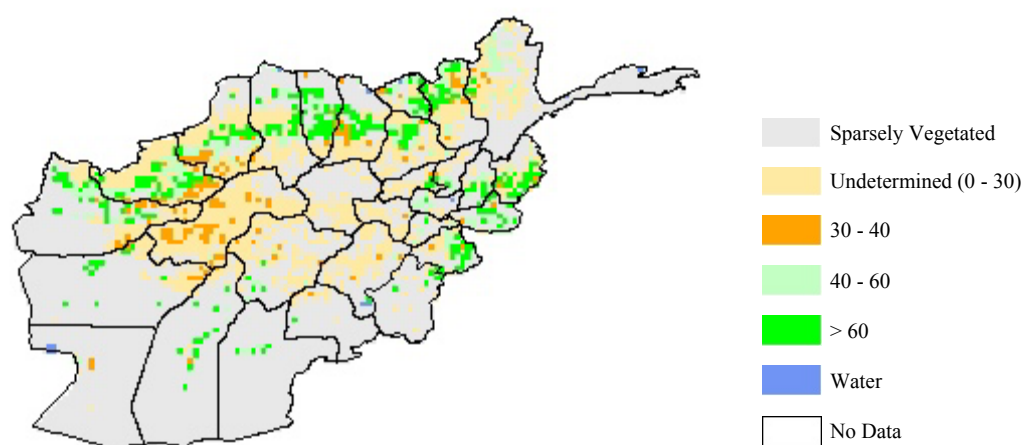


Figure 3 Percentage of land under permanent crops and arable land. (Source: FAO.)

The variations in altitude also influence the accessibility of water for irrigation, which further determines the differences in local agricultural systems. The fast-flowing streams of the upper reaches are hard to divert into simple canals and the irrigable land areas are small. In the lower reaches the rivers are slower-flowing and the irrigable land areas larger.

There is a strong general correlation between altitude, precipitation and length of growing season. The higher the altitude, the greater the amount of precipitation and the shorter the growing season due to frost hazard. In the central, north-eastern and eastern mountain zones, rainfall is sufficient for agricultural production and frost is the limiting

¹² Sloane, *Food security strategy for Afghanistan*. Report prepared for the working team on feed security, second draft, 2001.

factor. The foothills of the northern and southern mountains are flat with sufficient length of growing season for double cropping under irrigated conditions. Here, the limiting factors are effective rainfall (rain-fed agriculture) and irrigation water availability (irrigated agriculture).

Unreliable availability of water is a major problem for agriculture in many areas. Water flow in even the largest rivers is often uneven. Seasonal floods in spring can damage river offtakes reducing available irrigation water at crucial times in crop growth. Low river flows in summer can restrict summer cropping in potentially highly productive areas.

The percentage intensity of land under permanent crops and arable land across Afghanistan (Figure 3) reflects the dimensions of physical and climatologic constraints for agriculture, with the highest densities found in plains and along downstream parts of rivers.

Below follows a general description of physical conditions and agricultural activities by region, based on the website-content of FAO's representation in Afghanistan and distinguishing between north and northeast, west, central, east central, east and southwest. The location of provinces mentioned is shown in Figure 4.

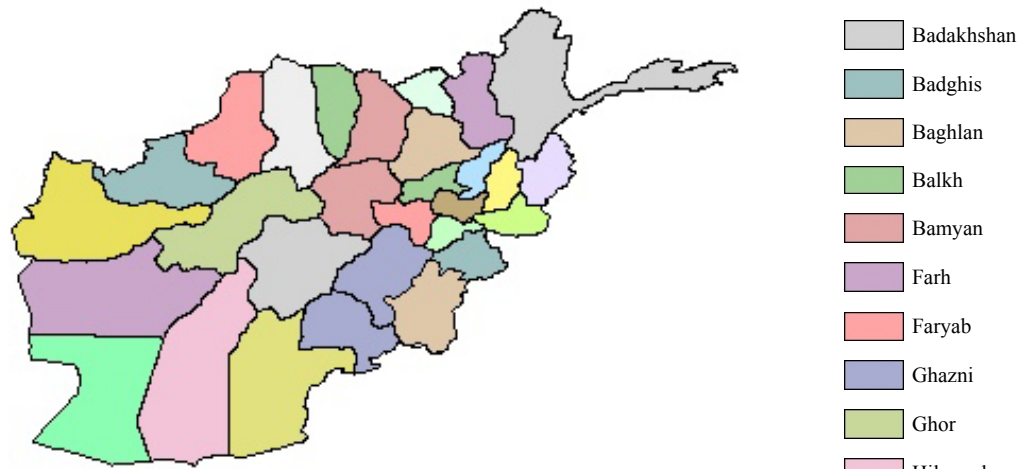


Figure 4 Names of provinces. (Source: FAO website)

1.4.1 North and north-eastern Afghanistan (provinces Badakhshan, Baghlan, Balkh, Faryab, Jawzjan, Kunduz, Samangan, Saripul and Takhar)

The northern plains and foothills stretch for over 1000 km along the northern border of Afghanistan as the southernmost extension of the Central Asian steppe. The foothills that lead up to the Hindu Kush are covered by deep and ancient 'loess' soils. Altitudes range from 400m on the plains to about 1900m in the cultivated foothills - the average lowest level of the snowline. Some rivers cut through the rain-fed lands from the south to support intensive agriculture.

The north and north east of the country have been seriously affected by both drought and warfare. The drought has impacted most adversely on the rain-fed 'lalmi' lands across the north and north east. In 2001 rain-fed wheat decreased by 21 percent from 510 000 ha in 2000 to 401 000 ha. In 2001 wheat yields and production had dropped by 45 percent from the year before and by 80 percent from

1999. Some river valleys still support agriculture but a lack of snowfall in the Hindu Kush Mountains has depleted most rivers.

Wheat in this region is cultivated mainly as an autumn sown crop. It is planted between mid-October and late November. Some spring wheat is sown on rain-fed 'lalmi' lands in March. Two types of local landrace wheat are preferred for this: one for autumn sowing, the other for the spring, but almost no rain-fed wheat has been harvested for the last three years because of the drought. Spring and summer crops include maize, rice, pulses, cotton and melons. Apricots, peaches, almonds and figs are cultivated where appropriate.

1.4.2 Western Afghanistan (provinces Badghis, Farh and Hirat)

The western region, together with the north and the north east, include the largest area of rain-fed 'lalmi' wheat lands in Afghanistan. Irrigated farming is also practiced in this region, mainly in the Harirud River basin. Wheat is the predominant autumn sown crop, usually planted between early October and mid to late November and harvested by the end of June. Double cropping is only possible in the lower Harirud and Murghab basins. Summer crops include maize, pulses, melons, vegetables and fodder crops of annual clover and perennial lucerne, all of which are cultivated on irrigated land. Chickpeas are grown on poorly-irrigated or rain-fed land. Apricots, plums, peaches and cherries (sour and sweet) are commonly cultivated in the Harirud basin. Some apples are also grown, as are grapes. Mulberries are widely cultivated for domestic consumption and as shade trees.

1.4.3 Central Afghanistan (provinces Bamyan and Ghor plus parts of Ghazni, Parwan and Wardak)

The main central massif of the Hindu Kush makes up what is generally known as the Hazarajat. This zone is made up of high valleys and plateaux, with agriculture practiced from 2000-4000m. Little rain-fed agriculture is practiced in these regions, except on a limited scale in Ghor and Bamyan provinces. The area under irrigated wheat in these two provinces has decreased as a result of conflict, drought and breakdown of irrigation systems. The winter snow and autumn rain is essential for replenishing the water tables that feed some of the most important river systems, including the Harirud and the Hilmand/Arghandhab systems.

Wheat is the main staple crop and is both autumn and spring sown, depending on altitude. On rain-fed land it is usually sown in the spring to avoid frost damage. Autumn sowing occurs through September and spring sowing may be as late as April to early May. Wheat is harvested from late July through to mid-September. Summer crops include rice, pulses, maize and potatoes. Rice and pulses are cultivated in the lower irrigated valleys where double cropping is possible. Only single cropping is possible above 1800m depending on the shelter and prevalence of frosts in the valleys. Other summer crops include vegetables, such as onions, and pulses, including beans and vetch. Persian clover, perennial lucerne and barley are cultivated for grain and green fodder. Apricots, pears, apples and walnuts are cultivated up to 2000m and above depending on the micro-climate and relative shelter. Mulberries are widely cultivated around settlements for domestic consumption and shade.

1.4.4 *Central-eastern Afghanistan (provinces Ghazni, Kabul, Kapisa, Logar, Parwan and Wardak)*

This region includes a number of provinces clustered around Kabul province and city. Wheat is the staple crop and is sown as an autumn and almost entirely irrigated crop. Maize is an important summer crop up to 1800m. Some very short duration local cultivars of maize are found here which mature in 90 days. As double cropping cannot be practiced in this area, maize is often sown as a late spring crop, sometimes after a clover break. Pulses such as beans and vegetables such as onions are grown as both subsistence and cash crops. Potatoes are cultivated in the higher valleys, mainly subsistence but surplus crops are sold to traders from Pakistan. Persian clover is widely cultivated as an early fodder crop, and some lucerne is also grown. Vegetables are widely grown. Most households maintain small gardens for domestic consumption, but some valleys also specialise in commercial production. Apples, apricots and pomegranates are also important crops, and there has been an increased interest in commercial production. Mulberries are widely grown for domestic consumption and as shade trees.

1.4.5 *Eastern and south-eastern Afghanistan (provinces Khost, Kunar, Laghman, Nangarhar, Nuristan, Paktya and Paktika)*

The southeast and east regions can be divided into the areas east of the Spinghar Mountains and those to the west. Elevations vary between 500m and 2500m with extensive plains alternating with valleys and mountains. The mountains bordering Pakistan catch the end of the Indian monsoon, providing sufficient rain to support forests of cedar, pine, fir and evergreen oak. Unfortunately these have been plundered by years of indiscriminate lumbering. The continuing drought has affected the flow of many of the seasonal and snow-fed streams rising in the Spinghar Mountains which irrigate many of the districts in Nangarhar, Paktiya and Khost provinces. Here the cultivation of improved, high-yielding wheat varieties is widespread. Apart from wheat, vegetables such as onion and okra are cultivated and rain-fed agriculture is insignificant.

Agriculture is mainly carried out in the valley bottoms and along the various rivers, but also in the plains of Paktika province. Double cropping is practiced at lower elevations in Kunar, Laghman, Nangarhar, Khost and Paktiya provinces.

Wheat is sown as an autumn crop in the southeast. Maize is an important summer crop. It is usually sown after wheat and sometimes, after a clover break, in the autumn into rice stubble. Rice is an important crop in Laghman and Kunar provinces, as well as in certain locations in Paktiya province. Other cultivated crops include pulses, oil seeds, potatoes, sugar cane, millet, clover and lucerne. Apricots, apples and pomegranates are widely grown and there has been a recent surge of interest in these crops. Since the early 1990s many private nurseries have been set up in Nangarhar, Kunar, Laghman, Paktiya and Khost provinces. Several districts in Nangarhar province, such as Rodat, have a long tradition of exporting pomegranates to Pakistan and India. Cherries have successfully been introduced into some valleys. Citrus fruit is cultivated in the warmer valleys of Nangarhar and lower Kunar province, although most of the large plantations established by the Soviets in the 1960s and 1970s are no longer operational. Mulberries are grown in most villages for fruit and shade. Guava, persimmon and loquat are also grown for domestic and commercial production in the lower valleys of Nangarhar, Kunar and Laghman provinces.

1.4.6 *South-western Afghanistan (provinces Hilmand, Kandahar, Nimroz, Uruzgan and Zabul)*

The southern and western plains lie at elevations that range from 200m to just over 1000m. The region is mainly desert or semi-arid steppe and virtually no rain-fed wheat is cultivated. Agriculture is concentrated along the main rivers, dominated by the Hilmand/Arghandab system. The drought diminished water flows in all the main rivers of the region and seriously affected the karez irrigation systems in Uruzgan, Zabul, Kandahar and upper Hilmand provinces. Uncontrolled drilling of deep tube wells is reported to be further diminishing the water table. Wheat is the staple crop and it is irrigated and sown in the autumn - some as late as early December in Hilmand province.

Double cropping is possible throughout the region, except in the higher areas of Zabul and Uruzgan provinces, but only if irrigation water is available. Maize is the main summer crop, both for grain and green fodder. Cotton was an important crop before the Soviet war and much of the economic return of the Hilmand/Arghandab scheme was based on cotton production. Unprocessed cotton is still grown in Hilmand province and sold to Pakistani traders, but local ginning and processing facilities have collapsed and poppy has taken the place of cotton as the most important cash crop. Vegetables of all kinds are cultivated across the region, mainly for domestic consumption. Raisins have been the main cash crop for centuries in Kandahar province and along the Arghandab River valley. Before the Soviet war Afghanistan controlled 60 percent of the world market for raisins, most of which came from this region. The industry suffered severe damage during the war and the drought has further jeopardised the industry. Pomegranates from Kandahar province were famous throughout the Indian sub-continent. Many pomegranate orchards are located along the Arghandab River. Almonds are famous across Kandahar, Zabul and Uruzgan provinces, especially a thin-shelled almond known as 'khargazi'.

2 Poppy cultivation

2.1 Crop characteristics¹³

The poppy (*Papaver somniferum* L.) is a herbaceous annual plant, that is, the plant produces seed within one year for a next generation. The poppy is a long-day plant with a critical day length of 14 to 16 hours inducing flowering. The length of the growing period of poppy depends on the ecotype, cultivar characteristics, climatic conditions and sowing time. Two main forms of poppy cultivation are found: the so-called 'winter' (autumn-sown) and 'spring' (spring-sown) cultivation. The two cultivation types are distinguished by the use of special poppy ecotypes, characterized by differing levels of frost resistance. The main difference between the two is the length of the growing period. Under European conditions, the growing period of spring poppy lasts 120-160

¹³ This section is mainly based on Bernáth and Németh (1998).

days and that of winter poppy 250-270 days. The actual length of the growing period shows large differences between countries, ranging from 120-165 days in India, 135-250 days in Afghanistan and 178-205 days in Pakistan.

Poppy has six development stages. The first stage is the embryo or dormant stage, which practically means that seeds are in the pre-germinating stage. The second stage is the germination stage, when seeds germinate. The duration of this period is 15-20 days, depending on prevailing temperatures. The third phase is the leaf rosette stage. This stage lasts from the appearance of the first leaves until the emergence of the flowering shoot and the formation of generative organs. This stage may last as long as 50-60 days for spring varieties and 180-220 days for winter varieties. The duration of the stage is strongly influenced by local climatic conditions and by the cultivation techniques used. The fourth stage is known as the elongation and branching. This stage lasts from the beginning of shooting until blossoming of the main axis and is generally about 21-30 days. Water and nutrient uptake is most intensive in this period. Following stage is flowering and formation of capsules and seeds, lasting for about 20-30 days.

After flowering, 10-14 days are needed until the capsules (also called seed pods, bulbs, or poppy heads) reach their final shape and size (about the size of a golf ball). During flowering, sunny, dry and warm weather is favourable. After flowering until so-called opium ripeness, sufficient water and warm weather is necessary. The sixth and final stage is the ripening of seeds and capsules, which, depending on climatic conditions, lasts 15-25 days. During this period, the leaves fall off, the capsules obtain their characteristic colour and the seeds will separate from the septum. Optimal weather in this stage is, again, sunny, dry and warm weather.

The competitive ability of the poppy crop with weeds is extremely poor. If weeds are not sufficiently suppressed, the development phases of the poppy are shortened, resulting in the formation of capsules of only 3-10 mm in size.

2.2 Soil requirements

Poppy is generally considered a demanding crop as regards soil characteristics. Although poppy can be grown in a variety of soils - clay, sandy loam, sandy and sandy clay - it grows best in a clay-loam soil of high fertility with a neutral or slightly alkaline pH.¹⁴ The soil should have a favourable structure for root development, good moisture and nutrient-retentive properties and be easily cultivated. The roots of a young poppy plant cannot readily penetrate clay soils, in which case growth is inhibited. Sandy soil, by contrast, does not retain sufficient water and nutrients for proper growth of the plant.

However, the wide distribution of poppy cultivation in Afghanistan (Section 3.1), indicates that the crop is cultivated on a diversity of soils, including non-optimal soils.

2.3 Cultivars

As part of the Annual Opium Poppy Survey in 1999,¹⁵ 210 interviews were conducted in the main poppy growing areas of Afghanistan to find out what governs farmers' choice for specific varieties. Here, the findings from these interviews are summarised.

In Afghanistan a wide diversity of poppy varieties is cultivated, not only within a relatively small area but also on a single household's plot of land. These varieties differ in resistance to disease, drought and temperature, as well as in factors that influence labour requirements for harvesting, including maturation rates, the size and number of capsules and the viscosity of the opium produced.

Households appear to experiment by cultivating different poppy varieties over a number of years in an attempt to match household human resources and natural resources with the particular characteristics of the varieties available. A significant number of households in each of the regions were found to cultivate varieties of poppy that produce

¹⁴ Németh, *Cultivation of poppy in the temperate zone*. In Bernáth, J., (Ed.), *Poppy - The genus Papaver*. 1998.

¹⁵ UNDCP, *Afghanistan Annual Opium Poppy Survey 1999*.

opium that is considered, by the respondents themselves, to be of poor quality, thus receiving a lower price. However, many of these varieties appear to be less vulnerable to crop failure, suggesting that households do not select the variety of poppy purely on the basis of the highest returns, but also consider the security of the returns. The extent to which households cultivate a combination of varieties suggests that many are seeking to balance risks and returns with household resources, particularly labour.

The major influence of cultivar selection on crop characteristics is further illustrated on the basis of an example from Tasmania, where a poppy cultivar has been developed that produces latex with only two major alkaloids: thebaine and oripavine. ***This example indicates that certain specific varieties of opium poppy could be developed and used in the framework of licensed opium production – varieties that are less suitable for heroin production and much better for the production of essential opium-based medicine. In this particular case, it greatly limits the risk of diversion to illegal purposes as thebaine and oripavine are not easily converted into morphine or heroin.***

Box 1 Poppy breeding in Tasmania¹⁶

Until 1996, Tasmania was a small producer of thebaine, which was extracted from poppies grown primarily for morphine. For several years, the Australian company Tasmanian Alkaloids cultivated varieties with enhanced thebaine content, up to about 15% of the morphine content depending on the dryness of the growing season. However, thebaine was difficult to extract from these varieties as the process would normally produce much more morphine than thebaine. Researchers at Tasmanian Alkaloids discovered a way to stop the conversion process when thebaine was produced and before going on to produce morphine. In a subsequent breeding programme, a cultivar, known as “Norman” has been developed that produces latex with only two major alkaloids: thebaine and oripavine. High alkaloid *P. somniferum* poppies can now be grown without risk of diversion for illicit purposes as thebaine and oripavine are not easily converted into morphine or heroin. Moreover, thebaine can subsequently be converted into codeine. The research of Tasmanian Alkaloids shows that different varieties of opium poppy can be developed that produce very different types and combinations of alkaloids. Such research should be the basis for a licensed opium system, where opium poppy varieties are needed that maximise the quantity and quality of medicine production and minimize risks of diversion to the illegal industry.

16 Fist, The Tasmanian poppy industry: a case study of the application of science and technology. 2001.

2.4 Seed

The great majority of Afghan farmers carry over seed of any crop from one year to the next from their own harvests, the simplest, safest and cheapest method of seed security.¹⁷ Localized borrowing of seed stock, or purchase from the local market are the next preferred options. In general, farmers identify the seeds they prefer and select those samples that are suited to their situation and with which they are familiar. Many of the farmers use 10th or 15th generation seeds, which are rather diluted and have lost much of their genetic qualities but are still referred to as high yielding improved varieties.¹⁸ It is unknown which of the above mentioned seed strategies is selected in the case of poppy.

Harvest of poppy seeds for the next years' generation may be done by allowing the capsules to dry on the stem after the harvest of opium. Once dry, the largest and most productive capsules are cut from the stem, and the seeds are removed and dried in the sun before storing for the following year's planting. An alternative method of collecting planting seeds is to collect them from intentionally unlanced capsules, because lancing may diminish the quality of the seeds.

Farmers are well aware of the productivity and other characteristics of various crop seeds that have been introduced in the country during the past couple of decades, mainly through the FAO seed programme. However, farmers are highly sceptical about new varieties, following crop failures using some of the new and untested varieties. FAO has assisted the MAAH in the preparation of a seed code and seed strategy, which are yet to be ratified and subsequently implemented. In the absence of a seed code, negative consequences may ensue, affecting farmers and food production in general.¹⁹

¹⁷ FAO and WFP, 2004.

¹⁸ Ibid.

¹⁹ Ibid.

2.5 Cropping calendar

Timing of sowing and harvest in Afghanistan is determined by latitude and altitude of the specific location.²⁰ Autumn sowing (September-December) is practised in eastern, southern and western regions. In north-eastern and central regions, sowing is both in autumn and spring. In higher altitude areas of these regions, poppy is sown in spring (March). The timing of harvest follows a similar pattern. It starts in the eastern and southern region (April). About one month later, opium is harvested in the northern and north-western regions, and eventually in the higher altitude areas of the central and northern-eastern regions (June and July). In 2004, poppy was harvested one to two weeks earlier compared to 2003. The early harvest was attributed to the weather conditions, and in some cases to farmers' decisions to harvest as early as possible to avoid eradication.

2.6 Fertilisation

The poppy crop combines relatively high nutrient requirements with low capacity to take up nutrients from the soil. Hence, proper NPK fertilisation considerably benefits yields (Box 2; Németh, 1998; Bernáth, 1998; Fist, 2001; Broszat, 1992) and seed and opium yields in the higher range are only attained if fertilisers are applied. Specific information about fertiliser use in poppy cultivation in Afghanistan is lacking. Afghan farmers, if asked what determines profitability of poppy cultivation, mention costs of seed, fertiliser and hired labour (UNDCP, 2001). This indicates that farmers do apply fertilisers in poppy fields. Key informants report, however, that fertiliser is not applied to poppy cultivated on rain-fed land.

²⁰ UNODC Afghanistan Opium Survey 2004, 2005.

Box 2: Fine tuning of nitrogen nutrition in Tasmanian poppy cultivation.²¹

Research conducted in Tasmania determined critical nitrogen concentrations in leaf tissues for alkaloid percentage in poppy straw, and demonstrated that significant increases in crop alkaloid content could be achieved by optimising nitrogen nutrition of the plant – through specific fertilization – at the so-called hook stage, when the buds of the poppy plant start hanging down (Fist, 2001). In one example, the alkaloid content in the straw increased from 1.38% to 1.68% following a single nitrogen application at ‘early hook’ stage, some time before poppy flowering. Subsequent field testing showed that in some years virtually all crops required this nitrogen fertilization treatment, whilst in other seasons, only some crops were deficient. Tasmanian field officers now promote testing the sap of the leaves to see whether certain crops are in need of nitrogen treatment. Adoption rates of this technique have increased to quite high levels, and the occurrence of unexpectedly low alkaloid content crops is very much lower than it was in the past, largely due to the recognition of nitrogen deficiency in the ‘early hook’ stage as a major cause of low alkaloid content.

A joint FAO/WFP mission conducted in 2004 observed that most farmers in Afghanistan are well aware of the value and usage of fertilizers, and the quality of several fertilizers available in bazaars.²² However, diluted fertilisers with reduced nutrient content, have been a major concern and, therefore, many farmers are reluctant to use fertilisers. Lack of any quality control has led to a surge in the import and sale of diluted and poor quality fertilisers. Two agricultural surveys conducted by FAO and MAAH in 2003 reported that nearly 78% of the farmers had applied mineral fertilisers on irrigated wheat and other crops. In addition to mineral fertilisers, farmers in some areas were also using farmyard manure on irrigated crops. Mineral fertiliser application rates vary according to area and irrigation water availability. In general, the observed mineral fertiliser rate on wheat is one application of di-ammonium phosphate at planting (equivalent to the seed rate - average 152 kg ha⁻¹) and one to two applications of urea in

21 Németh, *Cultivation of poppy in the temperate zone*. 1998; Bernáth, *Cultivation of poppy under tropical conditions*, 1998; Fist, *The Tasmanian poppy industry: a case study of the application of science and technology*, 2001. Broszat, *Der Mohn (Papaver somniferum L.). Anbau und Markt einer wiederentdeckten Kulturpflanze*. 1992.

22 FAO and WFP, 2004.

spring and at heading (again equivalent to the seed rate but sometimes twice the seed rate). As for poppy, mineral fertilisers are generally not used on rain-fed cereals.²³

2.7 Pests and diseases

Poppy may be attacked by a wide range of pests and diseases, including insects, fungi, nematodes, bacteria and viruses. Many of the pathogens that can infect poppy, can also infect other crops: they thus are a-specific. According to Broszat (1992), poppy can be characterised as a crop that is not particularly susceptible to pests and diseases. According to the same author, most pests and diseases have little significance, as they only occur infrequently in poppy. Only if cropping frequency within the rotation is high or if a large area in a region is under poppy, higher incidence levels can be expected.²⁴

According to Németh (1998), the weevil species *Ceutorrhynchus macula-alba* or *C. denticulatus* constitute the most dangerous insects in poppy plantations. These beetle-like insects chew the leaves and other plant parts.²⁵ The females bore holes into developing capsules for egg-laying, the holes subsequently functioning as *portes d'entrées* for fungi which may ultimately affect the entire capsule. Once hatched, the larvae themselves feed on ripening seeds in the capsule. Broszat (1992) mentions *Stenocarus fuliginosus* as another important poppy pest, which is again a beetle-like insect. Its larvae feed in the root system of poppy plants. Other parasitic insects such as poppy fly (*Dasyneura papaveris*) and poppy gnat (*Perrisia papaveris*) also use the holes made by weevils for laying eggs in the capsule. The most effective way to prevent damage caused by weevils is early sowing, so that poppy plants can reach flowering stage before the multiplication period of weevil. Accordingly, autumn sown poppy is almost never infected by weevils because of its earlier flowering and capsule development.

23 FAO and WFP, 2004.

24 Broszat, 1992.

25 Németh, 1998.

The most harmful disease to poppy is peronospora (*Peronospora arborescens*; False mildew).²⁶ The first symptoms are light spots on the surface of the leaves which then begin to grow and form a mould layer. In severe cases this disease may deform flowers and capsules, lower yields or even kill the plant. Poppy can also be infected by many other fungi (for example *Erysiphe communis*, *Fusarium* spp., *Ervinia* spp., *Helminthosporium* spp.), part of which can infect seeds. Generally, the damage caused by fungi is more severe when both precipitation levels and temperatures are high.

Which of the above mentioned pests and diseases occur in Afghanistan is unknown. However, Afghan farmers partly attributed below average yields in 2004 to various plant stresses including insect pests and diseases.²⁷ Farmers reported that especially the disease *Zardi* affected cultivation in the majority of villages in 2004. This disease caused a drying out of the poppy, resulting in a lower opium production. During the 2005 harvest period, a disease monitoring survey will be implemented by Afghan national agricultural experts with the aim to improve knowledge about the impact of disease on poppy yield.²⁸ The studied literature and websites suggest that Afghan farmers in general do not apply any pesticides, most likely because they are not available. The use of pesticides may result in increased seed and opium yields.

2.8 Irrigation

More than 90% of the total poppy area in Afghanistan in 2003 and 2004 was on irrigated land (see Section 3.1). This is despite the fact that compared with other crops including wheat, the poppy crop can thrive on relatively little water.²⁹ ***The poppy crop requires only a moderate amount of water before and during the early stages of growth.*** Greatest demand for water is at shoot elongation and capsule development.³⁰ (Németh, 1998). The preference for poppy cultivation on irrigated land is probably caused by

26 Ibid.

27 UNODC Afghanistan Opium Survey 2004.

28 UNODC Afghanistan Opium Survey 2005.

29 FAO and WFP, 2004.

30 Németh, 1998.

large yield differences between irrigated and rain-fed poppy. Note that, because of yield potential, irrigated poppy is managed quite differently than rain-fed poppy with respect to fertilisation, weeding and harvesting (see Sections 2.6 and 2.9).

2.9 Crop management and labour input

The poppy crop is the only representative of its family in agricultural crop rotations and can therefore be successfully cultivated before or after many other vegetable and arable crops.³¹ The poppy crop itself is considered a favourable preceding crop, because it benefits soil structure, mainly through providing extensive soil cover during most of the growing period.³² As for most other crops, pest and disease pressure can be expected to increase with increasing cropping frequency. Broszat (1992), citing other literature, states that poppy cropping frequency should not be higher than once every four years, preferably once every five or six years. In Tasmania, a three to four year rotation is practised.³³

With wheat being Afghanistan's staple crop and poppy far from being the main crop in Afghanistan (Section 3.1), poppy tends to be 'just' one crop in a wider cropping system. This was recently confirmed in a survey, part of UNODC's Opium Poppy Rapid Assessment Survey in 2005, among 225 villagers from 34 provinces throughout Afghanistan. To obtain more information on agricultural practices influencing yield and possible spread of disease, these villagers were asked whether they cultivate poppy in the same field every year. Most of the respondents reported that crop rotation is common and it is estimated that only 14% of villagers plant poppy every year in the same fields.

UNDCP's Strategic Studies mention the intercropping of poppy with other crops (for example onions and wheat) and cultivation under orchards in Afghanistan. The area of intercropped poppy relative to monocropped poppy is not systematically monitored,

³¹ Laughlin, Chung & Beattie, *Poppy cultivation in Australia*. 1998.

³² Broszat, 1992.

hence it is reported only in an anecdotal manner. For example, one of UNDCP's Strategic Studies³⁴ reports that many farmers in the districts Sarobi (Kabul province) and Tagab (Kabisa province) inter-cropped onions with poppy in 1999. This practice was also witnessed amongst those households cultivating opium for the first time in Panjwai district in Kandahar province. In 1998, intercropping onion with poppy was widely practised in Qarghai, yet in 1999 very few cases were seen. Reasons for part of the Afghan farmers to choose for intercropping are not known. Intercropping is generally practised to take advantage of positive interactions between the two crops, for example regarding suppression of weeds, pests and diseases. Intercropping might also be part of a strategy to avoid the risks associated with being dependent on one crop. Note that information in the Strategic Study is based on interviews with farmers, with a bias towards first time cultivators. Lacking experience with the poppy crop, these first time cultivators will be even more inclined to avoid risk.

Estimates of the labour requirements for the cultivation of poppy range from 300 to 486 person days per hectare.³⁵ Harvesting alone is thought to require 200 person days per hectare. It is unclear whether these estimates apply to irrigated poppy or rain-fed poppy. Rain-fed poppy is much less labour-intensive than irrigated poppy, because rain-fed poppy is weeded only once (three rounds in irrigated poppy) and because the number of lances in rain-fed poppy is lower. To allocate both hired and family labour efficiently, households cultivate different varieties of poppy with different maturation periods and stagger the planting of poppy. Despite these efforts, the majority of opium-producing households still require hired labour during the poppy harvest.

Studied literature and websites suggest that Afghan farmers do not use herbicides and weed poppy fields by hand. Herbicide application could hence be effective in reducing labour requirements. However, this would be only advantageous if alternative employment opportunities exist.

33 Laughlin et al, 1998.

34 UNDCP, An analysis of the process of expansion of opium cultivation into new districts in Afghanistan. Strategic Study No. 7, 2001.

35 UNDCP, An analysis of the process of expansion of opium cultivation into new districts in Afghanistan. UNDCP Afghanistan Programme, Strategic Study Number 5, 1999.

2.10 Opium harvesting methods

Two opium harvesting methods are widely practised. The first one is by making incisions in poppy capsules and, after drying on the capsule surface, subsequently harvesting the drained latex (opium). This method is used in Afghanistan and elsewhere in Asia. The second method is harvesting the dry poppy crop (12% moisture content), i.e. the capsules and top 15% part of the stem, collectively known as poppy straw. This harvesting method which can be mechanised using combines, is called the ‘poppy straw method’ and is practised in Australia, Turkey, France and Spain (Box 3).

The lancing of the capsules (also called scoring, incising, or tapping) begins about 2 weeks after the flower petals fall from the capsules. Not all plants in a field will be ready for lancing at the same time. Each capsule can be tapped from two to four times. In Afghanistan, a so-called *neshtar* is used to lance poppy capsules. If the person operating the *neshtar* cuts too deep into the wall of the capsule, the opium will drain into the interior of the capsule, rather than to the surface, where it can be collected. If the incisions are too shallow, the flow will be too slow and the opium will coagulate over the incisions and block the flow. A depth of about 1 millimetre is desired for the incision. Lancing ideally starts in late afternoon so the white latex-like raw opium, which has 60% water content, can ooze out and slowly dry on the surface of the capsule overnight. If the lancing begins too early in the afternoon, the sun will cause the opium to dry and block the flow.

The opium oxidizes, darkens, and thickens in the cool night air. Early next morning, the sticky opium gum is scraped from the surface of the capsules with a short-handled, crescent-shaped, flat, iron blade 3 to 4 inches wide. The opium gum is collected in a container which hangs from the farmer’s neck or waist. The wet opium gum collected from the capsules contains a relatively high amount of water and needs to be (sun) dried for several days. High-quality raw opium will be brown in colour and will retain its sticky texture. It will contain no more than 15% water.

Box 3 Harvesting according to the ‘poppy straw method’³⁶

Using the poppy straw harvesting method, poppy capsules and top parts of the stems can be harvested with a combine (as in Tasmania) or by hand (as in Turkey). Tasmanian mechanically harvested poppy is transported to processing plants. During the subsequent processing, the crop is threshed to separate seed from poppy straw. In Turkey, removal of seeds from capsules is done by hand. In a subsequent processing step, the alkaloids are extracted from the poppy straw to produce ‘concentrate of poppy straw’ (CPS). CPS can be sold as a narcotic raw material or utilised in the manufacture of pharmaceutical ingredients. A major advantage of the poppy straw method hence is that the opium processing stage is skipped.

2.11 Yields

In the past, calculation of opium yield in Afghanistan relied on farmers’ interviews, mostly done prior to the harvest. The data thus reflected primarily the farmers ‘expected’ opium yield rather than the actual opium yield which was still unknown at the time of the survey. Data were also subject to the farmers own bias.

Since 2000, UNODC has been developing an alternative objective yield assessment approach, based on measured volume of opium capsules and density. This method has been used in 2004 for the first time to estimate opium yields in regions. In 2004, the overall average dry opium yield in Afghanistan, weighted by cultivation area (see Section 3.1), was estimated at 32 kg per hectare.³⁷ This estimate was derived from capsule measurements taken in 138 fields across the country. The highest average yields were found in north-eastern Afghanistan (44 kg per hectare) and the lowest in central Afghanistan (18 kg per hectare). In the east, yields of 33 kg per hectare (close to the national average) and in the south of 28 kg per hectare (below the national average) were reported. The confidence-interval of the calculated average yields at the regional level was found to be relatively large for central, northern, north-eastern, and western

³⁶ Fist, 2001.

³⁷ UNODC Afghanistan Opium Survey 2004.

Afghanistan, reflecting the existence of both low- and high-yielding fields. Opium yields were more homogenous in eastern and southern Afghanistan.

Given the change in the methodology, direct comparisons with the yield calculated for 2003 (45 kg per hectare) are not possible. Nonetheless, there is evidence that yields declined substantially in Afghanistan in 2004 due to poor weather conditions (lack of rain and partly cold weather conditions) and pests and diseases.³⁸ Possible other factors for lower yields in 2004 may have been early harvest (to avoid the crop being destroyed as part of the eradication program) and poor quality of fertilisers.

³⁸ UNODC Afghanistan Opium Survey 2004.

3 Current poppy production in Afghanistan

3.1 Regional distribution

During the 1990s, Afghanistan firmly established itself as the largest source of illegal opium in the world. By the end of the 1990s, Afghanistan provided about 70% of global illegal opium production, well ahead of Myanmar (about 22%) and Lao PDR (about 3%). In 2001, following the ban imposed by the former Taliban regime, an abrupt decline of illegal poppy cultivation interrupted the two-decade increase, but, stimulated by a subsequent 10-fold increase in opium prices, cultivation resumed at a high level in 2002 and started to spread outside of the traditional areas. Although a new ban was issued in January 2002, the situation prevailing in Afghanistan has so far hindered the efforts of the new Afghan government to curb poppy cultivation in the country.³⁹

The Afghanistan opium survey is implemented annually by the United Nations Office on Drugs and Crime and, since 2003, the Afghan Government. It collects and analyses information on the location and extent of poppy cultivation, on the potential production of opium, as well as other socioeconomic dimensions of the problem. The results provide a detailed picture of the outcome of the current year's opium season and, with previous years' data, enable the identification of mid- and long-term trends in the evolution of the illegal drug problem in that country.

The estimated total area under poppy cultivation in Afghanistan increased significantly from 80 000 hectares in 2003 to 131 000 hectares in 2004 (range: 109 000 ha - 152 000 ha) (Table 1). The increase in 2004 (+64%) was substantially stronger than the increase in 2003 (+8%). The results for 2004 constituted a record for poppy cultivation in the country. Poppy cultivation increased in almost all regions and provinces in 2004. Only in Wardak province (Central Afghanistan), the area under poppy cultivation declined substantially (-63%).

³⁹ UNODC Afghanistan Opium Survey 2004.

Table 1 Regional distribution of poppy cultivation in 2003 and 2004. (Source: UNODC & Government of Afghanistan, 2004.)

Region ¹	2003 (ha)	2004 (ha)	% change in 2003-2004	in % of 2003 total	in % of 2004 total
Southern	28110	48431	72	35	37
Eastern	23810	36621	54	30	28
North-eastern	13136	16369	25	16	12
Northern	5717	14627	156	7	11
Western	5642	9917	76	7	7
Central	4068	4671	15	5	4
Rounded total	80000	131000	64	100	100

¹*Southern region:* Hilmand, Uruzgan, Kandahar, Zabul, Ghazni, Paktika. *Eastern region:* Nangarhar, Kunar, Laghman, Nuristan, Kapisa. *North-eastern region:* Badakhshan, Takhar. *Northern region:* Bamyan, Jawzjan, Sari Pul, Baghlan, Faryab, Balkh, Samangan, Badghis, Kunduz. *Western region:* Ghor, Hirat, Farh, Nimroz. *Central region:* Parwan, Paktya, Wardak, Khost, Kabul, Logar.

The most pronounced increase in poppy cultivation in 2004 was found in northern Afghanistan (+156%) and in western Afghanistan (+76%). Particularly strong increases (though from low levels) were reported for the provinces of Hirat (more than 1700%) and Nimroz (342%) in western Afghanistan and for the provinces of Samangan (1040%), Kunduz (357%), Faryab (324%) and Baghlan (309%) in northern Afghanistan. Increase of poppy cultivation in southern Afghanistan was 72% (Hilmand: +91%); 54% in eastern Afghanistan (Nangarhar: +63%), 25% in northeastern Afghanistan (Badakhshan: +22%) and 15% in central Afghanistan.

Essentially confined to a few provinces during the 1990s, opium production today is found in all of Afghanistan's provinces. Nonetheless, concentrations of poppy cultivation can still be identified. The main opium production areas are located in southern Afghanistan (37%), with large-scale cultivation in Hilmand, followed by eastern Afghanistan (28%), with large areas under cultivation in Nangarhar and north-eastern Afghanistan (13%) where cultivation is mainly concentrated in the province of

Badakshan. Northern Afghanistan accounts for 11%, western Afghanistan for 7% and central Afghanistan for 4% of the total area under poppy cultivation (131 000 ha).

Poppy areas in the six provinces with the six largest areas are given in Table 2. In 2004, the top three provinces cultivating poppy accounted for 56% and the top six provinces for 72% of the total area under poppy cultivation, indicating that there are still important concentrations. However, data also show that poppy cultivation has increased even more strongly, in relative terms, in non-traditional areas, particularly in the western and northern parts of Afghanistan. While cultivation increased in the top six provinces by 54%, it increased, on average, by 87% in the rest of the country. Hilmand and Nangarhar remain Afghanistan's two top provinces in the cultivation of opium poppy in 2004. Nangarhar had been ahead of Hilmand in 2003 while in most previous years (1994-2000 and 2002) the top position was held by Hilmand.

Table 2 Poppy areas in the six provinces with the six largest poppy areas and the rest of the country in 2002-2004. (Source: UNODC & Government of Afghanistan, 2004.)

Province	2002	2003	2004	% change 2003-2004	% of total area in 2004	% cumulative
Hilmand	29950	15371	29353	91	22	22
Nangarhar	19780	18904	28213	49	22	44
Badakshan	8250	12756	15607	22	12	56
Uruzgan	5100	7143	11080	55	8	64
Ghor	2200	3782	4983	32	4	68
Kandahar	3970	3055	4959	62	4	72
Rest of country	4796	19472	36441	87	28	100
Rounded total	74000	80000	131000	64		

Despite the strong increase in its cultivation, poppy is still far from being the main crop grown in Afghanistan. With 4.55 million ha land actually under cultivation, the relative area under poppy cultivation increased from 1.8% in 2003 to 2.9% in 2004. However, this share reaches much higher levels in the main opium producing provinces. The share of poppy in agricultural land was particular high in the provinces of Nangarhar (29%), Badakhshan (28%) and Kunar (24%).⁴⁰

Expressed as a percentage of the area under the cultivation of cereals (for which the most up-to-date information on a yearly basis is available), poppy cultivation increased from 2.8% in 2003 to 5.9% in 2004 (Table 3). This has been the consequence of a rise in poppy cultivation in 2004 in parallel with a decline in the cultivation of cereals. While the area under poppy increased by 64% in 2004, the area under cereals decreased by 21%.

Table 3 Area under cultivation of poppy and cereals in Afghanistan (in hectares*1000). Sources: UNODC, Opium Survey results and FAO & WFP (2004).

Crop/year	2003	2004	% change
Wheat	2294	1766	-23
Rice	145	185	28
Maize	104	90	-13
Barley	276	180	-35
Sub-total cereals	2819	2221	-21
Poppy	80	131	64
Poppy as % of cereals	2.8	5.9	

In 2003, total irrigated land in Afghanistan was estimated to amount to 1.79 million hectares. The proportion of irrigated land used for poppy cultivation thus increased from around 4% in 2003 to more than 7% in 2004. Most of the poppy cultivation takes place on fertile irrigated land (92% of the total in 2004). For comparison, 55% of the wheat is

⁴⁰ UNODC Afghanistan Opium Survey 2004.

grown on irrigated land and 45% on rain-fed land. (Data for 2004 showed that average wheat yields on irrigated land are 3.6 times higher than those on rain-fed land).

While the irrigated area with wheat declined by 8.5% or 90 000 ha in 2004, the area of poppy on irrigated land increased by 54% or around 42 000 ha (Table 4). Most of the remaining difference is due to shifts to rice production in north-eastern Afghanistan. The strongest growth of poppy cultivation in 2004 was, however, on rain-fed land (+294%), reflecting the spread of poppy cultivation to new areas.

Table 4 Poppy cultivation in Afghanistan, 2003 and 2004, irrigated versus rain-fed

Cultivation	2003	2004	% change in 2004
Irrigated	77700	119692	54
Rain-fed	2780	10944	294
Rounded total	80000	131000	64

Poppy cultivation in Badakhshan, the oldest opium-producing province in Afghanistan, traditionally is confined to less productive rain-fed land, and only limited in irrigated areas. In the past several years, increasingly irrigated land has been used for the cultivation of poppy, reducing the amount of land available for cultivation of traditional crops such as oil seed, pulses, potato and wheat. In 2003, virtually all poppy cultivation (95%) was concentrated on irrigated land in that province.⁴¹

3.2 Regional production

Regional opium production is estimated by multiplying the average dry opium yield per region and cultivated area per region (Table 5 and 6). The result shows an opium

41 UNODC Afghanistan Opium Survey 2005.

production of around 4,200 metric tons (range 3870 to 4530 metric tons) for 2004 and 4,100 for 2005.⁴²

Table 5 Regional distribution of poppy production in 2004. (Source: UNODC & Government of Afghanistan, 2004).

Region ¹	Poppy cultivation (ha)	Average yield (kg ha ⁻¹)	Opium production (mt)	Range (+/- mt)
Southern	48431	27.8	1346	97
Eastern	36621	32.5	1190	73
North-eastern	16369	44.2	724	54
Northern	14627	36.4	532	59
Western	9917	34.9	346	25
Central	4671	17.5	82	22
National average	132640	32.3	4220	327
Rounded total	131000	32.0	4220	330

¹ See note under Table 1 for division of provinces over regions.

Table 6 Regional distribution of poppy production in 2005⁴³

Region	Poppy cultivation (ha)	Average yield (kg ha ⁻¹)	Opium production (mt)
Southern	46147	37.9	1749
Eastern	4095	44.0	180
North-eastern	8734	41.8	365
Northern	28282	38.8	1098
Western	16543	41.4	685
Central	106	36.1	4
Rounded total	104000	39.0	4100

In 2004, the production increased by about 17% as compared to 2003 (3600 tons), and - after the peak of 4600 tons in 1999 - is the second highest production ever. It must be

⁴² Ibid.

stressed, however, that due to the change in the yield estimation methodology, production data for 2004 are not fully comparable with those of previous years. The largest increase in opium production at the regional level was observed in northern (132%), north-eastern (39%) and western Afghanistan (37%). The combination of strong area increase and relatively good yields were responsible for the strong increase in northern and north-eastern Afghanistan. Opium production increased moderately in southern (10%) and eastern Afghanistan (6%) and declined in central Afghanistan (-57%) due to poor yields.

As Table 6 shows, in 2005, potential opium production decreased by two per cent to 4100 metric tons. The amount of hectares dedicated to opium cultivation decreased by 21 per cent, from 131 000 to 104 000 hectares. Cultivation has decreased substantially in the eastern and north-eastern regions. It has doubled in the northern regions and increased sharply in the western region.

4 Alternative uses of poppy

Seeds from lanced poppy capsules can be used for culinary purposes and do not have effective narcotic content. Poppy seed is utilised for human consumption, industrial processing and in the manufacture of animal feeds. However, the quantity of seed and the way in which it is utilised varies between countries as a result of national traditions. There are particular regions (for example Central Europe and India) where poppy seed consumption has been traditional for many centuries, while in other countries the seed is only used for industrial processing and food decoration. In many regions, especially in Europe, special cultivars have been selected for seed and oil production (Bernáth, 1998a). In some regions these types of cultivars are called 'oil poppies'. Blue poppy seeds are used mostly in European cooking while the slightly smaller white ones are a regular feature in Indian recipes. Both have a pleasing, nutty taste that goes well with breads, biscuits and cakes. Ground poppy seeds are a common thickening agent in the Mughal cooking style of Northern India to obtain the sweet, milk, nutty flavour and

43 UNODC The Opium Situation in Afghanistan, as of 29 August 2005.

aroma. The nutty taste of poppies is also used for the subtly flavoured dishes typical of Japan.

Poppy oil is a vegetable oil extracted from the seeds. Poppy seeds contain up to 50% of high quality oil similar to sunflower oil. Poppy seed oil is a typical semi-drying oil, which is used in artists' paints, soaps after dehydrogenation and in oleo-chemical processing as a source of linoleic acid (C18:2). The oil is largely used in the north of France and in Germany as a salad oil, and is less liable to rancidity than olive oil. Another use of poppy is the use of dried stems plus capsules as ornamental plant.

5 Alternatives to poppy production

In the mid 1970s, Afghanistan was self-sufficient in cereals and horticultural products. Fruits, and dried fruits and nuts supplied about 40% of the country's export earnings.⁴⁴ (website of RAMP Afghanistan). Over the last 25 years, agriculture and natural resource management including irrigation systems, road and market infrastructure have been severely degraded by war and neglect. Many orchards have been cut down for fuel wood. Afghanistan is the centre of diversity for several species and carrot, radish, cherry plum, apricot, peach, pear, apple, walnut, pistachio, fig, grape, pomegranate, melon and almond are among the species present across the country.⁴⁵ Therefore, sufficient opportunities seem available to change production from poppy to alternative crops. However, major driver of change is the net returns of the different alternatives compared to poppy. Figure 5 shows the average gross income of poppy and alternative crops. This figure shows, for example, that in this particular study net income of poppy is about eight times higher than that of wheat. However, the income of different crops may differ between years and among different provinces in Afghanistan due to output price variability. Moreover, the same figure also shows that certain horticultural crops are profitable cash crops.

⁴⁴ Rebuilding Agricultural Markets Programme Afghanistan.

⁴⁵ International Center for Agricultural Research in the Dry Areas.

Income derived from opium poppy varies substantially between regions as well as from year to year. In 2004, farm-gate value per kilogramme of dry opium ranged from US\$65 in the north-eastern region to \$192 in the eastern region of the country.⁴⁶ In 2003, gross income of opium poppy per hectare was 27 times the income for wheat, while it decreased substantially in 2004 to amount to 12 times the income for wheat. Per capita gross income from growing opium decreased by 56% in 2004, but with US\$ 260 per head of poppy growing families, it was about 25% higher than per capita GDP. UNODC's Afghanistan Farmers' Intentions Survey 2003-2004 revealed that the average net income for a poppy farmer (generally cultivating poppy and other crops) was about 2.8 times higher than the income of a non-poppy farmer.⁴⁷

These year-on-year and regional fluctuations are an important lesson against drawing rash conclusions on the intrinsically higher profitability of opium poppy compared to other crops. What is more, in many cases, farmers do not only choose to grow poppy because of profit perception or other perceived comparative advantage. Instead, farmers cultivate opium as a result of “*salaam*” arrangements, which offers no scope to diversify or shift cultivation to other crops.⁴⁸ Indeed, UNODC estimates that in 2002, 19% of all outstanding loans among Afghan poppy farmers dated back to 1998. These loans are substantial in size and for many farmers represent the main reason for continuing or expanding opium cultivation. In general, opium's central role as credit increases its value – quite apart from other comparative advantage considerations. In addition, agricultural and topological factors in many areas (including susceptibility to drought, for example) diminish the possibilities for the cultivation of wheat or other crops.

Finally, it is important to note that not all opium growing farmers should be considered in any way 'rich'. About 31% of poppy farmers earned only between US\$200 and US\$500 in 2003, while for the same year, 29% of non-poppy farmers earned between US\$500 and US\$1000.⁴⁹

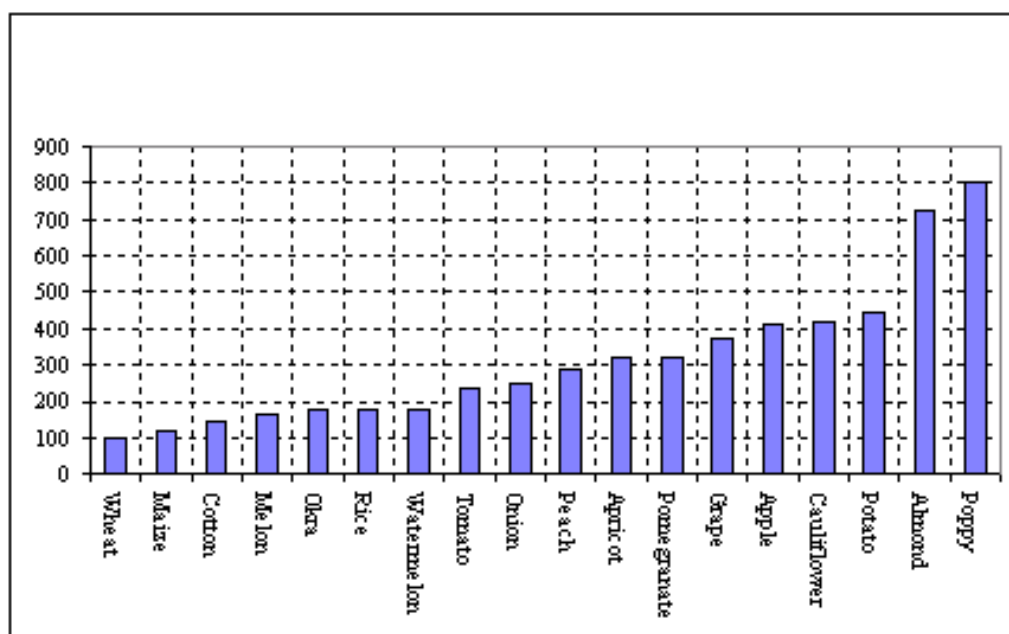
46 UNODC Afghanistan Opium Survey 2004.

47 UNODC, Afghanistan Farmers' Intentions Survey 2003/2004.

48 Ibid.

49 Ibid.

Figure 5 Average income of agricultural crops and poppy (wheat =100).⁵⁰



The attractiveness of alternative crops can be improved by introducing new, yield-increasing technologies such as improved seeds and plant material, fertilizers, pesticides, irrigation, and the like. Costs associated with using such technologies should be weighed against the increase in yield resulting from their use. Many of the current agricultural rehabilitation and development efforts in Afghanistan are aimed at the introduction of these technologies. It is outside the scope of this report to indicate which crops and technologies may be suitable alternatives to poppy, but some general observations can be made:

- Potentials of alternative crops and technologies will differ greatly between rain-fed and irrigated areas in Afghanistan. For example, introduction of costly fertilizers may be too risky for farmers depending on rainfall, while most likely they are profitable for farmers having a guaranteed supply of irrigation water

throughout the growing season. Hence, alternatives may be more easily adopted in irrigated areas than in rain-fed areas where drought and associated crop failure are more likely to occur. Alternatives in rain-fed areas have to compete with the relatively drought resistant poppy.

- Since resource-poor farmers lack capital, facilitating access to cheap credit will be one of the major drivers for the successful introduction of technologies and new crops, in addition to developing a well-organized agricultural extension network. Especially the introduction of perennial crops such as almonds and apricot is associated with a lag period of several years before these crops bear fruits and reach the stage in which profitable harvests are to be expected. In the first years of establishment, orchards may be intercropped with annual horticulture crops to alleviate some of the initial investment debts, but in general, these earnings are not sufficient. Afghanistan has a long-term tradition in the cultivation of perennials. However, agricultural extension will be needed to restore required skills and knowledge of farmers, which have been destroyed over the last 25 years, while some of the traditional cultivation techniques are over-hauled by new technologies.
- Any agricultural development program should take into account both the supply (production) and the demand side (market).⁵¹ (Christoplos, 2004). The large-scale introduction of perishable agricultural products may easily result in overproduction and a drop in output prices. Although agricultural products made up 40% of Afghanistan's export earnings 25 years ago, it is not expected that this position is easily regained. Afghanistan is land-locked, which complicates export, while global markets have gone through significant changes during the last 25 years, requiring greater focus on product quality, consistency, packaging and marketing. On the one hand this offers new opportunities, but on the other hand it requires a well-organized and knowledge intensive infrastructure to satisfy these demands. Short-term focus may be best on inland

50 International Center for Agricultural Research in the Dry Areas.

51 Christoplos, *Out of step? Agricultural Policy and Afghan Livelihoods*. 2004.

markets and those of bordering countries. Adding value to agricultural products, such as the production of biological dried-fruit products or special varieties, may provide long-term and more remote market options but often involve niche markets, which by definition do not provide large-scale market outlets.

- Recent studies show that current Afghan farm households, as in many other rural areas in the world, are less dependent on agriculture for their livelihood than often assumed.⁵² Agriculture is just one of the coping strategies of rural families with a diversified income portfolio consisting of remittances of family members living abroad or in Afghan cities, and off-farm income from working in construction, carpet weaving, cleaning, etc. Such incomes are often more reliable and less periodic than those earned in agriculture and contribute to income-smoothing. This observation has several implications. First, a strong focus on finding livelihood alternatives in agriculture only may be biased as other sources of income may be more important. Second, introduction of alternatives in agriculture should take into account the diversity in income generating activities and associated labour dynamics. Innovations in agriculture are often labour intensive and may demand labour at times that such labour cannot be delivered by own family members. A well-functioning labour market may solve this problem.

⁵² Grace & Pain, *Rethinking rural livelihoods in Afghanistan*, 2004.

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Agricultural aspects of Afghanistan's opium economy

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Introduction

The agricultural sector is the central pillar of the Afghan economy and currently the main engine for economic growth in Afghanistan. Approximately four fifths of the Afghan population live in rural areas, most of whom are either farmers or farm labourers.¹ According to the US government, around 85% of the Afghan population (estimated at around 25 million people) depend on the agricultural sector for its survival.²

The Food and Agricultural Organization (FAO) estimates that approximately 12% of the total land area in Afghanistan is arable. The rest is either too dry or too rugged for farming purposes and covered by forests (2%), permanent pastures (46%), is mountainous or desert.³ Afghanistan's legal agricultural sector mainly evolves around subsistence crops like wheat and other grains, sugar beets, cotton, rice, (dried) fruits and nuts. Grapes, apricots, and almonds generate higher income yields than subsistence-oriented and cereal crops, and are potential export products.⁴ Alongside these forms of

1 FAO, Agriculture and Food Production in Post-war Afghanistan. A report on the Winter Agricultural Survey 2002-2003 (Kabul 2003). Introduction.

2 US Government, Whitehouse webpage: rebuilding Afghanistan at:
<http://www.whitehouse.gov/infocus/nationalsecurity/rebuildingafghanistan.html>.

3 FAO, Afghanistan's country profile: Agriculture, FAO website at: http://www.fao.org/world/afghanistan/prof_ag_en.htm.

4 World Bank, Afghanistan-State Building, Sustainable Growth, and Reducing Poverty (Washington 2005),13.

agricultural produce, grazing constitutes another activity of importance in Afghanistan. The country has many herds of sheep, cattle, goats, horses, camels and donkeys. This livestock sector produces milk, meat and wool.⁵

The Afghan government and the international community are currently working hard to revive the agricultural sector. According to the Asian Development Bank, decades of war, civil conflict, exploitation and enforced neglect have resulted in degraded natural resources, damaged infrastructure and fragmented rural institutions.⁶ The World Bank maintains the view that expansion of irrigation, improved farming techniques, diversification and an improved transport infrastructure would do much to improve the current state of the Afghan agricultural sector.⁷

1 Agricultural aspects of the opium economy of Afghanistan

Opium poppy can be considered a traditional crop in Afghanistan although it had a very limited presence in the country throughout the centuries. In most parts of the country, opium poppy was not introduced until the 1990s.⁸ Consequently, opium consumption also remained relatively low until recent years. Only in a few places, such as the northern province of Badakshan, was opium cultivation a significant part of agricultural production.⁹

Nevertheless, at present a large proportion of Afghanistan's agricultural sector is dominated by the illegal cultivation of opium poppy and the subsequent harvesting of opium material. According to the United Nations Office on Drugs and Crime (UNODC), there were 356,000 Afghan households involved in opium cultivation in 2004.¹⁰ That amounts to approximately 2.3 million people or roughly 10% of the Afghan

5 Ibid.

6 Asian Development Bank, *Rebuilding Afghanistan's Agriculture Sector* (Manila 2003),1.

7 *Afghanistan-State Building, Sustainable Growth, and Reducing Poverty*,13.

8 UNODC, *The Opium Economy in Afghanistan. An International Problem* (New York 2003),87.

9 *Opium Economy in Afghanistan*,88.

10 UNODC, *Afghanistan. Opium Survey 2004* (Vienna 2004),1.

population.¹¹ During the 2003-2004 growing season, Afghan farmers cultivated opium poppy on 131,000 hectares, representing a 64% increase compared to the previous year.¹²

According to the UNODC Farmers' Intentions Survey for 2003-4, the main reasons for Afghan farmers to grow opium poppy are:

- 1) Persistent poverty and lack of alternatives;
- 2) The relatively high price that can be obtained for opium;
- 3) Access to credit from traffickers and related loan and debt arrangements.¹³

Opium poppy cultivation has broadly increased in recent years and can currently be found in all 34 provinces of Afghanistan.¹⁴ Opium production has become the leading economic activity in the country.¹⁵ A brief survey of the history of opium poppy cultivation in Afghanistan shows that the relatively recent growth of the opium economy over the past 26 years is strongly linked to the country's history of occupation, armed conflict, civil war and resulting harm to the agricultural economy, infrastructure and the entire economic system.

11 Opium Survey 2004,1.

12 Opium Survey 2004,,3.

13 UNODC, Afghanistan. Farmers' Intentions Survey 2003/2004 (Vienna 2004),15, 16.

14 Opium Survey 2004,,3.

15 William Byrd and Christopher Ward, Drugs and Development in Afghanistan, The World Bank: Social Development Papers. Conflict Prevention and Reconstruction (Washington 2004),2.

2 A short history of opium poppy cultivation in Afghanistan

The history of opium cultivation in Afghanistan is closely related to the country's history of war, foreign occupation and internal conflict. As such, the opium economy can be described as:

“partly an outcome and partly a cause of these processes – the war created the conditions in which opium production could thrive, but opium has also helped create a self sustaining war economy in which there may be limited incentives for putting the state back together.”¹⁶

In the 1920s, Afghanistan's opium production was still low and mainly limited to the provinces of Badakshan (north-eastern Afghanistan), Herat (east) and the area around Jalalabad (the province of Nangarhar in western Afghanistan).¹⁷ In Nangarhar province, opium poppy was mainly used as a cash crop, while in Badakshan it was predominantly used for medicinal purposes. In 1932, recorded opium production levels in Afghanistan amounted to 75 metric tons, a far cry from the 4,200 and 4,100 metric tons production estimated by UNODC for the years 2004 and 2005.¹⁸

The corresponding area under cultivation in 1932 was said to be less than 4,000 hectares.¹⁹ Up until 1978, the year of the pro-Communist coup, experts estimated the annual Afghan production to be around 300 metric tons.²⁰ However, the Soviet invasion of December 1979, which initiated two decades of occupation, civil war and foreign influence in Afghanistan, can be considered the starting point for massive opium poppy cultivation and opium production in Afghanistan. With the gradual decline of state authority during the Soviet occupation (which ended with the Russian retreat on

16 Jonathan Goodhand, *Frontiers and Wars: a study of the opium economy in Afghanistan* (University of London, 2003),2.

17 IRIN, *Bitter-Sweet Harvest: Afghanistan's New War*. IRIN Web Special on the threat of opium to Afghanistan and the region (July 2004), 42. See: <http://www.plusnews.org/webspecials/opium/opium-webspecial.PDF>.

18 *Bitter-Sweet Harvest*,42.

19 *Opium economy in Afghanistan*,88.

20 US Congressional Research Service (CRS), *Afghanistan: Narcotics and US Policy* (December 2004),2.

February 15, 1989) and the civil war that followed suit, opium poppy cultivation expanded.²¹

Opium poppy was one of the few crops capable of generating substantial revenue after the formal agricultural economy was almost entirely destroyed by the war. The Soviet regime quickly started exporting opium and heroin from Afghanistan.²² Moreover, opium production and trade was stimulated by the anti-Soviet *mujahideen* and the Pakistani Directorate of Inter-Services Intelligence (ISI) in order to obtain credit and financing for the expensive war effort to topple the Communist regime. Quickly after the Soviet invasion, opium had become the central pillar of Afghanistan's war economy. Many regional commanders in Afghanistan used illegal opium income to purchase weapons.

With the retreat of the Soviet army in 1989, opium production did not disappear, but continued to provide a major source of income for different Afghan factions in the ensuing civil war. In fact, the end of the war between the Soviet Union and the *mujahideen* forces caused an enormous decline in US and Soviet investment in Afghanistan, which increased the importance of opium and the dependence on opium poppy in war-torn Afghanistan. While the annual growth rate for opium production was 14% during the Soviet occupation, it increased substantially to 19% between 1989 and 1994.²³ Different *mujahideen* groups became huge producers of opium and fought each other for the control of the major opium fields in areas such as the Helmand Valley in southern Afghanistan.²⁴ Almost two decades of conflict had caused a phenomenon that mostly started as a *drugs-for-arms* trade to become a formal economic system.

The rise of the Taliban began in 1994. From 1996 onwards, this reformist Islamic movement (mostly Pashtuns) already controlled about 90% of Afghanistan. They were involved in a military conflict with a coalition of ethnic minorities in the northern part of the country. The centralization process that followed the rise of the Taliban regime

21 Afghanistan: Narcotics and US Policy,7.

22 Jeffrey Steinberg, "The Golden Crescent Heroin Connection", Executive Intelligence Review (October 1995).

23 UNODC, The Opium Economy in Afghanistan. An International Problem (New York 2003),5.

24 The Golden Crescent Heroin Connection.

ended the absence of state authority in Afghanistan and partially restructured the economy. However, it did not end Afghanistan's dependence on opium. On the contrary, between 1996 and 1999, opium poppy cultivation doubled.²⁵ In fact, the year 1999 saw the all-time record opium production of 4,600 metric tons.²⁶

This enormous surge in production led to international concern, mainly stemming from countries that were faced with increasing addiction rates because of the increased supply of Afghan illegal drugs flooding the international markets. In pursuit of diplomatic recognition and international support, Taliban supreme leader Mullah Muhammad Omar pronounced a ban on opium poppy cultivation in Afghanistan on July, 28, 2000.²⁷ A religious edict was added to this ban, which made opium cultivation (but not opium trafficking) contrary to the tenets of Islamic law (*haram*). Most of those rural households that had been involved in its cultivation before the ban had made *salaam* contracts for the 2001 opium harvest. The Taliban did not, however, see fit to cancel these contracts, which meant that these peasants were unable to pay their debts. The Taliban's ban was strictly enforced and poppy cultivation almost completely disappeared from Afghanistan. In 2001, opium cultivation reached a record low of 185 metric tons (cultivated on a mere 7,600 hectares).²⁸ However, prices rose, and this prompted a massive return of opium cultivation in 2002. Moreover, the ban made surplus opium stocks very profitable and the Taliban continued to profit from the opium trade. On 2 September 2001, Mullah Omar announced that the ban would remain effective during a second year. However, the terrorist attacks of 11 September 2001 on the United States entailed that the impact of this second consecutive year of enforcing the opium ban would never be known.

Taliban-held territories were invaded on October 7, 2001 by the Northern Alliance and the US-led international coalition.²⁹ Within approximately two months, this international coalition had defeated all substantial forces of the Taliban in Afghanistan, leaving only

25 UNODC, *The Opium Economy in Afghanistan. An International Problem* (New York 2003),5.

26 UNODC, *Afghanistan Opium Survey 2002* (Vienna 2002),4.

27 "After the Taliban. New figures show Afghanistan's opium output is rising fast", *The Economist* (18 November 2004).

28 UN, Press release SOC/NAR/880: Area under opium poppy cultivation in Afghanistan increased by 8%, UN says (29 October 2003).

29 The Northern Alliance is a multi-ethnic group primarily comprised of three non-Pashtun ethnic groups: Tajiks, Uzbeks and the Hazaras. "Who are the Northern Alliance?", *BBC News* (13 November 2001).

small pockets of resistance. The power vacuum that was left after the defeat of the Taliban in December 2001 allowed farmers to re-plant opium poppy. Moreover, farmers had little choice: since the traffickers could not collect on their loans made before the Taliban ban on cultivation, they monetized the debt at the new high prices, plunging opium growing families into deeper debt.

Sworn in on the 22 December 2001, the Interim Government in Afghanistan, led by Hamid Karzai, was clearly not able to control this resurgence of opium poppy cultivation and poppy production, despite decrees to combat the drug problem in Afghanistan. (Successive decrees were passed on 17 January 2002, 3 April 2002 and August 2002 concerning a ban on opium cultivation, production, processing and trafficking.)³⁰ The strategy of continuing where the Taliban left off did not work. The ban under the Taliban regime had driven farmers further into poverty and debt. Moreover, opium prices were booming as a direct result of the ban. This proved to be a strong incentive for farmers to enter or re-enter the opium economy, especially because sustainable economic alternatives were – if at all – only gradually becoming available.

Since the end of 2001, efforts to curb opium poppy cultivation have had very limited results. According to UNODC, potential opium production has increased from 3,400 metric tons in 2002, 3,600 metric tons in 2003 to 4,200 metric tons in 2004.³¹ This year, the total potential opium production in Afghanistan is estimated to amount to around 4,100 metric tons, a decrease of only 2% compared to last year's harvest.³²

30 Afghanistan: Narcotics and US Policy, 24.

31 Opium Survey 2004, 4.

32 UNODC, The Opium Situation in Afghanistan (29 August 2005). http://www.unodc.org/pdf/afghanistan_2005/opium-afghanistan_2005-08-26.pdf.

3 The tradition and culture of opium poppy cultivation in Afghanistan

It is said that opium has flourished in the country's southern desert region and in Northern provinces like Badakshan since the time of Alexander the Great (4th Century B.C.) when it was used as a medicine.³³ Its hardy nature is well suited to conditions in Afghanistan with its arid valleys, rugged terrain and unreliable natural irrigation.

Until the late 20th century, cultivation was largely situated in the provinces of Badakshan, Herat and Nangarhar. Production was modest and directed towards the national market.³⁴ International concerns about local consumption in Afghanistan led to the prohibition of opium cultivation in 1945.³⁵

Quite apart from its illegal trade, poppy cultivation continues to play a strong traditional role in Afghan, culture and society. Given the lack of medical care in Afghanistan, in some regions, many people – especially women and children – smoke or eat opium as a self-prescribed medicine within their families.³⁶ Traditional uses among minority groups such as the Tajik Ismailis and the Turkmens have many bases, from providing stamina to enhancing physical strength.³⁷ It also serves as a medicine for over 50 diseases. Especially in remote areas in Afghanistan, the population is often forced to smoke or eat opium as a medicine because of the lack of suitable alternatives. Opium is, for example, used as a pain killer to counter respiratory problems or for cough relief and to treat diarrhoea.³⁸ It is blown into the mouths of children or rubbed on the lips or other body parts to provide the medicinal effect.³⁹

In some provinces like Badakshan, opium poppy by-products have multiple uses: poppy seed oil is used for cooking and the dried stalks of the poppy plant as firewood and

33 Luke Harding, "Taliban to lift ban on farmers growing opium if US attacks", *The Guardian* (25 September 2001).

34 Francisco Thoumi, untitled, paper presented at the Paris International Symposium on Global Drug Policy: local Innovations and International Challenges, organized by The Senlis Council (26 November 2004),3.

35 Opium economy in Afghanistan,,88.

36 Bitter-Sweet Harvest: Afghanistan's New War: Chapter: Women and addiction.

37 Ibid.

38 Ibid.

39 UNDCP, Afghanistan. Strategic Study #6. The Role of Women in Opium Poppy Cultivation in Afghanistan (Islamabad 2000),2.

animal fodder (known in some regions as *konjara*). In general, opium poppy seeds are often used in cooking (especially for baking purposes), as a moisturizing oil and in making soaps, paints and varnishes. Finally, *Poppy straw*, a term that normally includes all dried and cut parts but the seeds of the poppy plant, is used as a winter fuel in Afghanistan.

Opium poppy cultivation plays an important social role in many Afghan families. The labour-intensive nature of opium harvesting and production requires the input of entire households.⁴⁰ Commonly, children will work in the fields, whereas women will be involved in numerous stages of poppy cultivation: planting, weeding, thinning, lancing the capsules, cleaning the seeds and processing by-products such as oil and soap.⁴¹

Opium is also central to Afghan society as a source of credit. The widespread system of *salaam* provides advance payments on opium to most opium farmers in Afghanistan.⁴² Opium is also a source of savings and investment: it is a non-perishable, low-weight, high-value product and has a relatively stable value over time.⁴³ Therefore, it can be stored until prices go up or it can be purchased and resold to obtain cash loans under a system known in some regions as *anawat*.⁴⁴

The clear downside of the credit system based on opium is that farmers often face rapidly escalating debts, especially in those cases where droughts or eradication destroy an opium poppy crop or harvest.⁴⁵ In such cases, the farmer's asset base is depleted and he is forced to take on more debt and become ever more dependent on the opium crop.⁴⁶

40 UNDCP, Afghanistan. Strategic Study #6. The Role of Women in Opium Poppy Cultivation in Afghanistan (Islamabad 2000),2.

41 Ibid,3.

42 UNDCP, Afghanistan. Strategic Study #3. The Role of Opium as a Source of Informal Credit (Islamabad 1999),3.

43 David Mansfield, Alternative Development in Afghanistan: The Failure of Quid Pro Quo. Paper presented at the International Conference on The Role of Alternative Development in Drug Control and Development Co-operation. Feldafing/Munich, Germany (August 2001),1.

44 Ibid,3, 4.

45 Karri A.Goeldner, "Roles and Opportunities for Rural Credit Initiatives in Afghanistan's Opium Economy", Workshop paper: Rural Finance in Afghanistan. The Challenge of the Opium Economy (8 December 2004),3.

46 Ibid.

4 Technology and know-how available in Afghanistan to opium farmers and opium and heroin producers

Given the short duration of the opium poppy harvest, landowners usually identify skilled itinerant harvesters. Having the relevant experience is crucial in order to be recruited, and most harvesters learn how to lance and collect opium from relatives or friends. In some cases, only harvesters that have worked on the owner's land are recruited. Harvesters normally are between 10 to 55 years old and often work in groups. Due to uncertainty about the exact timing of the opium poppy harvest resulting from the varieties of the opium cultivated and different climatic conditions, the timing of the harvest may differ from one region to another and from one year to the next.⁴⁷ Thus, itinerant harvesters have an important role to play in the harvest season.

The most common technique used to prepare the poppy fields for planting is the “*slash-and-burn*” technique. This implies cutting down any trees and clearing and burning any vegetation in the plantation area. After that, farmers and labourers manually spread opium seed over the fields. The crop area has to be weeded constantly throughout the growing season. Once sprouting has taken place, identification of mature opium poppy capsules and lancing can commence.⁴⁸ In this process, timing is crucial, as lancing opium capsules prior to full maturation is thought to have a significantly adverse effect the final yield. Therefore, in order to identify mature opium bulbs, each capsule is tested by the harvester by squeezing them between thumb and forefinger prior to lancing. The depth of the incision is also believed to considerably affect the final yield.⁴⁹ If the incision is too deep, the skin of the capsule will be cut and the latex will oxidise in the capsule; if the incision is too shallow, the flow of the gum will be blocked.

47 UNODC, Afghanistan. Strategic Study #4. Access to Labour: The Role of Opium in the Livelihood Strategies of Itinerant Harvesters Working in Helmand Province (Islamabad 1999), 13, 14.

This report shows that, for instance, that the harvest in Nawzad was reported to begin ten days earlier in 1999 than it had in the previous year due to particularly warm weather.

48 UNODC, Afghanistan. Strategic Study #1. An analysis of the Process of Expansion of Opium Poppy Cultivation to New Districts in Afghanistan (Islamabad 1998), 8, 9.

49 Afghanistan. Strategic Study #4. Access to Labour, 15.

The membrane of the bulb toughens as it matures over the period of the harvest. Farmers must make six or seven deeper incisions into the poppy bulb in order to extract all the opium. Three different lancing instruments, known as *neshtars*, each with blades of different length, are used by the experienced harvesters.⁵⁰ Opium gum exudes from the bulb through these cuts. The next day, the farmer scrapes the gum off the capsules with a flat tool called a scraper. Each bulb is usually scored in this manner between three and five times, or until scoring produces no more opium. Once the gum is collected, the farmer sets it out to dry for several days, and then wraps it in leaves or plastic. The gum is stored until a trader comes to the village or brought at a later stage to an opium bazaar—opium gum has a very long shelf life and can gain value over time. The hundreds of seeds remaining in each capsule are processed by farmers for oil and only a fraction of the seeds from each harvest is needed for subsequent harvests. The remaining seeds are normally crushed into edible oil. Evidence shows that from 10 kg of seed, 5 kg of rich oil can be processed, which is either sold or used for household consumption.⁵¹

Once the opium enters the illegal market, a merchant or broker buys the opium for transport to a morphine “refinery”. If possible, most traffickers carry out refining close to the poppy fields, since compact morphine bricks are much easier to smuggle than bundles of pungent, jelly-like opium.⁵² At the refinery, which may be little more than a small house with some equipment, the opium is mixed with lime in boiling water. Boiling water is used to dissolve opium gum. 55-gallon drums are used for boiling vessels and burlap sacks are used to filter and strain liquids.⁵³ A white band of morphine forms on the surface, while organic waste sinks to the bottom. The morphine is collected, reheated with ammonia, filtered and boiled again until it is reduced to a brown paste. This paste is poured into moulds and dried in the sun, after which it becomes morphine base.

50 Ibid.

51 Bitter-Sweet Harvest: Afghanistan's New War. IRIN Web Special on the threat of opium to Afghanistan and the region. See: <http://www.irinnews.org/webspecials/Opium/poppro.asp>.

52 Alfred Mc Coy, *The politics of Heroin: CIA complicity in the Global Drug Trade* (Brooklyn 2003).

53 Ibid.

The process of making heroin out of morphine involves boiling morphine and a common chemical, acetic anhydride, for some hours, along with sodium carbonate, activated charcoal, chloroform, ethyl alcohol, ether, and acetone. The two most commonly produced heroin varieties are called “No. 3 heroin” or smoking heroin, and “No. 4 heroin” or injectable heroin.

5 Territorial governance: the relationship between farmers and local, regional and central government

According to the Afghan Ministry of Rural Rehabilitation & Development (MRRD), three key elements are required for the promotion of good local governance:⁵⁴

- The establishment of a framework for village level consultative decision-making and representing local leadership;
- Developing local capacity of identifying and prioritising development needs at the local level;
- Promotion of sub-national governance capacities at district and provincial level.

The Ministry for Counter-Narcotic’s 2005 *Counter Narcotics Implementation Plan* is formulated to be consistent with these three elements and has designed a building-institution structure in order to accelerate territorial governance.⁵⁵ Accordingly, the government intends to establish “District Development Councils” and “Provincial Development *Shuras*”.⁵⁶ These entities will be responsible for identifying district and provincial development priorities. They should produce recommendations of priorities for so-called Provincial and District Development Plans. The Development Councils and *Shuras* will also have to ensure compliance with the ban on opium cultivation.

54 Islamic Republic of Afghanistan, Ministry of Rural Rehabilitation & Development, Equitable Growth through poverty reduction, making the poor and asset rather than a liability to economic growth, PowerPoint Presentation, 2005.

55 Islamic Republic of Afghanistan, 1384 (2005) Counter Narcotics Implementation Plan. See the website of the Canadian Embassy in Afghanistan: http://www.afghanistanembassy.ca/en/counter_narcotics/index.php.

56 Counter Narcotics Implementation Plan. Chapter on “Provincial structures”.

Alongside these entities, Provincial Development Committees (PDCs) will have to act as final decision-making bodies when it comes to development projects in the province. These Committees will be chaired by the local governor, and will also include the relevant Ministries, such as Agriculture, Counter Narcotics, and Rural Rehabilitation and Development. Moreover, UN agencies, international partners, NGOs and the Provincial Reconstruction Teams (PRTs) will have a position on the PDCs. They will have to formulate the Provincial Development Plans by providing technical assistance to the Provincial *Shura* and Ministries involved.

In Pashtun communities, decision-making lies with the *jirga*, a permanent council of respected and powerful elders.⁵⁷ In non-Pashtun communities, the *shura* is the name given to this council. The power of *shuras* and *jirgas* is inversely related to the relative power of central government. At the village level, Afghans' primary allegiance lies with their local community and the authority of the local council.⁵⁸ This reinforces local tribal and ethnic loyalties. The *jirgas* and *shuras* also sometimes play an important role in the agricultural economy, supplying agricultural inputs such as seed and fertilizer, as well as providing a point of interface with development agencies.⁵⁹

Despite these provincial structures and traditional community decision-making mechanisms, territorial governance in Afghanistan is seriously influenced by warlords' activities. In some regions, local and regional leaders hold enormous power, maintain private armies forming a major impediment to effective law enforcement. In north-eastern Afghanistan, for example, warlords are particularly powerful. In provinces such as Badakhshan, local warlords are said to be stronger and better equipped than the police.⁶⁰ They are often blamed for human right violations, land-grabbing from farmers and undermining local government.⁶¹ There are often armed clashes between different

57 Peter Coleridge, Development, Cultural Values and Disability: The Example of Afghanistan (March 1998). See http://www.eenet.org.uk/key_issues/cultural/coleridge1c.shtml.

58 Ibid.

59 Karri A. Goeldner, Rural Finance in Afghanistan,9.

60 IRIN News, Afghanistan: focus on warlordism in northeast (1 June 2005).

<http://www.irinnews.org/report.asp?ReportID=47424&SelectRegion=Asia>.

61 IRIN News, Afghanistan: Trial of strength as governors take on warlords (23 December 2004).

http://www.irinnews.org/report.asp?ReportID=44802&SelectRegion=Central_Asia&SelectCountry=AFGHANISTAN.

groups over territorial disputes, border crossings and transportation routes for illegal drugs.⁶²

Warlords can therefore be seen to wield considerable power over farmers and land ownership.⁶³ In some regions, rural households have closer ties with warlords than they do with local or provincial institutions or government officials. As such, warlords may represent an additional *de facto* layer of local administration. Indeed, warlords may well collect taxes on farmers' profits, and supply them with weapons and vehicles.⁶⁴ The influence of warlords thus poses a serious structural impediment to effective relations between farmers and the Afghan government. The problems are compounded when it is considered that in many rural areas, a government presence is often entirely absent.

The Afghan central and local authorities are faced with a serious dilemma: on the one hand, the government is trying to get rid of illegal poppy cultivation and decrease Afghanistan's dependence on the illegal opium industry. On the other hand, many farmers, field labourers and their families are fully dependent on illegal opium production for their daily income.⁶⁵ 356,000 families were said to be involved in opium poppy cultivation in 2004.⁶⁶ In Afghanistan, this dilemma has already led to serious social protest when government police forces were trying to eradicate fields of opium poppy. One of the first incidents took place in the leading poppy cultivating province of Kandahar. Opium farmers were of the opinion that forced destruction of opium poppy crops had taken place without any accompanying alternative livelihoods policy.⁶⁷

Relationships between farmers and the Afghan government are further complicated by the nascent law enforcement capacity of the government and the shortage of critical infrastructure in the countryside. With the new Constitution, the establishment of a new

62 Ibid.

63 Bitter-Sweet Harvest: Afghanistan's New War. IRIN Web Special on the threat of opium to Afghanistan and the region See: <http://www.irinnews.org/webspecials/Opium/poppro.asp>.

64 Jason Manning, "Combating Poppy Production", Online NewsHour (August 2003). <http://www.pbs.org/newshour/bb/asia/afghanistan/aug03/drugs.html>.

65 World Bank, Afghanistan. Poverty, Vulnerability and Social Protection: An Initial Assessment (Washington 2005),12.

66 Afghanistan Opium Survey 2004,5.

67 IRIN News, Afghanistan: Protest against opium eradication (14 April 2005).

<http://www.irinnews.org/report.asp?ReportID=46645&SelectRegion=Asia&SelectCountry=AFGHANISTAN>.

government and the canalization of resources coming from the International Community, Afghanistan is trying to structure farmer-government relations through local institution building and the initiation of development programmes. The Ministry of Rural Reconstruction and Development plays a leading role in this process of making the present situation of farmers less difficult.

Recent efforts carried out by the government in order to strengthen the power of local authorities by ensuring national security and control over the Afghan territories are now resulting in confrontations between warlords and local authorities, for example in Faryab (north-west Afghanistan).⁶⁸ Ensuring security in the isolated provinces and solving the problem of illegitimate power of local commanders will be key issues in the immediate future of Afghanistan. Doing so will give local government effective power and the opportunity to work more effectively with farmers on rural development and alternative livelihood programmes.

In this context, a system of licensed opium production can play an important role. At the local level, such a system would bring together local government, farmers and other wage labourers to work jointly on a project strengthening the local legal economy. In so doing, it would facilitate local governmental control over legal economic activities, strengthen local government institutions, and thus provide significant leverage for the successful implementation of other alternative livelihood programmes and rural rehabilitation projects. At a more macro-level, this could go a long way towards improving stability and security within the major opium-growing provinces.

68 IRIN News, Afghanistan: Trial of strength as governors take on warlords (23 December 2004).
http://www.irinnews.org/report.asp?ReportID=44802&SelectRegion=Central_Asia&SelectCountry=AFGHANISTAN.

5.1 Main provinces of cultivation and production: Recent trends and shifts

Opium cultivation in Afghanistan has increased significantly in recent years. In 2004, 67% of the global opium poppy cultivation took place in Afghanistan. The area under cultivation increased from about 80,000 hectares in 2003 to 131,000 hectares in 2004 (see the table below). The 64% increase recorded that year is in line with the assessment of farmers' intentions made at the beginning of the planting season.⁶⁹ However, unfavourable weather conditions (insufficient rain and cold temperatures) and disease kept potential opium production in Afghanistan at around 4,200 metric tons, representing an increase of only 17% compared to 2003.⁷⁰ The overall increase in area under cultivation was due to new farmers shifting to opium poppy cultivation and to farmers dedicating a larger piece of land to opium poppy growing.⁷¹ Compared to 2004, the year 2005 reveals a modest decrease in potential opium production from 4,200 to 4,100 metric tons (2%) and a fall in total cultivation from 131,000 to 104,000 hectares (21%).⁷²

In terms of cultivation within Afghanistan, opium poppy is now cultivated in all 34 provinces of the country.⁷³ Cultivation has increased from 18 provinces in 1999, 23 in 2000, 24 in 2002 and 28 provinces in 2003.⁷⁴ However, the bulk of opium poppy cultivation is relatively concentrated; in 2004 just three provinces accounting for 73,000 ha, or 56% of the total area under cultivation: Helmand (29,400 ha), Nangarhar (28,200 ha) and Badakhshan (15,600 ha). If one adds the next three provinces of Uruzgan, Ghor and Kandahar, 72% of the total cultivation of opium poppy took place in six provinces and 28% in the remaining 26 provinces.⁷⁵ In 2005, the provinces of Helmand, Kandahar, Balkh, Farah and Badakhshan together accounted for 65% of total poppy

69 UNODC, Farmers' Intentions Survey 2003/2004 (Vienna 2004) and UNODC, Afghanistan Opium Survey 2004 (Vienna 2004).
http://www.unodc.org/pdf/afg/afghanistan_opium_survey_2004.pdf.

70 UNODC, World Drug Report 2005 (Vienna 2005),39.

71 UNODC, Afghanistan Opium Survey 2004 (Vienna 2004),5.

72 UNODC, The Opium Situation in Afghanistan (29 August 2005),2, 3.

73 UNODC, World Drug Report 2005 (Vienna 2005),39. http://www.unodc.org/pdf/WDR_2005/volume_1_chap1_opium.pdf.

74 UNODC, Afghanistan Opium Survey 2004 (Vienna 2004),3.

75 Ibid,24.

cultivation in Afghanistan.⁷⁶ Poppy cultivation in the provinces of Uruzgan, Ghor and Nangarhar has decreased significantly, by 58.4, 46 and 96% respectively.⁷⁷

In 2004, 92% of cultivation took place on fertile irrigated land. The expansion of opium poppy cultivation came at the expense of cereal cultivation, notably of wheat, which declined significantly in 2004. Opium poppy cultivation continues, nevertheless, to cover a relatively modest share of the national agricultural land (3% in 2004, up from 1.6% in 2003). By comparison, wheat covered 39% of all agricultural land in 2004. Opium poppy's share can, however, reach much higher levels in some of the provinces such as 29% in Nangarhar, 28% in Badakhshan and 24% in Kunar.⁷⁸

Opium prices are inversely proportional to supply trends in Afghanistan. They are generally declining with increasing supplies. The average price for fresh opium at the time of harvest, weighted by regional opium production, amounted to US\$92 per kilogram in 2004, a 69% decline on the previous year's price. However, prices for fresh opium at the farm-gate are still two to three times higher than in the second half of the 1990s.⁷⁹

The opium poppy harvest typically begins in the southern parts of Helmand in the districts of Marja, Nahr-e-Saraj and Nad-e-Ali.⁸⁰ In 2004, the main harvest in the eastern and south-western regions of Afghanistan started early April compared to mid-April in 2003.⁸¹ Around one month later, opium is harvested in the northern regions. Finally, harvesting season reaches the higher altitude areas of the central and north-eastern regions.⁸²

76 UNODC, The Opium Situation in Afghanistan (29 August 2005). Statistical Annex, I.

77 Ibid, 4.

78 UNODC, Afghanistan Opium Survey 2004 (Vienna 2004), 4.

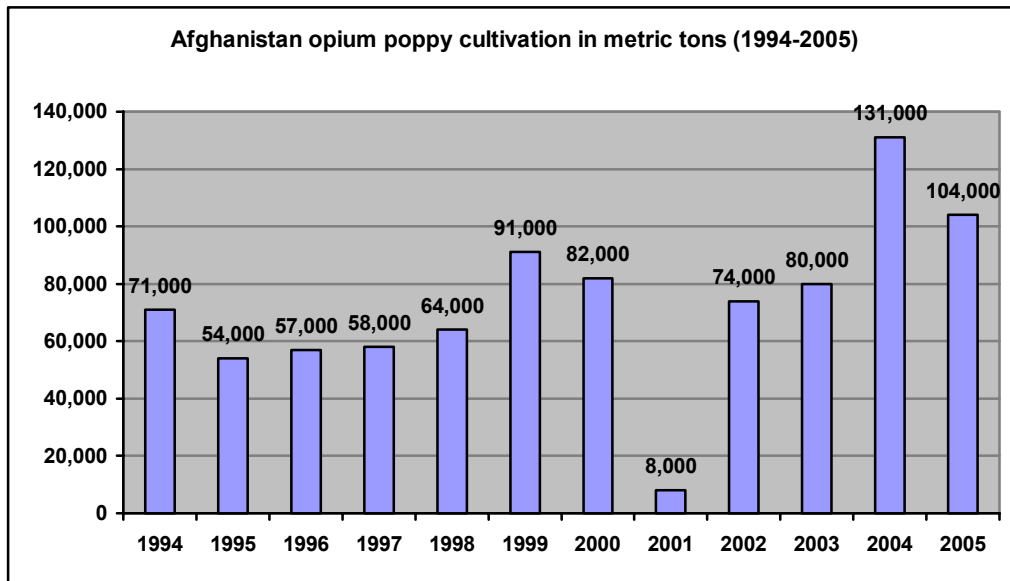
79 UNODC, World Drug Report 2005 (Vienna 2005), 40.

80 Strategic Study #4 "Access to Labour: The Role of Opium in the Livelihood Strategies of Itinerant Harvesters Working in Helmand Province, Afghanistan".

http://www.unodc.org/pakistan/en/report_1999-06-30_1_page006.html

81 UNODC, Afghanistan Opium Survey (Vienna 2004), 51.

82 Ibid.



Source: Adapted from UNODC, *The Opium Situation in Afghanistan* (29 August 2005).
Statistical Annex, p. 1.

The UNODC Afghanistan Rapid Assessment Survey (RAS survey) of 2005 showed a falling trend in opium poppy cultivation in the majority of Afghanistan's 34 provinces, with many farmers having refrained from planting.⁸³ The survey showed that the two main reasons reported by villagers for the expected reduction in cultivation were respect for the Government's ban on opium poppy cultivation, and fear of eradication. The survey also showed that the low yields of opium poppy in 2004, as well as the increased wheat prices in 2005 influenced many farmers' decision to not plant poppy.

The RAS survey also compared expected provincial cultivation trends in 2005 and opium poppy cultivation levels in the same provinces in 2004. This showed a decline of cultivation in three out of four provinces with the highest opium poppy cultivation levels in 2004. In Helmand, Nangarhar and Uruzgan provinces, which jointly accounted for 52% of the total area under opium poppy cultivation in Afghanistan in 2004, an

83 UNODC, *Afghanistan Opium Rapid Assessment Survey* (Vienna 2005).

expected decrease in cultivation was reported.⁸⁴ The 2005 UNODC figures confirm this decrease of 10% (Helmand), 58.4% (Uruzgan) and 96% (Nangarhar).

Only a few provinces were expected to show an increase of opium poppy cultivation in 2005: Kandahar (southern Afghanistan), Farah (south-west), Baghlan (north-east), Sari Pul (north) and Badghis (north-west).⁸⁵ According to the RAS survey, farmers in these provinces “were aware of the Government’s ban on opium poppy cultivation and the planned eradication campaign, but did not believe these would be enforced.”⁸⁶ However, these provinces only accounted for ten% of the total area under opium poppy cultivation in 2004. In 2005, three of the main opium-growing provinces showed increased cultivation: Kandahar (162%), Balkh (334%) and Farah (348%).⁸⁷ Three of the other main opium-growing provinces, however, showed decreases in opium poppy cultivation: Helmand (ten%), Badakshan (53%) and Nangarhar (96%).⁸⁸

Main opium poppy cultivation provinces in Afghanistan in 2005 (hectares)

Province	2003	2004	2005	Change 2004-2005	% Total in 2005	Cumulative %
Helmand	15,371	29,353	26,500	-10%	25%	25%
Kandahar	3,055	4,959	12,989	162%	12%	38%
Balkh	1,108	2,495	10,837	334%	10%	48%
Farah	1,700	2,288	10,240	348%	10%	58%
Badakshan	12,756	15,607	7,370	-53%	7%	65%
Rest of Country	46,010	76,298	36,064	-53%	35%	100%
Rounded Total	80,000	131,000	104,000	-21%		

Source: Adapted from UNODC, *The Opium Situation in Afghanistan (29 August 2005)*.
Statistical Annex, p. 1.

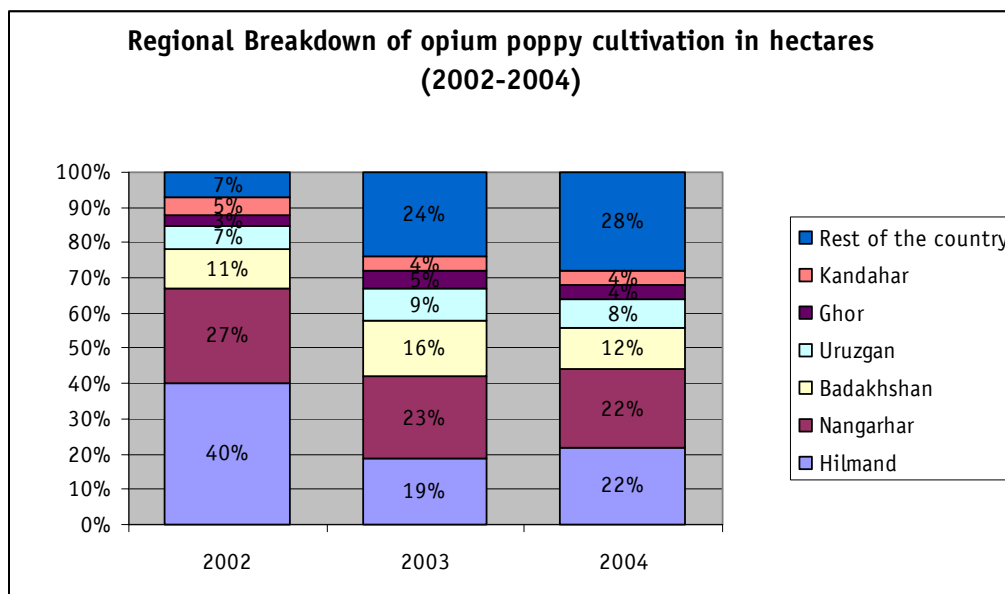
84 Ibid.,6.

85 Ibid.,6.

86 Ibid.,6.

87 UNODC, *The Opium Situation in Afghanistan (29 August 2005)*. Statistical Annex,1.

88 Ibid.,1, 4.



Source: UNODC Afghanistan Opium Survey 2004

5.2 Different varieties of opium poppy

A wide variety of opium poppy types are cultivated in Afghanistan. These varieties appear to differ on the basis of resistance to disease, drought and temperatures, as well as factors that influence the labour requirements for harvesting, including maturation rates, the size and number of capsules and the viscosity of the opium produced. Unfortunately there is little or no information available on the botanical names or details of the opium poppy varieties presently cultivated in Afghanistan.

A UNODC study conducted in Afghanistan in 1999 noted that the decision to cultivate certain varieties of opium poppy, or to mix varieties of opium poppy, can provide an indication of the different motivations and circumstances that influence household poppy crop cultivation:

“It is possible to see a wide diversity in the varieties of opium poppy cultivated not only within a relatively small area but also on a single household's plot of land. Discussions with farmers and key informants have indicated that each of these different varieties has

different characteristics. The fieldwork for the study revealed that households cultivated different varieties of opium poppy to spread out the demand on both family and hired labour during the harvest period. “⁸⁹

To spread out the need for both hired and family labour, households have been found to cultivate different varieties of opium poppy with different maturation periods and to stagger the planting of opium poppy. Despite these efforts, the majority of opium-producing households still require hired labour during the opium poppy harvest.⁹⁰

Households appear to undertake a process of experimentation, cultivating different varieties of opium poppy over a number of years in an attempt to match household human resources and natural resources with the particular characteristics of the varieties of opium poppy available. Many farmers cultivate poppy varieties known to produce poor quality opium of low monetary value. However, these varieties appear to be less vulnerable to crop failure. This suggests that farmers do not select the variety of opium poppy purely on the basis of the highest returns, but also consider the security of the returns.⁹¹

89 UNODC, Strategic Study #1 “An Analysis of the Process of Expansion of Opium Poppy to New Districts in Afghanistan (Preliminary Report)”, Annex E. (June 1998). http://www.unodc.org/unodc/en/alternative_development_studies_annex.html.

90 UNODC, Strategic Study #4 “Access to Labour: The Role of Opium in the Livelihood Strategies of Itinerant Harvesters Working in Helmand Province, Afghanistan” (June 1999). http://www.unodc.org/unodc/alternative_development_studies_4.html.

91 UNODC, Strategic Study #1 “An Analysis of the Process of Expansion of Opium Poppy to New Districts in Afghanistan (Preliminary Report)”, Annex E. (June 1998). http://www.unodc.org/unodc/en/alternative_development_studies_annex.html.

5.3 Impact of eradication programmes on illegal poppy cultivation

Chapter 6 of the Afghan 1384 (2005) Counter Narcotics Implementation Plan stipulates that there will be a “*credible, targeted and verified eradication campaign in 1383-84 (2004-2005) led by the new Afghan government*”.⁹² Indeed, the Afghan government and the International Community are committed to eradicating illegal opium poppy in Afghanistan. One can distinguish between two basic forms of eradication: voluntary and forced. After banning opium production in January 2002, the interim government of President Hamid Karzai started in April 2002 with its first eradication campaign. This included a strategy of voluntary eradication as farmers were offered a compensation of US\$ 250 (and later US\$ 300) per *jerib* (0.195 hectare) of destroyed opium poppy.⁹³ The eradication campaign started in the south where most illegal opium poppy is cultivated. However, only small areas of opium cultivation were destroyed in several regions of Afghanistan.

Overall cultivation in terms of the total amount of hectares under cultivation went up from 74,000 in 2002 to 80,000 in 2003. The strategy of compensation was quickly abandoned as it only seemed to stimulate cultivation and attract new farmers into the business. Moreover, only about one tenth of the farmers actually obtained compensation, which impoverished smaller and highly-indebted farmers and seriously harmed the credibility of the programme.⁹⁴ Antonio Maria Costa, Executive Director of UNODC commented on the eradication policy in Afghanistan by saying that eradication of poppy needs to reach a threshold of credibility in order to work.⁹⁵

Eradication continued throughout 2003, 2004 and 2005. UNODC data shows that total production (both in metric tons and in total amount of hectares under cultivation) increased substantially from 2003 to 2004 and started to decrease from 2004 to 2005.⁹⁶

92 Islamic Republic of Afghanistan, 1384 (2005) Counter Narcotics Implementation Plan. See the website of the Canadian Embassy in Afghanistan: http://www.afghanistanembassy.ca/en/counter_narcotics/index.php.

93 Charles J. Hanley, “UN cites failure to uproot opium”, *Boston Globe* (19 August 2002).

94 World Bank, *Afghanistan-State Building, Sustainable Growth, and Reducing Poverty* (Washington 2005),121.

95 IRIN, *Bitter-Sweet Harvest: Afghanistan’s New War. Poppy eradication: The issues, the players and the strategies*. <http://www.irinnews.org/webspecials/Opium/Erappop.asp>.

96 UNODC, *The Opium Situation in Afghanistan* (29 August 2005),2, 3.

In any event, total national production does not seem to have fallen significantly as a result of eradication.⁹⁷ While a 21% decrease of poppy-cultivated land could be witnessed, potential output only decreased from 4,200 metric tons to 4,100 metric tons.⁹⁸ UNODC estimates that about 5,100 hectares may have been eradicated in the spring of 2005, which would represent only about five% of the total 2005 opium cultivation, estimated at around 104,000 hectares.⁹⁹ However, from 2004 to 2005, opium cultivation decreased with a total of 27,000 hectares. With only 5,100 hectares eradicated in 2005, this would indicate that more than 81% of this decrease cannot be attributed to opium poppy eradication. UNODC estimates that 72% of eradication took place in Nangarhar and Helmand, which both showed decreases in opium cultivation (10% and 96% respectively).¹⁰⁰

As a follow up to the “Opium Rapid Assessment Survey” from March 2005, the Government of Afghanistan and the United Nations Office on Drugs and Crime (UNODC) released a report called “*Afghanistan: support to the verification process of opium poppy eradication*” to monitor the 2005 governor-led opium poppy eradication campaign. This latest report confirms that eradication was more applied in the southern provinces than in northern provinces, and that the eradication campaigns in Nangarhar, Laghman, Kunar, central Helmand and southern Uruzgan were effective. In eastern Afghanistan, non-cultivation was more widespread than elsewhere.

There is also evidence to suggest that poppy cultivation is moving to remote and rain-fed farmlands, especially in northern Afghanistan. Although expectations indicate a general downward trend of poppy cultivation this year, increases have already been noted in some provinces including Farah, Kandahar, Sari Pul and Baghlan. ***Moreover, eradication efforts around Afghanistan have been confronted with several clashes between counter-narcotics police and poppy farmers which led in some areas to the***

97 Afghanistan-State Building, Sustainable Growth, and Reducing Poverty,,128.

98 The Opium Situation in Afghanistan,,2, 3.

99 Ibid,3.

100 UNODC, The Opium Situation in Afghanistan (29 August 2005). Statistical Annex,1, 4.

suspension of eradication.¹⁰¹ Opium farmers claim that despite initiating eradication programmes, the Afghan government has not delivered on its promise to provide assistance, compensation and alternative livelihoods to farmers.¹⁰²

At the time of conducting the Rapid Assessment Survey in February 2005, opium poppy could still be planted in many of the Northern provinces. While farmers in the North were preparing their land for poppy cultivation, they were closely following eradication activities in southern Afghanistan to assess the possible risk associated with poppy cultivation.¹⁰³ In December 2004, the Afghan Government announced a countrywide eradication campaign and requested the provincial Governors to implement this programme. Eradication figures as reported by the Governors to the central Government are given in the table of Eradicated Fields below. At the time of the Rapid Assessment Survey, there were very few reports of active eradication. Eradication was reported in only 9% of all surveyed villages, mainly in Helmand and Nangarhar.¹⁰⁴

101 IRIN, Afghanistan: Protest against opium eradication.

<http://www.irinnews.org/report.asp?ReportID=46645&SelectRegion=Asia&SelectCountry=AFGHANISTAN>.

102 Ibid.

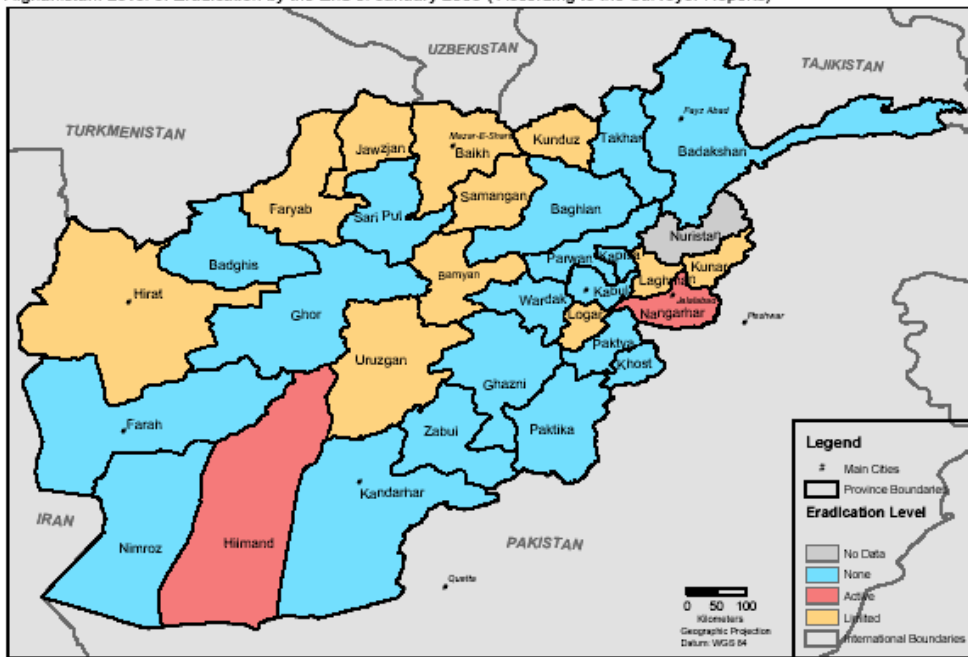
103 UNODC, Rapid Assessment Survey 2005 (Vienna 2005),6.

http://www.unodc.org/pdf/publications/rapid_assessment_afghan_2005.pdf.

104 Ibid,6.

Feasibility Study on Opium Licensing in Afghanistan
for the Production of Morphine and Other Essential Medicines

Afghanistan: Level of Eradication by the End of January 2005 (According to the Surveyor Reports)



Source: UNODC - UNODC Afghanistan Opium Survey 2004 (http://www.unodc.org/unodc/press_monitoring.htm)
Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Source: UNODC Afghanistan Opium Rapid Assessment Survey 2005 p.16.

List of Poppy Eradicated Fields 25/10/2004 – 16/01/2005

No.	Province	Poppy Eradicated (Jereeb)	Other reports eradicated
1	Konoz	386	
2	Laghman	250	80%
3	Nangarhar	250	60-70%
4	Kandahar	131	
5	Ghazni	400	
6	Koner	3604	5,360
7	Helmand	25873	
8	Urozgan	35000	20,000
9	Zabul	118	35,000
10	Samangan	842	
11	Heart	79	
12	Perwan	550	
13	Faryab	9	
14	Loger	5	
15	Jozjan	868	
16	Badakhshan	570	50% No cultivation
17	Balkh	1825	
18	Badghis	794	
19	Sar-e-Pul	3	
20	Farah	39	
21	Baghlan	56	
	Total:	71,682	

Source: Islamic Republic of Afghanistan – Ministry of the Interior, Counter Narcotics Deputy Ministers Office, in UNODC Afghanistan Opium Poppy Rapid Assessment Survey, 2005.

Since 2002, the UK and US government have both put pressure on the Afghan government to eradicate opium poppy as soon as possible. For the year 2005, Washington initially allocated funds for eradication that totalled more than twice the amount allocated for alternative livelihoods (US\$ 313 million compared to US\$ 120 million).¹⁰⁵

The fundamental problem with this strategy is that currently too many Afghan people and families are still dependent on the illegal opium economy. If eradication is undertaken before sustainable alternatives provide cash to farmers, crop eradication will prevent poor farmers from paying off their salaam contracts and mire them further in debt.¹⁰⁶ A certain threshold of general development combined with viable alternative livelihoods and substantial poverty reduction must be reached in order for eradication policies to be effective in the long run.

Eradication by aerial spraying of chemicals, as under the US-inspired “*Plan Colombia*”, is, at least for the time being, not an option in Afghanistan. President Karzai has openly opposed this damaging method of eradicating poppy crops.¹⁰⁷ Moreover, the 1384 (2005) Counter Narcotics Implementation Plan explicitly states that “*the Afghan government has a no aerial eradication policy.*”¹⁰⁸

In Colombia, the eradication campaigns carried out by aerial spraying of chemicals (and by manual eradication) have not led to a substantial reduction of coca cultivation. In 2004, coca cultivation decreased by 6,000 hectares (from 86,000 to 80,000 hectares).¹⁰⁹ To obtain this modest reduction, an astonishing 139,161 hectares were eradicated that year. Moreover, 98% of these hectares were sprayed with chemicals.¹¹⁰ The remainder was manually eradicated by the Colombian Army. This

105 Netherlands Institute of International Relations Clingendael, Afghanistan 2005 and Beyond. Prospects for Improved Stability Reference Document (The Hague 2005),64.

106 Barnett R. Rubin, Road to Ruin: Afghanistan’s Booming Opium Industry (New York 2004),15, 16.

107 Afghanistan 2005 and Beyond. Prospects for Improved Stability Reference Document,64.

108 Islamic Republic of Afghanistan, 1384 (2005) Counter Narcotics Implementation Plan. See the website of the Canadian Embassy in Afghanistan: http://www.afghanistanembassy.ca/en/counter_narcotics/index.php.

109 UNODC, World Drug Report 2005 (Vienna 2005),12.

110 Ibid,62.

raises serious doubts about the effectiveness of the eradication strategy in Colombia and elsewhere.

*Quite apart from the manifest failure to achieve a serious reduction in coca cultivation, aerial spraying in Colombia has had several devastating drawbacks. First of all, chemical spraying of coca crops has serious negative consequences for the environment. The exact impact of herbicide spraying on the environment remains unclear and highly disputed, but it is clear that spraying does not only affect coca crops.¹¹¹ Herbicides are sprayed over nearby food crops, fishing ponds and in national parks where coca is widely grown.¹¹² Poor farmers complain that spraying ruins both their crops and their livelihoods.¹¹³ Moreover, forced eradication by aerial fumigation – especially when legal alternatives are not in place – often creates social unrest, instability and violence.¹¹⁴ ***In a country such as Afghanistan, chemical eradication would undo many of the achievements of the past years in terms of economic and political stability and provoke farmers to turn their backs on the newly established central government.****

Moreover, eradication programmes are very costly, and the results can easily be undone simply by re-planting or shifting cultivation to other areas. Therefore, on the short term, it would make sense to spend the money earmarked for eradication instead on transition programmes such as licensed opium. In the short term, alternative livelihood and job creation, rural rehabilitation and general economic development should be the focus of Afghan drug policy – not eradication programmes.

111 Eduardo Cifuentes, the Colombian ombudsman stated in 2002 that he had received more than 6,500 complaints of aerial spraying planes fumigating food crops, leaving farmers without a livelihood, seriously harming the people's – especially children's – health and causing serious damage to the already sensitive eco-system of the Amazon region. Jeremy McDermott, "Colombia drug spraying 'hits weakest'", BBC News (10 October 2002).

112 Yadira Ferrer, "Colombia: Anti-Drug Herbicide to Be Sprayed Again in Nature Reserve", International Press Service, (20 May 2005).

113 Elinor Shields, "US weighs costs of Plan Colombia", BBC News (5 July 2005).

114 WOLA, *Drugs and Democracy in Latin America: The Impact of US Policy* (Washington 2004). Executive Summary, 12.

5.4 Alternative livelihood strategies

The “alternative livelihoods” concept is an evolution of “alternative development”. Alternative development (AD) was the initial development-based strategy to counter illegal drug cultivation and supply, focusing mainly on crop substitution. It was described by the UN as:

“(a) process to prevent and eliminate the illegal cultivation of plants containing narcotic drugs and psychotropic substances through specifically designed rural development measures in the context of sustained national economic growth and sustainable development efforts in countries taking action against drugs.”¹¹⁵

In Afghanistan, The United Nations Drug Control Programme (UNDCP) started its first alternative development programme in June 1989 which lasted until March 1996 (AD/AFG/89/580: *Afghanistan Drug Control and Rural Rehabilitation project*). It consisted of different projects in many different poppy areas. In March 1997, the second AD programme was launched (AD/AFG/97/C28: *The Poppy Crop Reduction Project*). ***Both programmes had very mixed results. Overall, opium poppy cultivation increased over this period and, moreover, in those areas where it decreased, a direct link with AD projects could often not be established.***

Projects were overly focused on simply substituting crops. They did not take into account the different motivations and factors influencing households in their decision to cultivate opium poppy, and failed to include the poorest farmers.¹¹⁶ Moreover, political dynamics, such as negotiations with the Taliban regime at the end of the 1990s, hindered progress towards the introduction of sustainable alternative crops in Afghanistan.¹¹⁷ In the run-up to 2000, UNODC (then UNDCP) actively negotiated an opium ban with the Taliban government in exchange for international aid and investment. It was reported

115 United Nations. Measures to enhance international cooperation to counter the world drug problem, A/RES/S-20/4 (8 September 1998). Part E.

116 David Mansfield, Alternative Development in Afghanistan: The Failure of Quid Pro Quo. Paper presented at the International Conference on The Role of Alternative Development in Drug Control and Development Cooperation. Feldafing/Munich, Germany (August 2001),8.

117 Afghanistan, Drugs and Terrorism,,10.

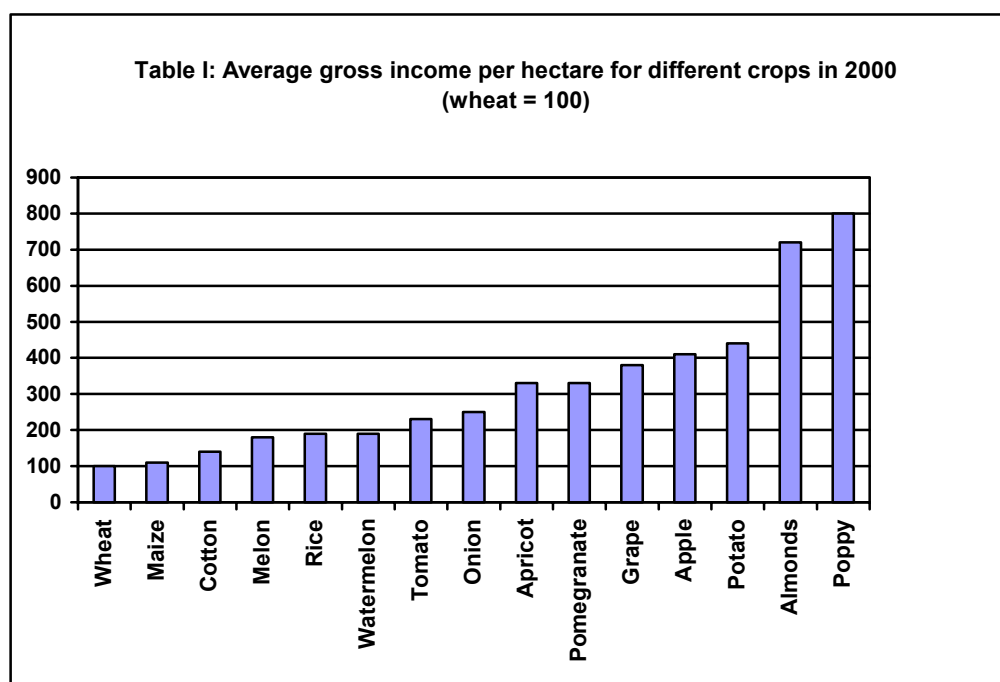
that UNODC promised the Taliban government US\$250 million to support the ban.¹¹⁸
This ban was enacted on 27 July 2000.

Currently, UNODC and many other organizations such as the German association for Technical Cooperation (GTZ), the Dutch development organization Cordaid and the Danish Committee for Aid to Afghan Refugees (DACAAR,) are working on alternative livelihood programmes in Afghanistan. Projects are undertaken to stimulate the cultivation of alternative crops such as saffron, cotton or sugar beet. In many cases, these projects are aimed at reviving industries that have almost completely disappeared through war, conflict and drought. According to the International Center for Agricultural Research in Dry Areas (ICARDA), high-value horticultural crops may possess the best income-raising potential for farmers in the long term.¹¹⁹ ***However, ICARDA states that there are “no quick or easy solutions in sight”.***¹²⁰ Horticultural crops like raisins, pistachios, citrus fruit, figs, dates and almonds are relatively high-value crops, a feature that is very compatible with the small average farm size in Afghanistan of about 2 hectares. Table I below sheds light on the 2000 average gross value per hectare for horticultural and other agricultural crops.

118 Graham Farrell and John Thorne, “Where have all the flowers gone?: evaluation of the Taliban crackdown against opium poppy cultivation in Afghanistan”, *International Journal of Drug Policy* 16 (2005), 85.

119 ICARDA, *Restoring Alternatives to Poppy*. <http://www.icarda.cgiar.org/Afghanistan/Poppy.htm>.

120 *Ibid.*



Source: Adapted from FAO, *Food security through sustainable crop production in Afghanistan*. (DP/AFG/96/004), Field document 1 (2000).

The reach of alternative livelihood strategies extends beyond that envisaged by Alternative Development programmes. Alternative livelihood interventions aim at the development of all aspects of the rural economy, including for example, access to credit and employment in both farm and non-farm activities.¹²¹ In order to be successful, an alternative livelihood programme should provide enough alternative off-farm and non-farm income opportunities for farmers and other labourers. It should contribute to generalised (rural) development and poverty alleviation through the creation of assets, markets and livelihoods.¹²² The provision and introduction of alternative crops alone will almost ensure failure.

121 Barnett R. Rubin, *Road to Ruin: Afghanistan's Booming Opium Industry* (New York 2004),16.

122 World Bank, *Drugs and Development in Afghanistan* (Washington 2004),21.

A system of licensed opium cultivation and production can play an important complementary role to other alternative livelihood projects. Such a system could boost legal forms of employment, stimulate the local economy and help it to reach the threshold of general development needed for different counter narcotics measures to be effective and necessary to move Afghanistan away from its current dependence on the illegal opium economy.

Another key advantage of licensed opium production systems is that as it is not necessary to dismantle existing opium cultivation traditions, capacity and know-how, they avoid the structural deficiencies of other alternative livelihood interventions being proposed and pursued. In a 2004 report, The World Bank described this deficiency in the following terms:

*“Alternative livelihoods approaches are attractive, but as the primary instrument of a drug reduction strategy they suffer from major weaknesses in time scale, cost and effectiveness. Completing such programs would take many years and large resources, without visible reduction of drug production in the interim. Moreover, opium would remain the crop of choice, particularly for resource-rich farmers, and poorer farmers may continue to be bound to the opium economy by debt and their need to access land and credit.”*¹²³

Another drawback to traditional alternative livelihood strategies is the fact that if sufficient alternative off-farm and non-farm opportunities are not created in the short term, farmers and – more importantly – itinerant farm workers and harvesters would move to other areas. This can be considered to be part of the so-called “*balloon effect*”, when cultivation shifts to new areas because of counter narcotics policies or other factors. According to the UNODC, itinerant harvesters in Afghanistan are a major contributory factor in the introduction of opium poppy into new districts in Afghanistan.¹²⁴

123 Ibid,21, 22.

124 UNODC, Afghanistan. Strategic Study #4. Access to Labour: The Role of Opium in the Livelihood Strategies of Itinerant Harvesters Working in Helmand Province, Afghanistan (Islamabad 1999),26.

Conclusion

A system of licensed opium production for the production of essential medicines could circumvent the difficulties with alternative livelihood programmes that have been highlighted in this paper. By utilising existing farmers' expertise, know-how and technology to cultivate poppy for medicine, the establishment of such a system would not take the length of time required in the establishment of an entirely new alternative livelihood intervention.

A detailed investigation of the means by which licensed opium poppy cultivation could provide farmers with access to land and credit, and whether they could be given a guaranteed price for their crop or labour should be undertaken. Such a solution is clearly necessary to enable farmers to escape the current vicious circle of advanced payments, opium cultivation and production, and increasing debt levels resulting from adverse harvests or other factors such as eradication and interdiction. Bringing opium cultivation inside a legal framework also creates clear potential for introducing standard health and safety safeguards and experimenting with new biotechnologies.

Finally, introducing licensed opium production could perhaps counter the 'balloon effect' by providing short-term jobs for farmers and itinerant wage labourers before alternative livelihood programmes and other rural development projects reach maturity. Consequently, farmers and local labourers, especially young people, would not be forced to migrate to urban areas in order to find employment. *Given the current size and importance of the agricultural sector in Afghanistan, a massive migratory flow towards the urban areas of Afghanistan is not desirable; current employment opportunities would not be sufficient to accommodate such newcomers, and the urban centres do not in any way have the ability to absorb such an influx of poor labourers.*

The system of licensed opium production that is being proposed in this Feasibility Study should be considered as a transitional alternative livelihood measure that should not only be considered as part of a long term economic strategy for

Afghanistan, but also as a short-term bridge between counter narcotic interventions and rural economic development. As such, it could help create the conditions to facilitate the successful implementation of more medium- and long-term development strategies currently being proposed and pursued.

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The Opium Economy in Afghanistan: a supply chain and network analysis

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Introduction

The supply chain and network – beginning with the Afghan farmer and ending with the final consumer – will be examined in this paper. Understanding of this will underpin an assessment of how to best enable a transition from illegal to licensed opium cultivation for the production of morphine and other essential medicines.

1 The Afghan supply chain

1.1 Introduction

The opium market in Afghanistan is fragmented, with a large number of farmers and relatively few large wholesalers. A broad depiction of the supply chain is provided in Figure 1. The actors that play a role in the supply chain are: rural wage labourers, farmers (sharecroppers or landowners), shopkeepers, small traders and wholesalers and refiners. Warlords and commanders are in control of many of these actors, but are depicted here as outside the chain, owing to the indirect nature of their influence. Finally, opium will be processed into heroin or morphine and either consumed locally or exported abroad to the final consumer.

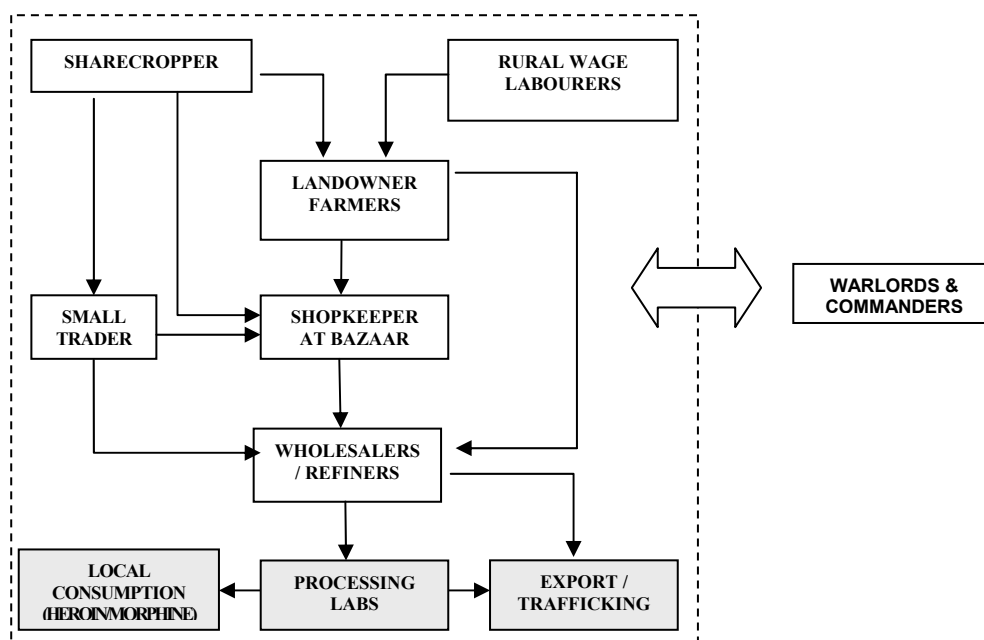


Figure 1 The opium supply chain

Note: opium for local consumption is sold at all levels of the supply chain

1.2 The supply chain actors

Farmers

The studies carried out in this area (World Bank 2004a/2004b, UNODC 1998, DIFD/ICARDA 2004) show that poppy farmers can be grouped into two broad classes: resource rich (or landowner farmers) and resource poor farmers (or sharecroppers). In 2004, the UNODC (2004a) collected data on the number of families cultivating opium poppy in Afghanistan. It was estimated that 356,000 families were involved in opium cultivation, compared with 264,000 in 2003 (an increase of 35%). Given an average of 6 to 7 members per family, 2.3 million persons are involved in poppy cultivation.

- *Resource rich and landowning farmers*

This group has access to landholdings and capital resources. They typically cultivate opium themselves as part of a diversified cropping pattern that also includes food

crops and other cash crops. Many of these farmers will also rent out or sharecrop part of their land and receive part of the poppy crop in return (World Bank 2004a).

- *Resource poor farmers and sharecroppers*

Poor farmers have typically little or no land of their own unless they provide low or unpaid labour through sharecropping arrangements. Given the high profitability of opium, sharecropping arrangements in opium-producing areas normally require opium cultivation. This means that they grow opium and give a share to the landowner. To feed their families, they have to sell their opium at low prices immediately after harvest. For poor farmers, opium poppy cultivation is a means of survival, providing access to land and securing the credit that is so critical for subsistence during the winter months. Many poor farmers are locked into the opium economy, both by debt and by their need to access the means of production. They plant each new crop to offset the advance of the last (World Bank 2004a, DIFD/ICARDA2004).

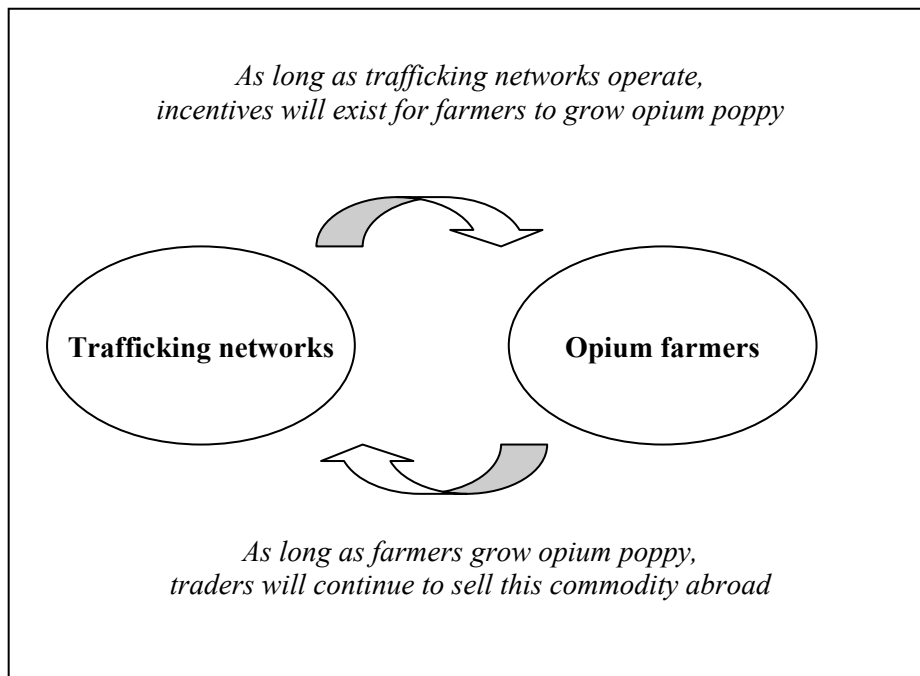


Figure 2 *Linkage between farmers & traffickers*

Rural wage labourers

Opium poppy cultivation is highly labour intensive. The bulk of rural wage labourers, who engage in harvesting poppy, are poor. Although the majority of itinerant labourers have (small) landholdings, these are often insufficient to satisfy their subsistence requirements. Large numbers of itinerant labourers move seasonally, following the poppy harvest in different areas (World Bank 2004a).

Shopkeepers

Shopkeepers, mostly located at ‘opium bazaars’, are responsible for storing the opium and ultimately selling it at the highest possible price. The charge for this service is a commission to both the seller and the final buyer (UNODC 1998).

Small traders

Small traders often trade on a part-time basis and handle small volumes. They buy and sell opium at farm gate and at ‘opium bazaars’ (World Bank 2004a).

Wholesalers and refiners

A small number of large wholesalers dominate the trade in bulk purchases. They often buy opium at the bazaar or employ agents to purchase opium at the farm gate. They are also responsible for organising processing and trafficking to neighbouring countries. (UNODC 1998, World Bank 2004a). Since opium in Afghanistan would be virtually worthless if it could not be sold abroad, large traders are a vital link between domestic production and demand for opiates abroad. This group is often linked by family ties willing to commit substantial capital. The risks are great, as are the rewards (World Bank 2004a).

Warlords and Commanders

Warlords and commanders are often not physically involved in the opium supply chain, but influence the chain with their power. They often receive ‘protection payments’ and in turn employ substantial numbers of militia fighters. In most parts of Afghanistan, the farmers pay money to the local commanders; usually around 10% of their income but as high as 40% in some districts (UNODC 2004a). The processing facilities are often

‘sponsored’ and protected by warlords and commanders. The process of converting opium to morphine and then to heroin is commonly a matter of *bucket chemistry*, where the ‘cooks’ are generally not true chemists but simply follow recipes. These processing facilities may be either fixed or mobile (Iselin 2004). Warlords and commanders have huge economic interest in the illegal processing activities and will therefore defend their processing operations at all costs. Quite apart from equipment ordinarily found in a laboratory, equipment will also consist of sophisticated communications equipment and weaponry (UNODC, 2003). The power of the warlords affects the entire Afghan opium economy. The World Bank (2004a) depiction reproduced in figure 3 below summarizes the vicious circularity that defines the roles of warlords, opium and security.



Figure 3 A vicious circle
Source: World Bank 2004a p11

There are many actors involved in the Afghan opium supply chain. Some have more influence than others but they are all (inter)linked. Any change will have effect on all chain participants and thus the entire Afghan opium economy. In order to succeed, alternatives should take the entire supply chain into account. If not, there is a high risk of failure.

2 The supply chain outside Afghanistan

2.1 Introduction

It is now pertinent to examine the opium supply chain from Afghanistan's borders across to Europe. As shown in figure 4, in 2004 Afghanistan exported about 500mt of morphine and heroin and close to 1000mt of opium (UNODC 2005b). The three main transit countries are Central Asia, Pakistan and Iran. 30% of heroin is shipped via Central Asia, though the bulk is still exported via Pakistan (46%) and Iran (24%) to Turkey (directly or via Iraq) to Western Europe. 92% of the opium exports are trafficked through Iran (UNODC 2004a).

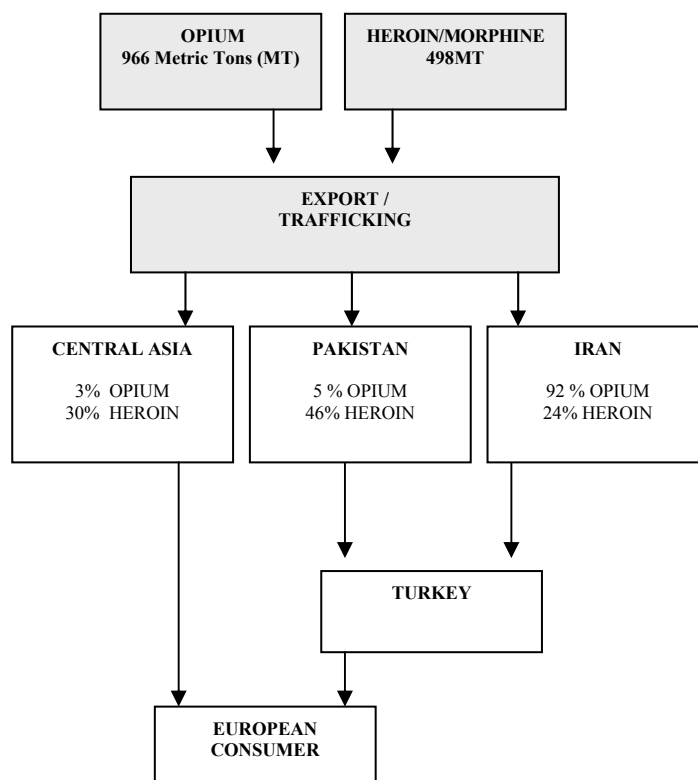


Figure 4 The supply chain outside Afghanistan

Source: Adapted from UNODC 2004a p.110

Note: see appendix 2 for illegal trafficking flow of Afghan opiates

2.2 Trafficking

Heroin trafficking in general is perceived to be less of a risk than opium trafficking, given opium's bulky nature and its distinct odour, which makes detection more likely (UNODC 1998). Global seizures of opiates have increased in 2003, to a record high of 33%, compared to 2002. The main reasons for the increased seizures are the higher rates of opiate production and trafficking as well as improved law enforcement activities, notably in the countries surrounding Afghanistan (UNODC 2005b). Nonetheless, border controls in all Central Asian countries still tend to be weak.

Although Afghan traffickers are heavily involved in shipping opiates across the border, they are not (yet) engaged in the long-distance trade (UNODC 2003). Nevertheless, the choice of exit route is decided by the Afghan trafficker. The main determinants of trafficking routes are the transport infrastructure and geological conditions (Iselin 2004). Furthermore, enforcement efforts, risk of detection, size of shipment, costs, ethnic lines and the speed with which the drugs can get to the next market are also key determinants of exit routes. The UNODC has also reported (2004a) involvement of traders from Pakistan, Iran and of some of the Central Asian countries in shipping opiates out of Afghanistan. They are often of the same ethnic group origin as people living in Afghanistan.

Further on in the supply chain, criminal groups of Turkish or Kurdish origins play a significant role in wholesale shipments of opiates from Turkey to re-distribution centres across Western Europe. While criminal groups of Albanian origins and various other Balkan countries have gained importance, much of the retail trade in Western Europe is in hands of criminal groups of West African origin (UNODC 2005b).

2.3 Transport

In contrast to many other agricultural crops, opium is a non-perishable, easy to store, low-weight and high value crop (UNODC, 2003). Therefore, there are no special transport requirements for opium. For local transport, taxis or buses are often used. Some traders use their own cars or motorbikes, purchased with the income earned from opium trade. The costs cited for transporting opium to the border range from \$1.20 to \$1.80 per kg (UNODC 1998). In general, the following rule applies: the closer the shipment to the production areas, the less sophisticated the method of transport (Iselin, 2004). Within Afghanistan, three main exit routes (appendix 3) can be distinguished: Southern, Western and Northern Route (Iselin 2004, World Bank 2004a, UNODC 2004a).

For the distribution of opium, road transport is the most commonly used means of transport. There are 2,793 kilometres of paved roads and 18,207 kilometres of unpaved roads, for a total road system of 21,000 kilometres (1998 estimate).

2.4 Consumption of illegal opiates

The number of global opiate users is estimated at around 16 million, of which 11 million abuse heroin. In economic terms, Western and Central Europe are the world's most lucrative heroin markets. Of all opiates produced in the Near and Middle East and Southwest Asia sub-region (which includes Afghanistan), more than one-fifth is locally consumed and about half of it is exported to Europe, while the rest goes to other regions in the world (UNODC 2005b). On average, it takes about one year before opium in the form of heroin enters the final destination market. Given the seasonal nature of the production (which results in one crop per year) this makes for an efficiently organised supply chain.

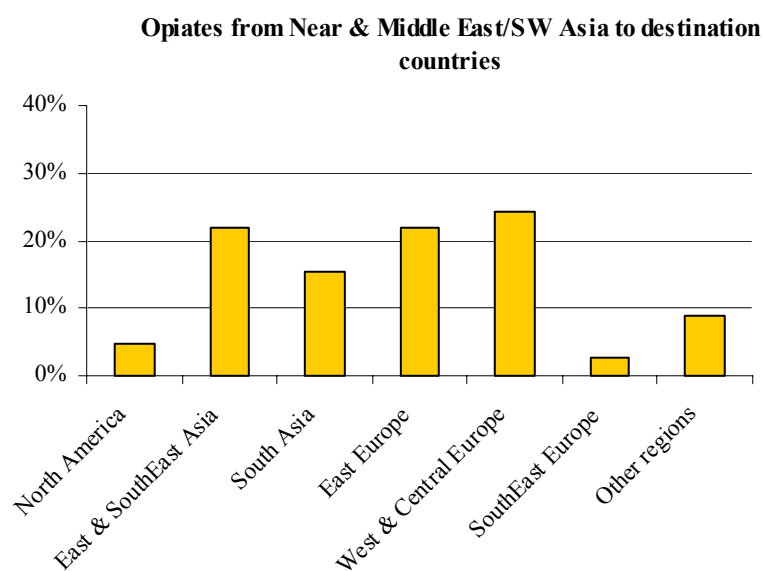


Figure 5 Opiates from Near & Middle East and SW Asia to destination countries
Source: Adapted from UNODC 2005b p133

3 Production, Prices and Income

3.1 Introduction

The Afghan opium trade has the usual characteristics of a competitive market, where entry and exit seem to be relatively easy for both production and trafficking, and the number of participants is high. However, market outcomes are seriously affected by unequal endowments and power relations, and there are ever-worsening inequalities (World Bank 2004a). The functioning of the Afghan opium market influences responses to external changes. This study will now turn to trends in production and prices.

3.2 Production

Global opium production has grown substantially over the last two decades with the clear exception in 2001 following the Taliban enforced ban on poppy cultivation. At that time, global opium production decreased dramatically to 1,600 metric tonnes. As figure 6 shows, the opium production ban in Afghanistan only had limited

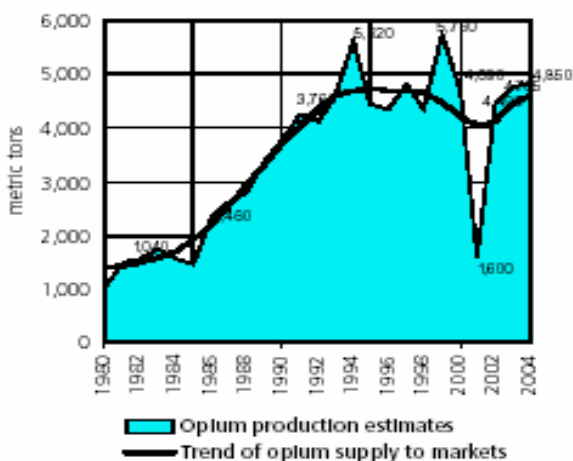


Figure 6 Global potential opium production

Source: UNODC 2005b p.34

consequences for the global supply of opiates, probably because of the large stocks built up in the late 1990s (UNODC 2005b). However, the implemented ban on opium production could only be successfully retained for one year.

Two main reasons for this were:

- 1) Unavailability of real alternatives for farmers.
- 2) Severe drought and thus very poor yields for other crops.

This combination caused many farmers to resume cultivating poppy (UNODC 2004a).

In 2004, the total area under poppy cultivation increased in Afghanistan to a record level of 131,000 hectares. Despite this, it occupied only 2.9% of the total actual agricultural land. However, the increase in poppy production came hand in hand with a serious decline in the area used for cereal cultivation (figure 7). In 2004, Afghanistan produced only 66% of its cereal needs for domestic consumption. This necessitated wheat imports and other international assistance. It is notable too that were wheat to be cultivated on fertile, irrigated land (as is opium), the wheat yield would be far larger, averaging 3.6 times higher than on rain-fed land (UNOCD 2004a). In 2005, the total area under poppy cultivation decreased by 21% to a level of 104,000 hectares (UNODC 2005c).

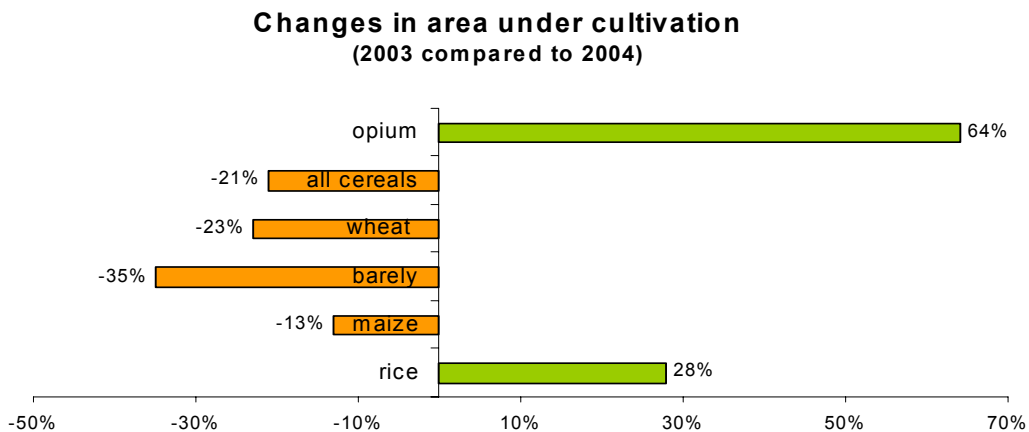


Figure 7 Changes in area under cultivation
Source: Adapted from UNOCD 2004a p.48

The availability and support of alternative livelihoods plays an important role in the sustainability of opium reductions. However, alternative livelihood programs should procure that alternative crops have a sustainable and profitable farm gate price. This would allow farmers to switch to legal food and cash crops without losing the ability to meet their subsistence needs. Food aid, on the other hand, has a negative impact on local food prices and simultaneously 'frees' arable land for poppy cultivation, especially fertile irrigated land. If medicinal opium is produced under a licence, it should be ensured that irrigated land is available to enable a sustainable and diversified agricultural output.

3.3 Prices & Income

A historical analysis of opium poppy cultivation and farm-gate prices sheds light on the relationship between production levels and price incentives (figure 8). A change in prices often caused a change in production in the same direction. However, after the ban on opium in 2001 by the Taliban, this mechanism was disturbed. For example, from 2003 to 2004 opium prices declined with 69% to \$92 while supply was still increasing (UNODC 2004b). The 2004 price level was still three times higher than the prices in the nineties, so the downward change in price had no effect on the incentive to grow poppy. Besides prices, the World Bank (2004b) cites the following reasons as influencing production incentives: market demand, local production constraints (including know-how, labour and plant health) and law enforcement.

In 2002, the average price for one kilogram of fresh opium at the time of harvest increased significantly to a record high of US\$ 350. From 2002 up until 2004, prices decreased again, while production continued to increase. The main reason for this change is that prices at that time were still three times higher than in the nineties. Despite the decrease in price, there was still a high incentive for farmers to increase their

poppy production. According to *the Opium Rapid Assessment Survey 2005* (UNOCD 2005a), the average farm gate price increased to \$186 per kilogram while the level of opium production probably declined in the majority of Afghanistan's 34 provinces (appendix 1 for production trends per province). The reported reasons for this decline are: respect for the ban on opium poppy cultivation which has been announced countrywide by the Afghan Government, fear of eradication, low yields per hectare of opium in 2004 and increased wheat prices (UNOCD 2005a).

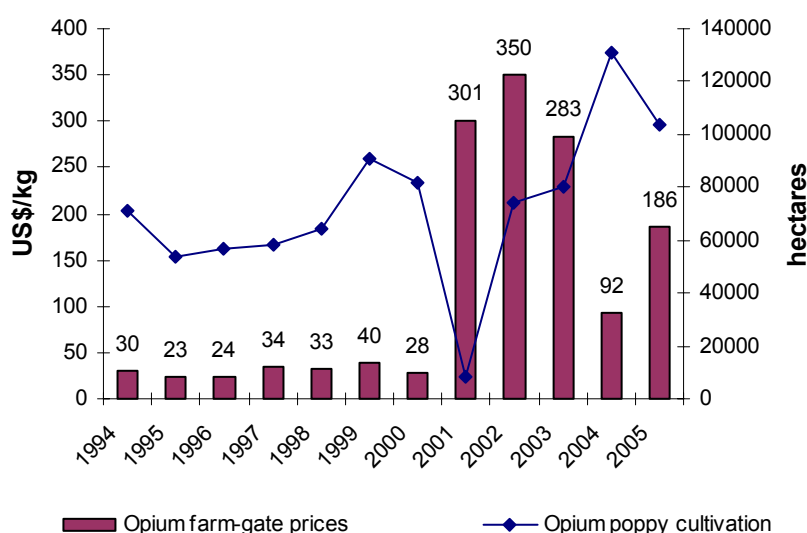


Figure 8 Fresh opium farm-gate prices and hectares under cultivation in Afghanistan

Source: Adapted from UNODC 2004a p.65 and p.3, UNODC 2005c p.1

Fluctuating yields, prices and farmer income between regions and from year to year make it difficult to draw conclusions about the average income of farmers as compared to shop keepers, traffickers and other actors further down the supply chain of opium, morphine or heroin. For most opium farmers, opium does not represent more than a subsistence crop; a product that allows them to feed their families. The World Bank states that most of the estimated 356,000 households involved in poppy cultivation are

probably poor (World Bank, 2004a). They are engaged in sharecropping or tenancy arrangements, which, in most cases are the only means to gain access to land, and credit, and to earn a living.

The overall gross income for Afghanistan farmers and traffickers from the opium sector in 2004 is estimated at approximately US\$2.8 billion. In the post-Taliban period, the total Afghan income from opium production has remained largely stable. As a result of market saturation, gross farm income has declined by 40% between 2003 and 2004. In addition, prices for opiates in neighbouring countries remained largely stable. This entailed an increase in the profit margin for traffickers (World Bank 2004b, UNOCD 2004a).

Figure 9 shows that the share of traffickers in total gross Afghan income increased from 53% in 2003 to 79% in 2004. Thus the traffickers largely benefited from the lower opium prices at the farm-gate (UNOCD 2004a, World Bank 2004a). The UNOCD (2004a) reports two possible reasons for the high increase in income of traffickers in 2004. First of all, there is the time-lag between opium production and heroin export. Secondly, wholesale prices in neighbouring countries have probably not declined because of the destruction of heroin producing facilities which limits heroin output. In conclusion, the income of the traffickers is dependent on the farm-gate price and wholesale prices in neighbouring countries.

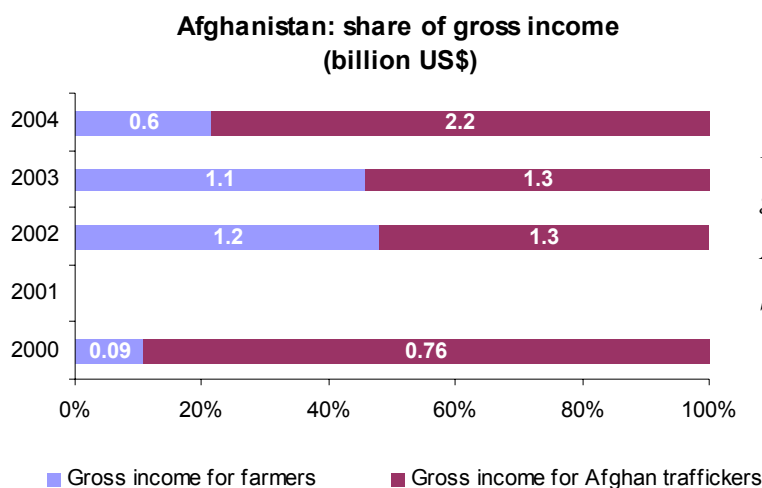


Figure 9 Share of gross income within Afghanistan

Source: Adapted from World Bank 2004a p.27

The value of opium increases substantially as it moves from producer to final consumer. Although retail and wholesale prices have seen an overall decrease, they have remained more or less stable since 2000. The fact that the farm-gate prices in Afghanistan, as the largest supplier for Europe, have increased after 2001 and decreased again in 2004, is not reflected in the retail and wholesale prices. Given that the street price in the European market is at least 10 times the Afghan border price, a major drop in Afghan prices would have little effect on the consumer price (World Bank 2004b). Despite the change in retail prices, the distribution of wholesale and retail prices have remained more or less the same (figure 10).

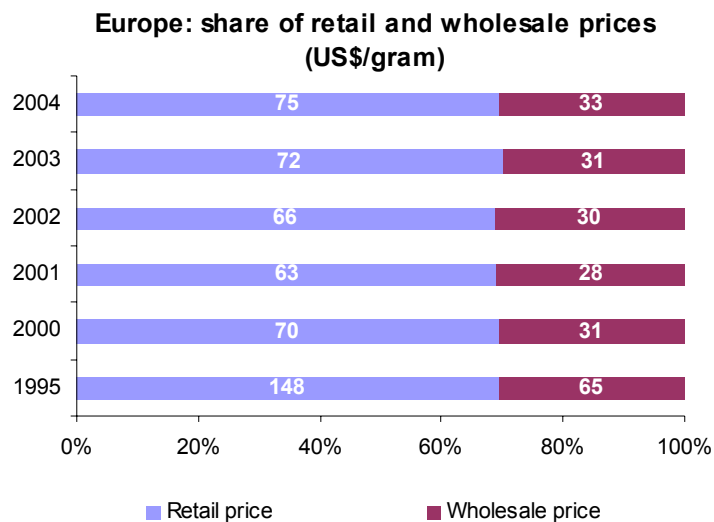


Figure 10 *Share of retail and wholesale prices income within Europe*

In the European supply chain, income distribution has remained more or less stable over the past decade. In the Afghan supply chain, the income distribution is vulnerable to both farm-gate prices and wholesale prices in neighboring countries. High profits are made the higher up one is in the supply chain. As a consequence, wholesalers are able and willing to pay primary producers substantially higher prices at the farm-gate if production eradication programs are successful. Existing counter narcotics initiatives must take this 'price mechanism' into consideration or they are bound to backfire.

3.4 Reasons for growing poppy

It is often said that farmers grow opium poppy because of the higher profitability compared to other crops (beside factors such as pressure from local warlords or traffickers or in order to obtain credit, which will be tackled below). In 2003, the average gross income per hectare from opium exceeded that of wheat by as much as 27 times. Even with lower prices in 2004, gross income was still almost 12 times higher (\$4,600 compared to \$390) (World Bank 2004a, UNODC 2004a). However, such figures as these must not be seen in isolation. Income earned by growing opium poppy varies substantially from year to year as well as between different regions. This point is expanded in more detail elsewhere in this section.

Gross income of opium poppy and wheat per hectare in 2003 and 2004

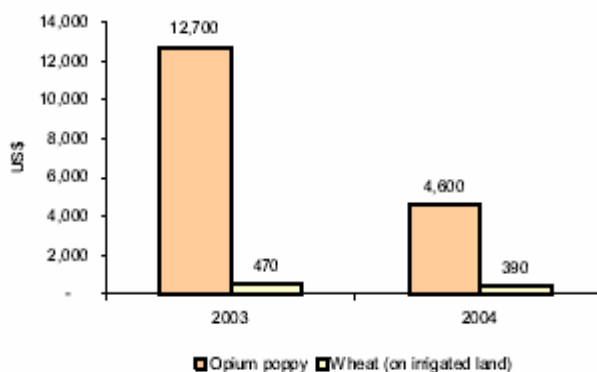


Figure 11

Source: UNODC, 2004a p.74

Moreover, for many farmers, growing opium is borne of necessity rather than choice. In part, this is due to agricultural conditions in many parts of Afghanistan not being conducive to the cultivation of crops less hardy than opium. It is also the result of the system of *salaam* (advanced payment) and other loan arrangements. This is dealt with further below. Owing to the fact that opium is a source of credit, investment and savings, the price of opium is inflated compared to other crops. A possible direction to increase the prices for wheat or other agricultural crops might be to increase the local demand for so called secondary products (for example meat, eggs and milk). For example, if the demand for chicken meat increases, the local demand for agricultural crops consumed by chickens will also increase. Furthermore these products might have a more competitive price level than other primary crops.

Opium is an important means of obtaining credit for many farmers. A significant proportion of the rural Afghan population relies on credit to meet their basic needs. Seasonal loans are common and obtained by all wealth groups. However, a greater proportion of the resource poor incur seasonal debts than resource rich. The resource poor also rely more on traders and shopkeepers, while the resource rich often have access to credit from family members (Mansfield, 2004).

Three different forms of credit can be distinguished (Mansfield, 2004; UNODC 2003; Rubin, 2004).

- *An interest free loan* from family members, known as *qarze hasana*, is the preferred option for many farmers mostly because repayment arrangements are more flexible. This type of loan is often used to pay the costs of a marriage.
- *Advance payment* on a fixed amount of agricultural production, known as *salaam*. In return for an advance payment, the resource poor farmers often sell their entire crop prior to harvest. Resource poor farmers often agree to traditional credit *salaam* contracts with traders or shopkeepers before planting. The farmer agrees to provide the lender with a set quantity of opium gum after harvest, in return for which the lender pays the cultivator half the value of the future crop in cash at the market price

at the time of the loan. This cash enables many poor families to buy food over the winter.

- *Purchase of commodities on credit.* Shopkeepers and traders allow farmers to delay the payment for (basic) necessities and perhaps agricultural inputs, usually until after the winter harvest. Depending on the product, the relationship between lender and borrowers and the duration of the loan, the mark-up on the market price will vary.

Expected profit is one of the main motivations for traders to enter the opium market, funding, for example, the Haj to Mecca - the duty of all Muslims, though not one that all can afford. With money also comes access to power, reputation and respect within the local community (UNODC, 2003 p 128).

4 Regional differences

4.1 Introduction

The lack of an adequate transport infrastructure, which is due to the destruction of twenty years of war, meant that the opium markets within Afghanistan have developed geographically separate from one another (UNODC 2003). Nonetheless, all provinces in

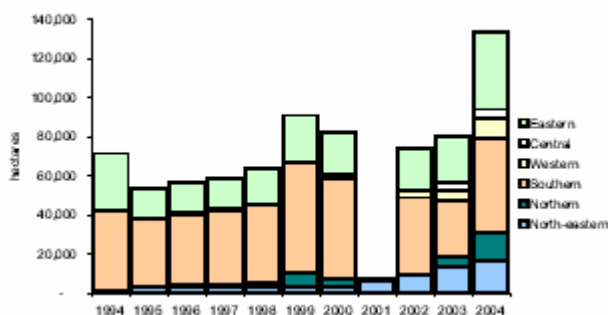


Figure 12 Regional distribution of opium poppy cultivation
Source: UNODC 2004a v. 23

Afghanistan were involved in poppy cultivation in 2004. UNODC findings (1998) suggest that the structure of the opium trade especially differs between the Eastern and Southern region. These two regions together accounted for more than 60% of the total poppy area (figure 12).

4.2 Regional supply chain structure

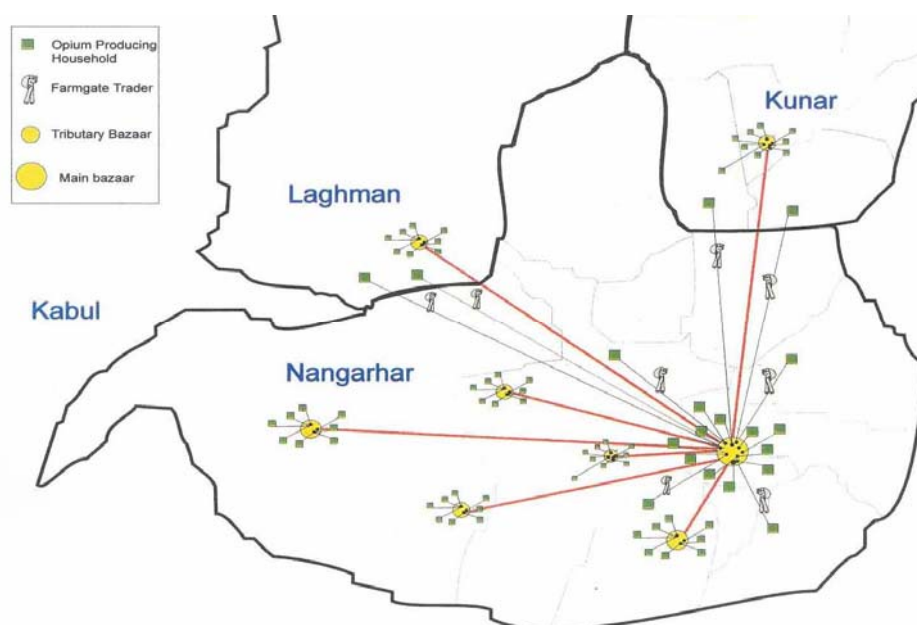


Figure 13 Illustrative Diagram of the Opium Trade in the Eastern Region

Source: UNODC, 1998 Annex A

The opium market in the East is concentrated in one location: the bazaar of Ghani Khel in Shinwar district of Nangarhar province. The Ghani Khel bazaar is generally regarded as the centre of opium trading in eastern Afghanistan (UNODC 2003). It is both geographically and logistically favoured due to its proximity to the asphalt road. The bazaar has been destroyed several times and the authorities make regular raids and announce the ‘closure’ of the bazaar. However, this does nothing to prevent its continual reappearance, (although the market’s character is now less open and more discreet than in the past). Traders disclose that they have connections with people in the police or the security force and are therefore not worried about future developments. To contact buyers in other regions in the world, traders at the bazaar use mobile or satellite phones. It takes only six to twelve hours for a heroin dealer anywhere in the world to know that his money has been received and his shipment is in transit (McGeough, 2005).

The opium market in the south is largely decentralized. There are a number of bazaars in the region where opium is sold and where opium is purchased by Afghan traders as well as by traders from Pakistan, Iran and, less frequently, by traders from the Central Asian Republics. Each of these bazaars have a number of shops specialized in opium trading (UNODC, 2003).

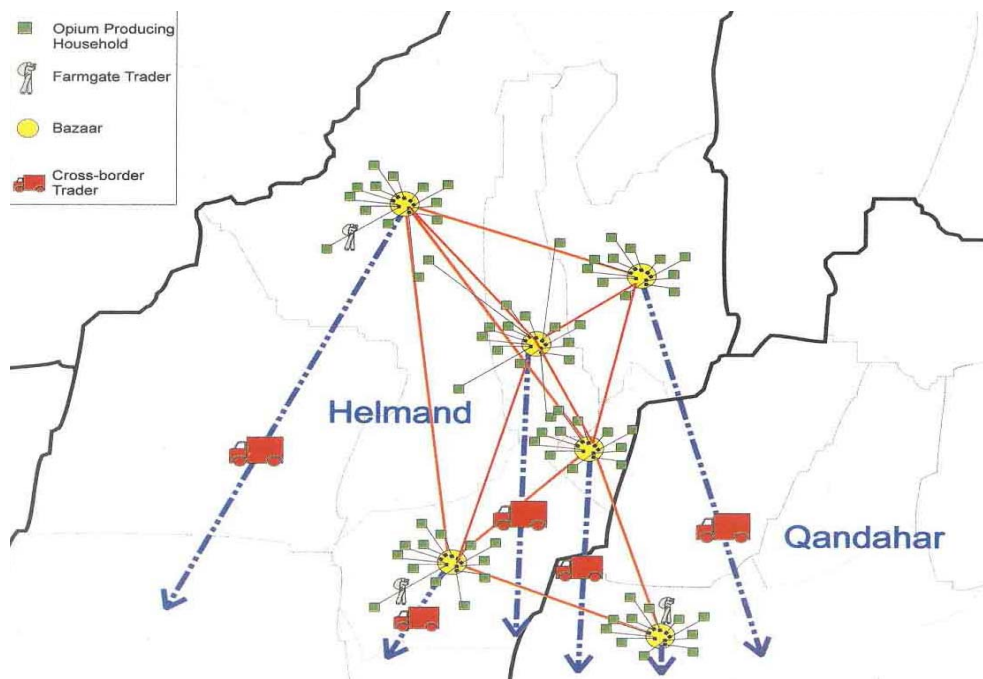


Figure 14 Illustrative Diagram of the Opium Trade in the Southern Region

Source: UNODC, 1998 Annex A

4.3 Regional prices

The fact that Afghan opium supply chains mainly operate regionally is also reflected in the price differences among the regions. Average prices of fresh opium ranged in 2004 from US\$42 per kilo in north-eastern Afghanistan to US\$123 in southern Afghanistan (see appendix 4 for details per province). Several factors might explain these differences. These include: the quality of opium poppy, prices in neighbouring countries and the threat of violence during transport (UNODC 1998, UNODC 2004a). Finally, the UNODC (2004a) reports differences in the marketing of opium. Farmers in southern and eastern Afghanistan are free to choose their trader, whereas local commanders in Badakshan (north-eastern region) only allow selected traders to enter the village and forbid farmers to sell their opium outside the village. The traders can thereby obtain the opium at a lower price from the farmers and pay the commanders a commission in return for this privilege.

Clearly, there are different supply chain structures. Given this, different approaches will be necessary to switch the supply chain to licensed opium production for medical purposes.

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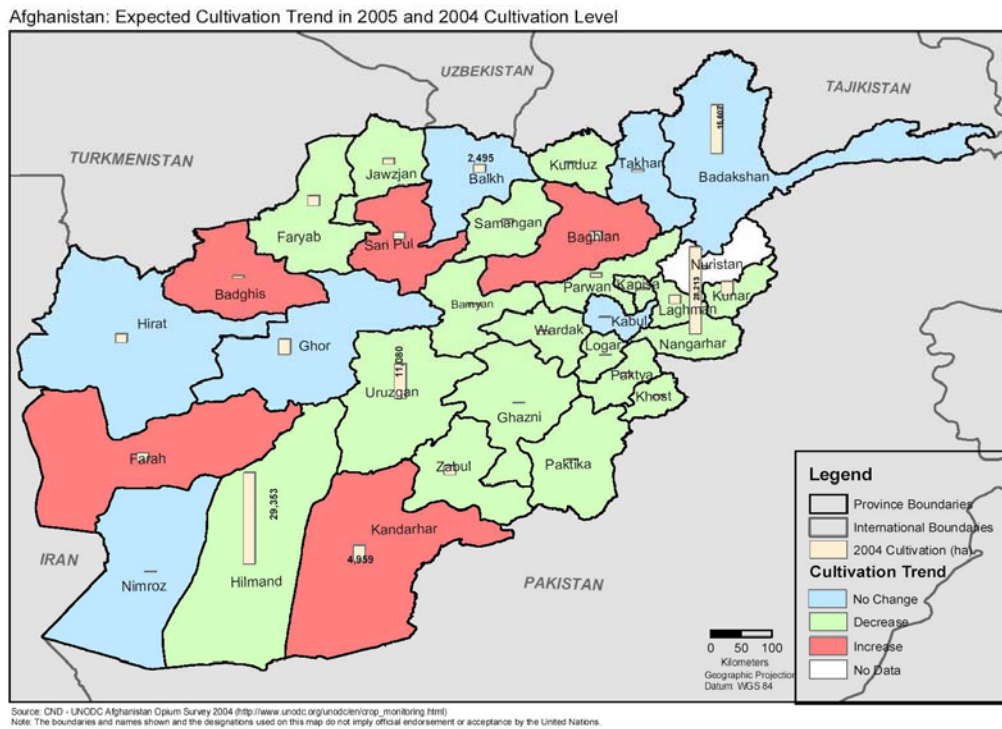
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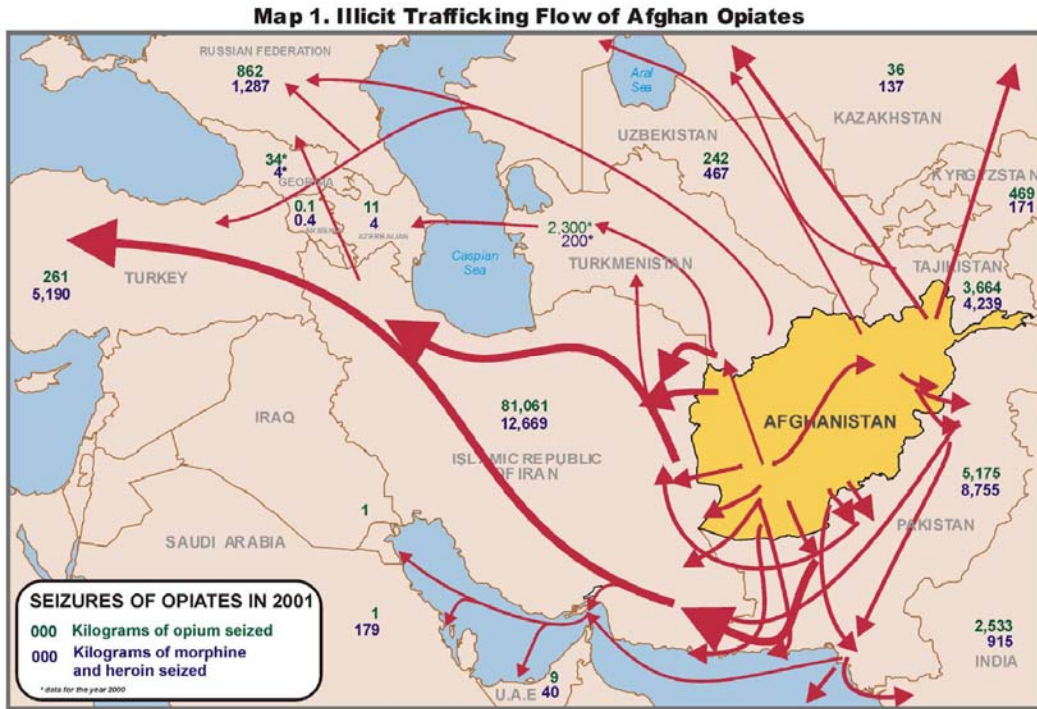
APPENDIX

Appendix 1



Source: UNODC 2005a p.12

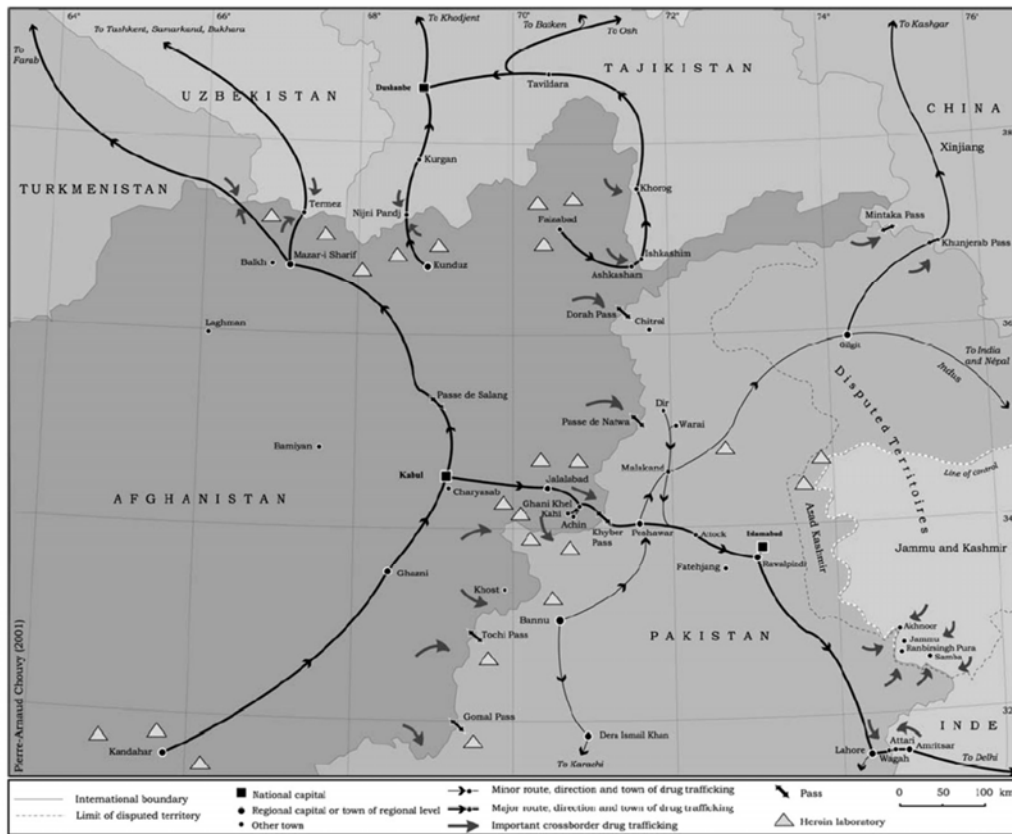
Appendix 2



Opium seizures

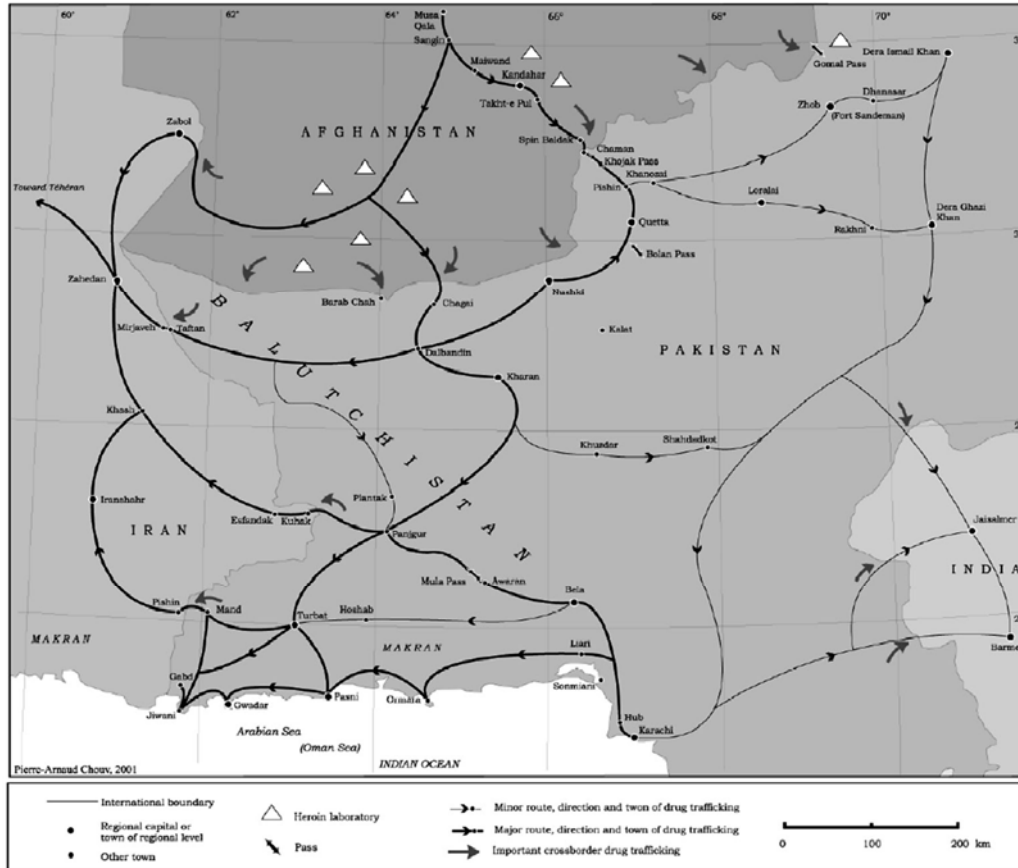
Source: UNODC 2003 p. 154

Appendix 3:



Trafficking routes in the North

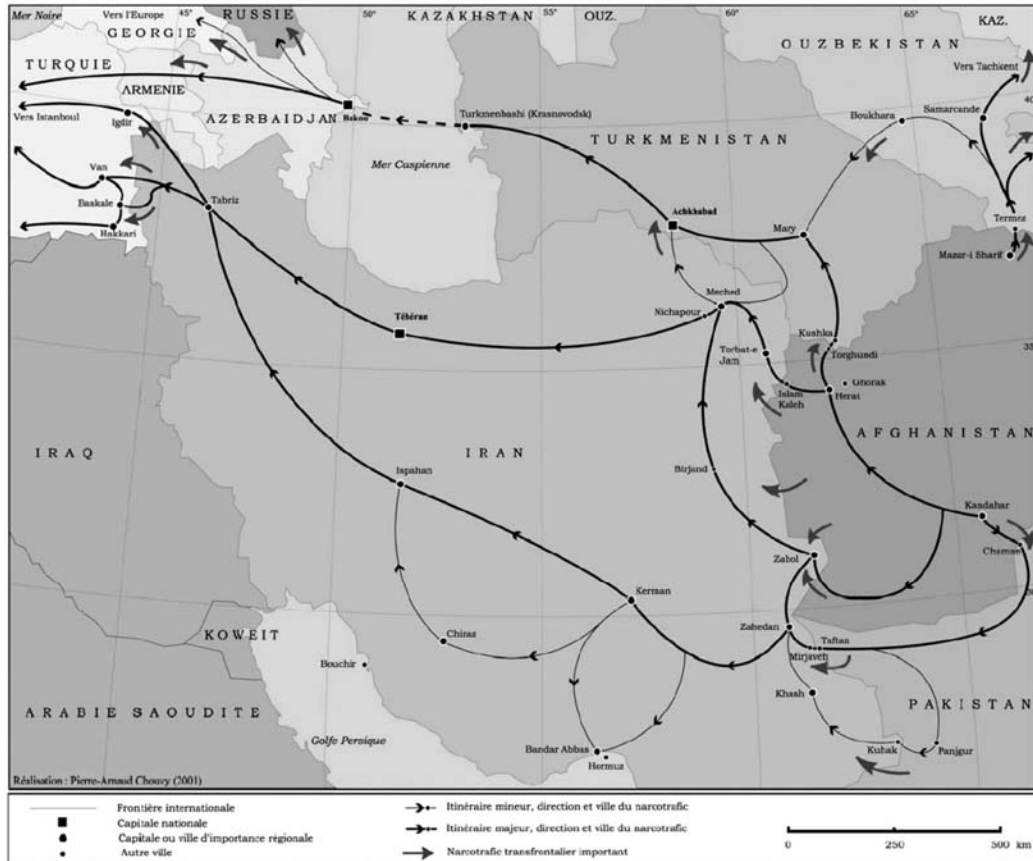
Source: Geopolitical Drug Newsletter (2001)



Trafficking routes in the South

Source: *Geopolitical Drug Newsletter* (2002)

Feasibility Study on Opium Licensing in Afghanistan
for Production of Morphine and Other Essential Medicines

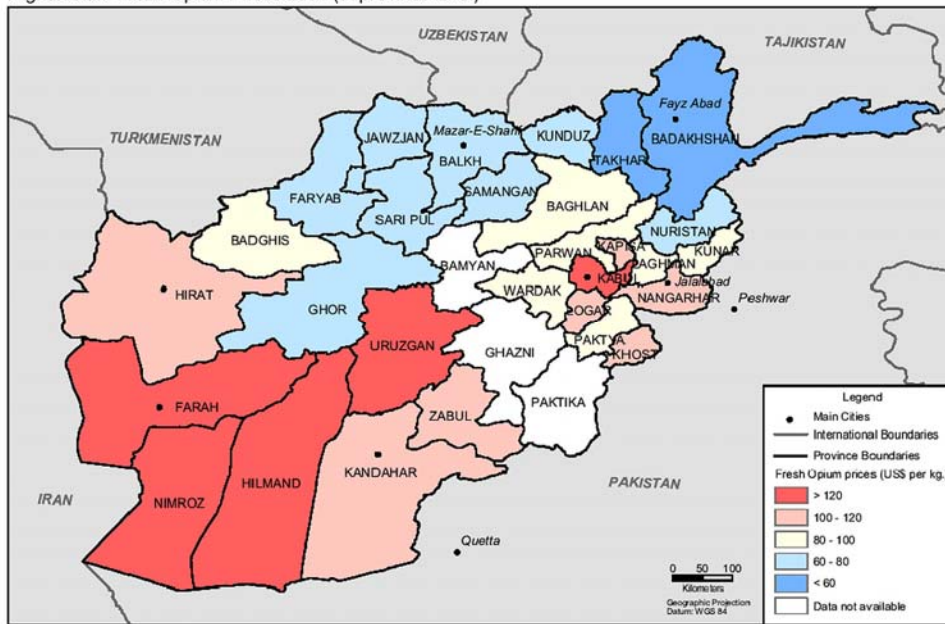


Trafficking routes in the Western

Source: Geopolitical Drug Newsletter (2002)

Appendix 3:

Afghanistan: Fresh Opium Prices 2004 (at province level)



Source: UNODC - UNODC Afghanistan Opium Survey 2004 (http://www.unodc.org/unodc/press_monitoring.html)
Note: The boundaries and names shown and its designations used on this map do not imply official endorsement or acceptance by the United Nations.

Opium prices

Source: UNODC 2004a

A Geographic and Numerical Survey of the Illegal Global Market for Heroin

Executive Summary

Deflating the Scope of the Global Illegal Heroin Market

A stable global illegal heroin supply relying on Afghan opium

Global opium production has remained largely stable at around 4,000–5,000 metric tons since the early 1990s. In 2004, Afghanistan produced 4,200 metric tons of opium, 87 percent of global illegal opium production (UNODC 2005a). Global illegal opium seizures amount to approximately 20 percent of annual global production. *However, it is clear that seizures do little to disrupt trafficking flows of heroin from source to consumer countries.* In terms of associated treatment demand, heroin is the world's most problematic drug, although it comprises just one-fifth of the illegal drugs market at the retail level. At the production level, heroin manufacturing profits depend heavily on the price of opium. At the retail level, the price of heroin is significantly higher in industrialized countries, its price having a direct correlation to its distance from its country of origin. There is a rising demand for the drug along the transit routes which is coupled with increasing rates of HIV/Aids prevalence.

New markets setting new heroin addiction challenges

In terms of user numbers, the global demand for heroin is relatively steady, but the rapid growth of opium production in Afghanistan has fuelled the development of a large heroin market in the region, particularly along transit routes out of Southwest Asia: Uzbekistan, Tajikistan, Pakistan, Iran and Turkmenistan. Further a field, in Central Asia, the Russian Federation and Eastern Europe the widespread use of heroin and other opiates can be detected in drug-treatment statistics and increasing rates of HIV/AIDS prevalence. In Russia, for example, over 70 percent of the opiates seized

originate in Afghanistan and up to 90 percent of registered HIV infections have been officially attributed to injecting drug use. However, user surveys are more reliable indicators of opiate usage, since treatment demand can only take place where treatment facilities are available.

Afghanistan is currently experiencing its own increase in heroin addicts, repatriated from Iran and Pakistan, where they were first introduced to the drug. Although figures are still low, it is widely feared by health experts that heroin addiction and the threat of HIV/AIDS could become a serious problem as in neighboring Iran.

Europe, the principal market in monetary terms

The highest regional rate of heroin use is found in Europe. *In pure monetary terms, Europe is the biggest market for Afghan heroin.* It is estimated that in 2003 the value of the heroin and other opiates market in West and Central Europe was US\$25 billion, and the total retail market value of Europe's opiates market (including those of East and South-East Europe) was US\$37 billion. Europe thus accounts for 56% of the global opiates retail market, valued at approximately US\$65 billion.

Opium licensing will help in deflating the root of the illegal heroin market

The illegal heroin trade in Afghanistan leaves huge amounts of resources in the hands of criminal groups. In 2003, the UNODC estimated that Afghanistan produces 75% of the world's illegal opium, equating to almost US\$49 billion at the retail level. In the long term, an opium licensing scheme for Afghanistan, will contribute to reducing the financial room for manoeuvre of criminal organisations mainly engaged in illegal heroin activities.



A geographic and numeric survey of illegal global supply of and demand for heroin, morphine and opium, with emphasis on Afghanistan

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Gabrielle Archer

The Senlis Council

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Introduction

This paper provides a statistical survey of the global supply of and demand for heroin, morphine and opium¹ drawing on existing drug use and production data. In so doing its aim is to highlight the significance and impact of the Afghan opium industry on the global market. It will be shown that in terms of numbers of users, global demand for opiates is relatively steady, but that it is increasing in those countries which border Afghanistan. Widespread use of opiates in certain regions can be detected in drug treatment statistics and increasing rates of HIV/AIDS prevalence. However, user surveys are more reliable indicators of opiate usage, since treatment demand can only exist where treatment facilities are available.

The supply of opiates is measured according to opium production data. Production data for opium is probably the most reliable indicator of how the drug problem is evolving at

¹ In the World Drug Reports the United Nations makes reference to ‘opiates’. These are “any of a group of alkaloids derived from opium poppy (*papaver somniferum*), such as morphine and codeine, including their derivatives, such as heroin” (World Health Organisation Lexicon of Alcohol and Drug Terms, 1994. However, for the purposes of the World Drug Reports, the United Nations Office for Drugs and Crime uses ‘opiates’ to mean morphine, heroin and opium, and this chapter will use the same meaning. Additionally, the World Drug Reports compare heroin, morphine and opium production in terms of ‘heroin equivalent’. The generally accepted ratio for converting opium to morphine is 10:1, in that it takes 10 kilograms of opium to manufacture 1 kilogram of morphine. The conversion ratio for morphine to heroin that the UNODC uses is 1:1 (UNODC World Drug Report 2005, p.48).

the global level. Information on the final output – heroin – is more difficult to obtain and subject to a higher degree of uncertainty as direct access to clandestine laboratories is clearly problematic.²

While production is clearly linked to trafficking and consumption, sometimes the links are less direct than they appear. There can be, for example, significant time lags (of one or two years) as a result of the manufacturing processes (opium → morphine → heroin), the length of the trafficking routes, and the existence of stocks which are known to have the potential to reduce the impact of supply side changes.³

In 2004, the global illegal opiates market was relatively stable. Global opium poppy cultivation increased by 16%, but actual opium production did not. Production stood at 4,765 metric tons in 2003 and 4,850 metric tons in 2004. Opium production is becoming less lucrative for producers, with an average farm-gate price of US\$92 in 2004; down from US\$283 in 2003, and heroin production is increasing in and around Afghanistan. In northern Afghanistan in particular, the bulk of opiates are now already smuggled out of the country in the form of heroin.⁴ The profits on heroin manufacture, at least at the production level, depend heavily on the price of opium; as opium prices fall, heroin profits increase.

Most of the opiates produced in Afghanistan are consumed in the local region, or exported to Europe, as shown by seizure statistics. Uzbekistan, Tajikistan, Pakistan, Iran and Turkmenistan are the primary transit countries for Afghan opiates. Globally, seizures of opiates amount to less than 20% of annual global production. To a large extent, seizures of opiates do not interrupt the flow of heroin from source countries to consumers.

Despite being the world's major problem drug in terms of associated treatment demand, opiates account for just one fifth of the illegal drugs market at the retail level (US\$65 billion out of US\$322 billion).⁵ The retail price of heroin in a particular region is

2 UNODC World Drug Report 2005, p.33.

3 Ibid., p.34.

4 Ibid, p.132.

5 Ibid, p.127.

effectively proportional to its distance from the country of manufacture. In general, the price of drugs increases the further they are trafficked from the region in which they were manufactured. Thus heroin is much more expensive in places such as Australia and the United Kingdom than in Southwest Asia.

With regard to the global supply of opiates, some medium-term trends can be projected. If poppy cultivation in Afghanistan increases or remains steady, the price of opium is likely to continue to decrease. As such, the manufacture of heroin will become more profitable at the production level, and heroin production in Afghanistan will probably increase.

This projected increase in heroin production will create inevitable knock-on effects including a continued decrease in the wholesale and retail prices of heroin, as well as increasing numbers of new HIV infections in transit countries and the new heroin markets of Eastern Europe. It is also possible that as heroin purity levels rise, accidental overdoses will rise accordingly.

1 Demand for heroin, morphine and opium

1.1 A steady but growing demand

Each year, 16 million people worldwide abuse opiates (opium, morphine and heroin). This is 0.4% of the population aged 15-64 and includes 10.6 million people who use heroin (0.3% of the adult population). These figures can be compared to the 14 million people who use cocaine each year, 26 million using amphetamines, 8 million using ecstasy, and 160 million who use cannabis.⁶

Figure 1 Extent of drug use (annual prevalence) estimates 2003/04 (or latest year available)

	All illegal drugs	Cannabis	Amphetamine-type stimulants		Cocaine	Opiates	of which heroin
			Amphetamines	Ecstasy			
(million people)	200	160.9	26.2	7.9	13.7	15.9	10.6
in % of global population age 15-64	5.0%	4.0%	0.6%	0.2%	0.3%	0.4%	0.23%

(Adapted from UNODC World Drug Report 2005 p.23)

Overall, global trends in opiate consumption were broadly stable in 2003,⁷ although regional shifts have reshaped the patterns of heroin use in the world. According to the United Nations there has been a slight decrease in opiate use in Western Europe, but usage rose in Central Asia, the Near and Middle East/South-West Asia, South-East Europe, as well as in Eastern and Southern Africa. The United Nations, in its World

⁶ UNODC World Drug Report 2005, p.56.

⁷ The most recent year for which comprehensive data are available.

Drug Report for 2005 stated that almost all of these increases could be linked to the re-emergence of large-scale opium production in Afghanistan.⁸

The rapid growth of opium production in Afghanistan has fuelled the development of a large heroin market in the region and, further, in Central Asia, the Russian Federation and East Europe. Largely caused by the increase in intravenous heroin use in these regions, the HIV/AIDS epidemic has quickly spread.⁹

In terms of profitability, the new heroin markets in East Europe, Russia and Central Asia are not yet as lucrative as the Western European markets. As such, the economic incentive they provide to traffickers is lower. They do however offer the potential to offset the reduction in profitability per transaction by expanding the consumer base. ***There are already more opiates users in those new heroin markets than in Western Europe and the potential for further growth in the new heroin markets is large.***¹⁰

1.2 Consumption and accessibility

More than half of the world's total opiate using population is found in Asia including central Asia. (8.5 million people out of 16 million) (UNODC 2005a) and there are indications that consumption is increasing in this region. The countries with the highest levels of opiate usage are found in those lying along trafficking routes out of Afghanistan. In Iran, 2.8% of the population aged 15-64 consumes opiates and in Kyrgyzstan the figure is 2.3%.¹¹

However, the highest regional prevalence rate is in Europe (0.8%). Within this region, Eastern Europe has the highest levels of opiates consumption, notably in the Russian Federation where 2.1% of the population aged 15-64 consume opiates. The number of heroin users in West and Central Europe is estimated at 1.5 million (or 0.5% of

8 Ibid., p.56.

9 UNODC Global Illicit Drug Trends 2003.

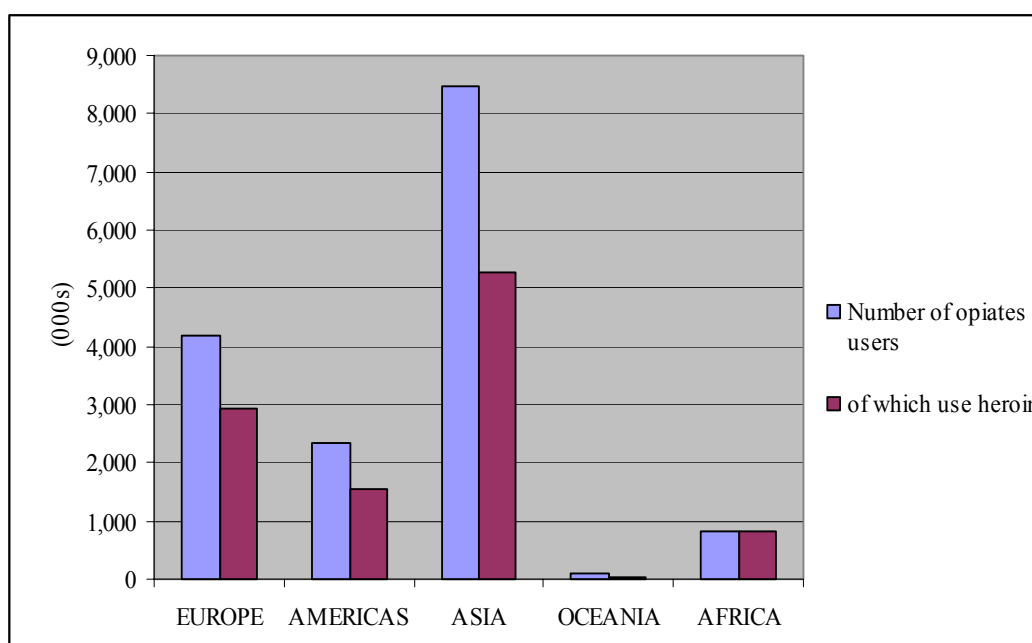
10 UNODC World Drug Report 2005, p.4.

11 Ibid., pp 56, 365.

population aged 15-64). The United Kingdom with 0.9% and Italy (0.8%) have particularly high rates of use.¹²

In the Americas, use of heroin is concentrated in the USA, and heroin use continues to be minimal in South America, where consumption of opiates is largely limited to diverted pharmaceutical preparations.¹³ In the Oceania region, opiates use is around the global average, with 0.4% of users aged 15-64.¹⁴

Figure 2 Annual prevalence of opiates use 2002-2004



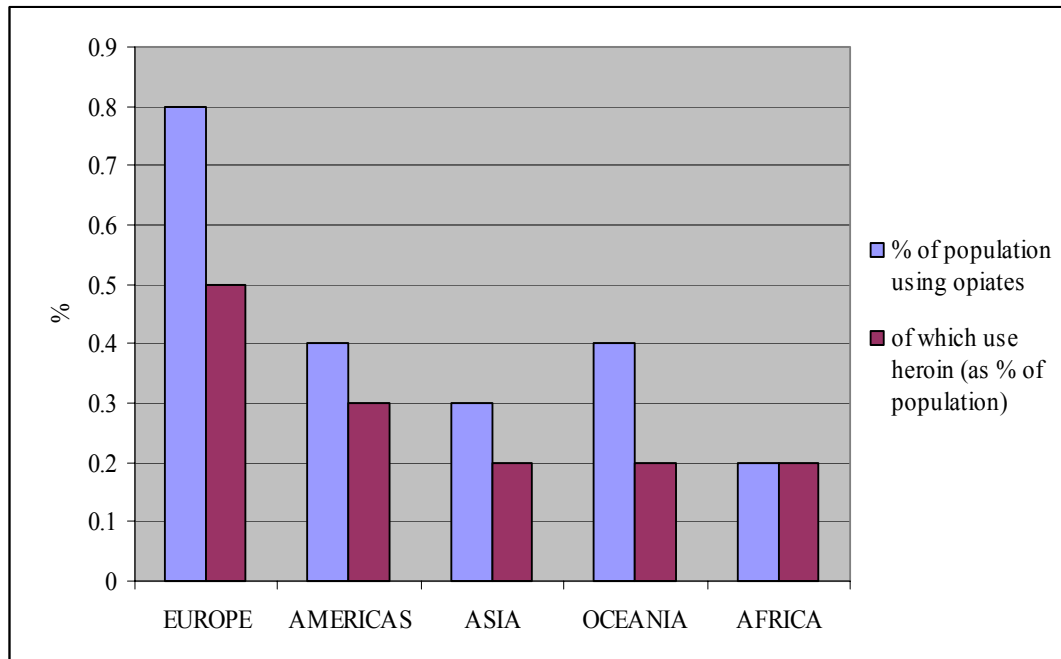
(Adapted from UNODC World Drug Report 2005)

Figure 3 Annual prevalence of opiates use 2002-2004 as a percentage of population (age 15-64)

¹² Ibid, p.56.

¹³ Ibid, p.56.

¹⁴ Ibid, p.56.



(Adapted from UNODC World Drug Report 2005)

1.3 Detection tools

Information on the number of people seeking treatment for drug-related problems provides a useful insight into general trends in problem drug use. Treatment demand data serve as an indirect measure for assessing drug use trends.¹⁵

However, as useful as drug treatment statistics are, user surveys are the most reliable way of detecting opiate use, because, as already highlighted, treatment demand can only take place where treatment facilities are available. Additionally, it is important to keep in mind that despite the wealth of drug treatment data available, it is difficult to measure the extent to which drug users are treated successfully.¹⁶ The main problem with user surveys however, is that most countries still do not have the capacity to provide data on illegal drug use based on population surveys or prevalence estimation studies.¹⁷

¹⁵ UNODC Report of the Secretariat on the world situation with regard to drug abuse, 2005.

¹⁶ EMCDDA Annual Report 2004: The state of the drugs problem in the European Union and Norway, p.3.

¹⁷ UNODC Report of the Secretariat on the world situation with regard to drug abuse 2005, p.3.

In many regions, data on demand for drug abuse treatment are the main type of data that are routinely available on drug abuse. The number of persons receiving such treatment per 1,000 inhabitants (aged 15-64) is very much influenced by the availability and accessibility of specialized treatment services in different countries and may appear low even if actual demand for drug abuse treatment in a region exists.¹⁸

United Nations figures show that in terms of treatment demand, opiates, notably heroin, continue to be the main problem drugs in the world. Worldwide, more people (1.3 million) are treated for opiates abuse¹⁹ than for any other substance. In a given sample of 1000 opiate users, 78 people worldwide are in treatment for opiate use and 2.6 die per year, the highest such ratios for any kind of illegal substance.²⁰

In the United States of America, heroin accounted for the second largest (after marijuana) percentage of treatment admissions for illegal drugs in 2003.²¹ For most of Europe and Asia, opiates continued to be the main problem drug in 2003, accounting for 62% of all treatment demand.²²

Another indicator of rising opiate use in particular regions is increases in HIV infection rates. Globally, it is estimated that 5%-10% of all HIV infections are attributable to injecting drug use, mostly via the use of contaminated injection equipment.²³ According to the United Nations, injecting drug use transmission of HIV accounts for the bulk of infections in the Russian Federation, Ukraine, Moldova, Belarus, Kazakhstan, Uzbekistan, Estonia, Latvia, Lithuania, Armenia, Azerbaijan, Georgia and Poland.²⁴ As noted above, in 2003 opiate usage rose in Central Asia, the Near and Middle East/South-West Asia, South-East Europe. This rising opiates use is having a direct and severe impact on increasing rates of HIV infections in these areas. ***In Russia, where according to the Russian Federal Drug Control Service, over 70% of the opiates seized originate***

18 Ibid. p.19.

19 That is, abuse of heroin, morphine or opium.

20 UNODC World Drug Report 2005, p.10.

21 NIDA. Infofacts: Nationwide Trends, 2004.

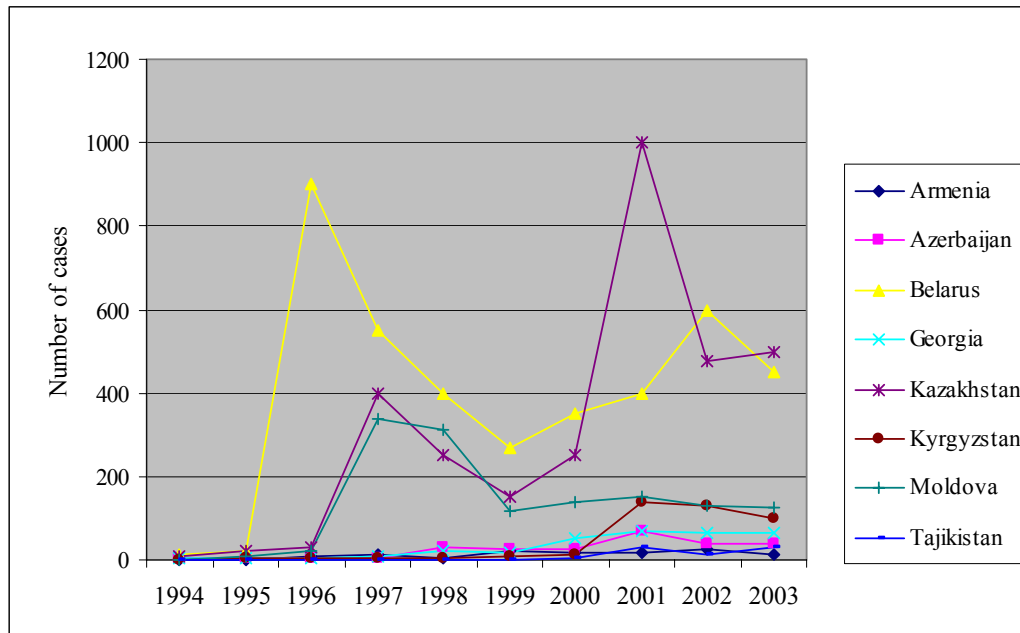
22 UNODC World Drug Report 2005, p.24.

23 UNAIDS AIDS Epidemic Update Report 2003.

24 United Nations Development Program, HIV/AIDS in Eastern Europe and the Commonwealth of Independent States – Reversing the Epidemic: Facts and policy options 2004.

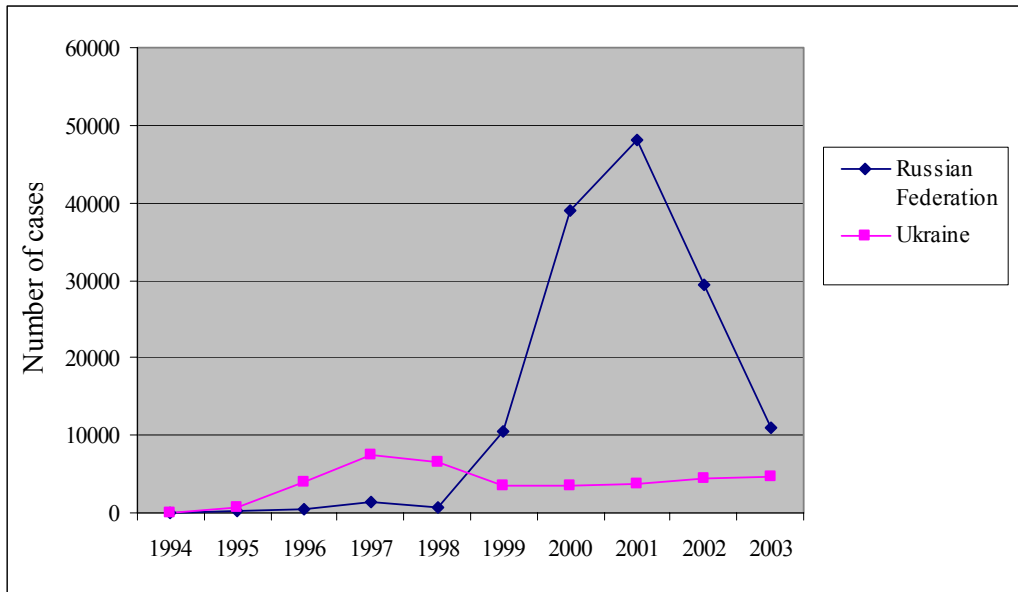
in Afghanistan, up to 90% of registered HIV infections have been officially attributed to injecting drug use.

Figure 4 Newly registered HIV infections among injecting drug users, selected central Islamic States (1994-2003)



(Adapted from EuroHIV End-year Report 2003)

Figure 5 Newly registered HIV infections among injecting drug users, Russian Federation and Ukraine



(Adapted from EuroHIV End-year Report 2003)

1.4 Market size

The value of the global illegal drug market in 2003 was estimated at US\$13 billion at the production level, at US\$94 billion at the wholesale level (including seizures), and at US\$322 billion based on retail prices and including seizures and other losses. This indicates that despite seizures and losses, the value of the drugs increase substantially as they move from producer to consumer.²⁵

In 2003, opiates had a retail level market size of US\$65 billion; the wholesale level market was worth US\$21 billion, and the production level, or farm-gate market was US\$1.2 billion.²⁶

In 2003 Afghanistan produced 75% of the world's illegal opium,²⁷ which would have been worth US\$900 million at the producer level, US\$15 billion at the wholesale level, and nearly US\$49 billion at the retail level (see figure 7).

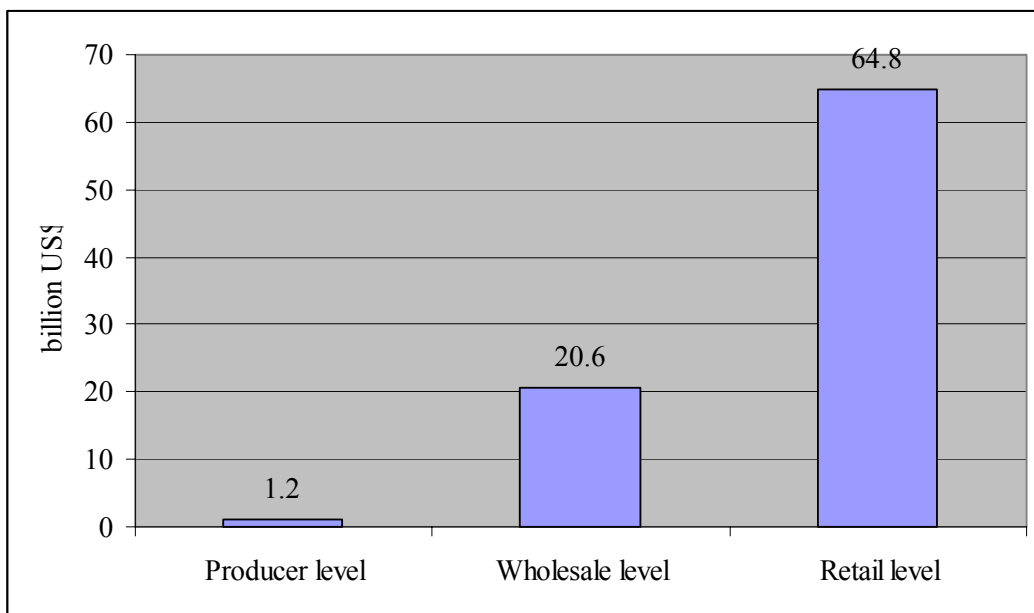
²⁵ UNODC World Drug Report 2005, p.127.

²⁶ Ibid, p.127.

²⁷ Ibid, p.34.

The overall gross income from the opium sector for Afghanistan farmers and traffickers is estimated to have been approximately US\$2.8 billion in 2004.²⁸ The traffickers' share of the total gross Afghan income increased from 53% in 2003 to 79% in 2004. Thus it is the opiates traffickers who benefit most from the decreasing farm-gate opium prices.²⁹

Figure 6 Value of the illegal global market for opiates at different levels in 2003

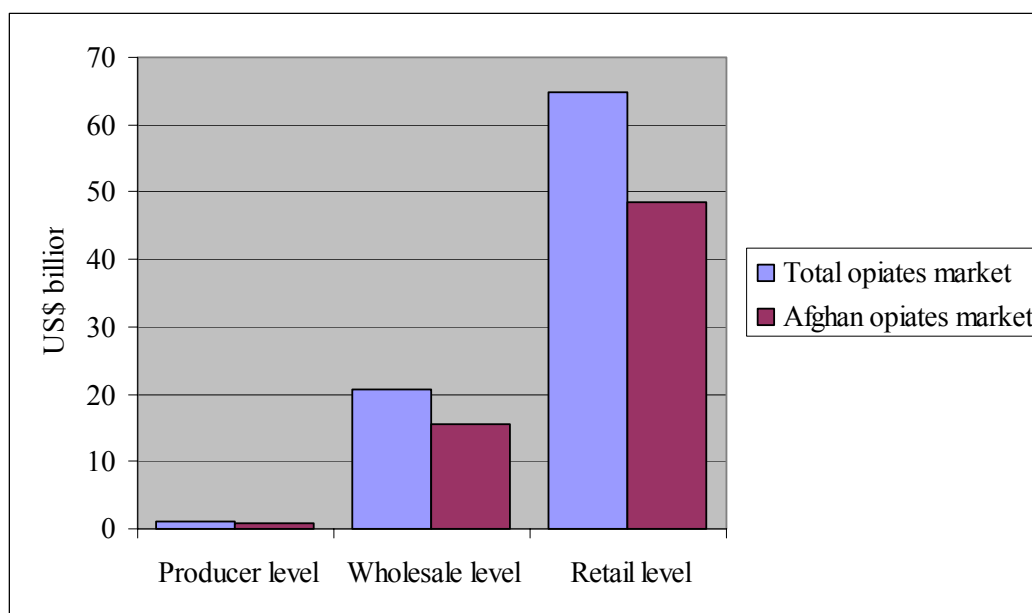


(Adapted from UNODC World Drug Report 2005).

Figure 7 Size of the Afghan opiates market compared to the global opiates markets in 2003

²⁸ Ward and Byrd, Afghanistan's Opium Drug Economy, World Bank SASPR no.5 Working Paper 2004; and UNODC Afghanistan Opium Survey 2004.

²⁹ Ward and Byrd, Drugs and Development in Afghanistan, Social Development Paper no.18, 2004.



(Adapted from UNODC World Drug Report 2005)

1.5 Price and location

In general, the price of drugs increases the further they are moved from the region in which they were manufactured. Thus heroin is much more expensive in places like Australia and the United Kingdom. *This helps explain why approximately three-quarters of the total global retail drug market – in economic terms – is found in the industrialised world (some US\$245 billion out of \$322 billion), when only about a third of the world’s drug users are located in OECD countries.*³⁰

*With regard to opiates, the United Nations World Drug Report 2005 estimated that the value of the opiate market in West and Central Europe is US\$25 billion, and the total retail market value of Europe’s opiates market (including those of East and South-East Europe) is estimated at US\$37 billion. Europe thus accounts for 56% of the global opiates retail market, valued at around US\$65 billion.*³¹

³⁰ UNODC World Drug Report 2005, p.134.

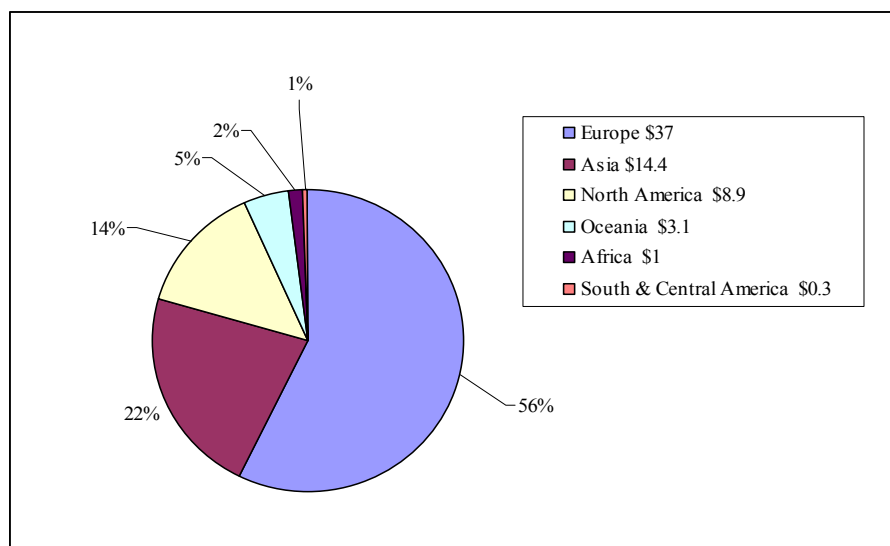
³¹ Estimates for North America, however, highlighted a problem that still needs to be resolved in future. There are some apparent contradictions as to the origin of heroin and its reported availability. According to US Government reports, heroin produced in Colombia

More specifically, according to the British government, heroin users in the United Kingdom consume 5 one-gram units of heroin a week, at a price of £60/g.³²

However, the current control system is faced with a decreasing price of heroin in European and North American markets (see figure 11).

Asia is the second biggest retail market– in economic terms – accounting for 22% of the global total. The third largest market is North America, which consumes US\$9 billion worth of opiates or 14% of the global total.³³

Figure 8 Regional Distribution of opiate retail sales in 2003 in billion US\$



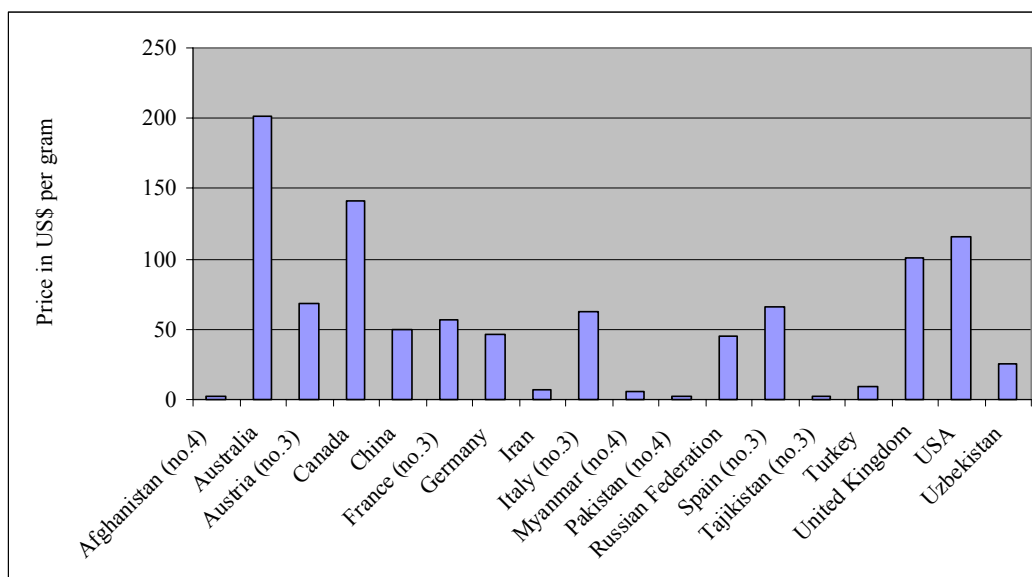
(Adapted from UNODC World Drug Report 2005)

Figure 9 Retail price per gram of heroin in selected countries 2002-2003

and Mexico account for the bulk of illegal heroin imports in the USA. However, current production estimates available for these countries are not sufficient to cover the bulk of the North American demand for heroin“ World Drug Report 2005 p. 134.

32 United Kingdom Strategy Unit 2005, Drugs Project Report 2005, p.12.

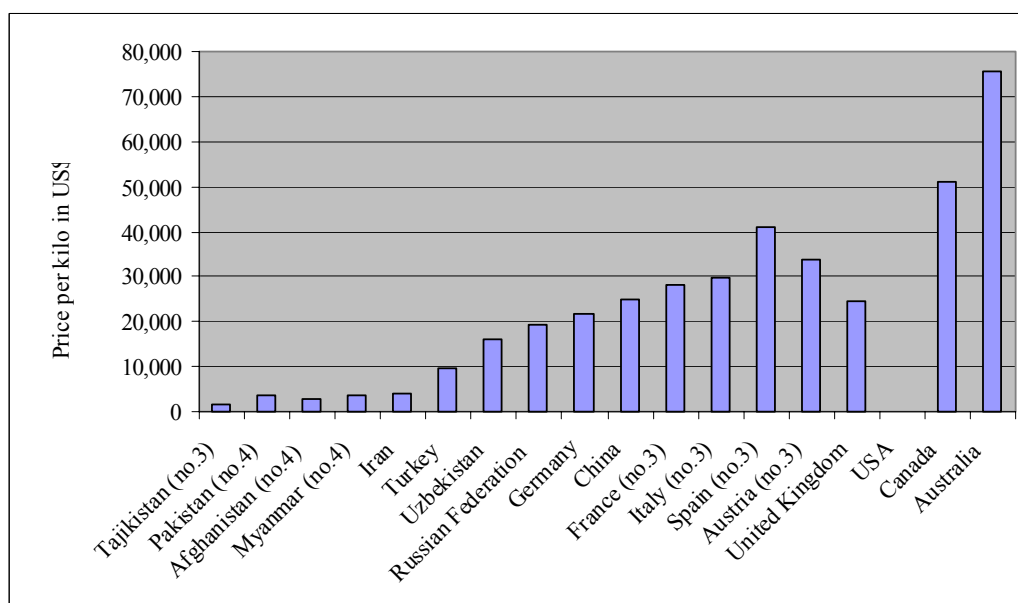
33 UNODC World Drug Report 2005, p.130.



(Adapted from UNODC World Drug Report 2005)

Note: Heroin no.4 is smokable heroin, whereas heroin no.3 is the less pure injectable heroin.

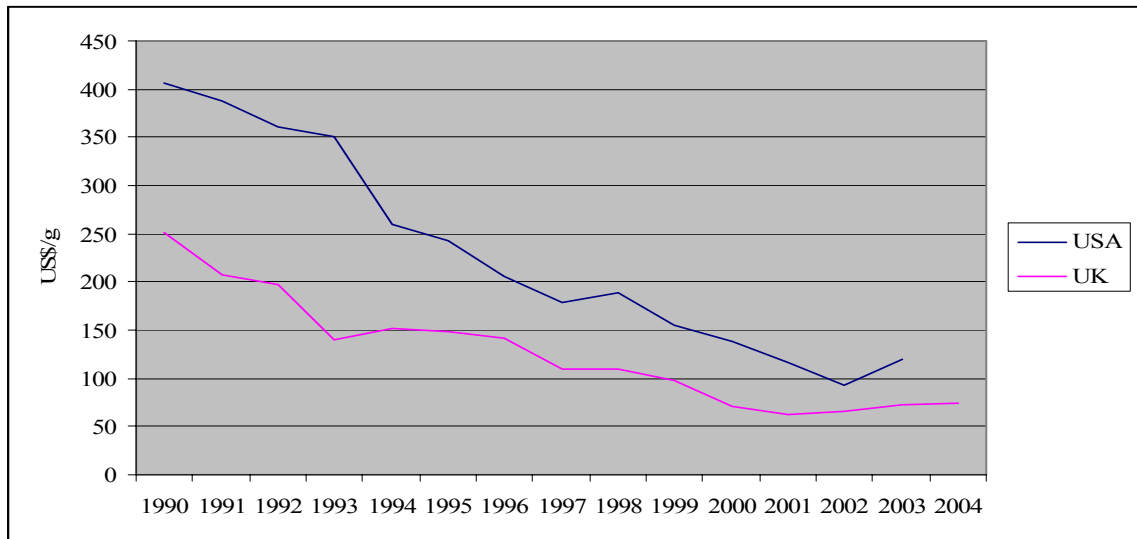
Figure 10 Wholesale price per kilo of heroin in selected countries 2002-2003



(Adapted from UNODC World Drug Report 2005)

Note: Heroin no.4 is smokable heroin, whereas heroin no.3 is the less pure injectable heroin.

Figure 11 Retail price of heroin in Europe and USA (1990-2004)



(Adapted from UNODC World Drug Report 2005)

In 2003 the sale of heroin, morphine and opium, measured at wholesale prices, was equivalent to 2.6% of global export of chemicals (US\$794 billion), 3% of global agricultural exports (US\$674 billion) and 26.1% of global exports of ores and other minerals (US\$79 billion).

Figure 12 Street price of heroin in 2003 compared to gold and platinum in Europe and the USA

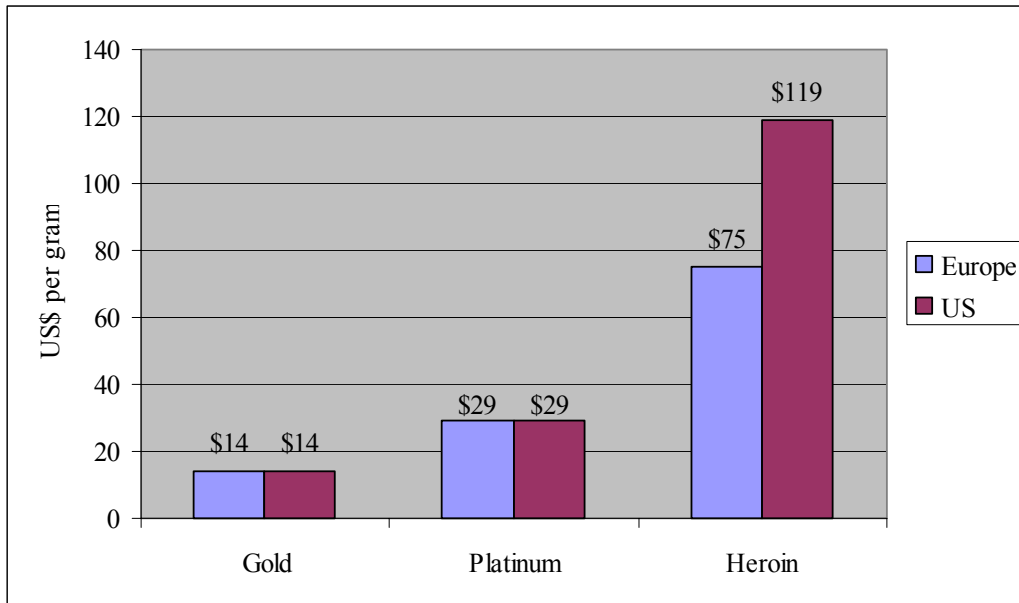
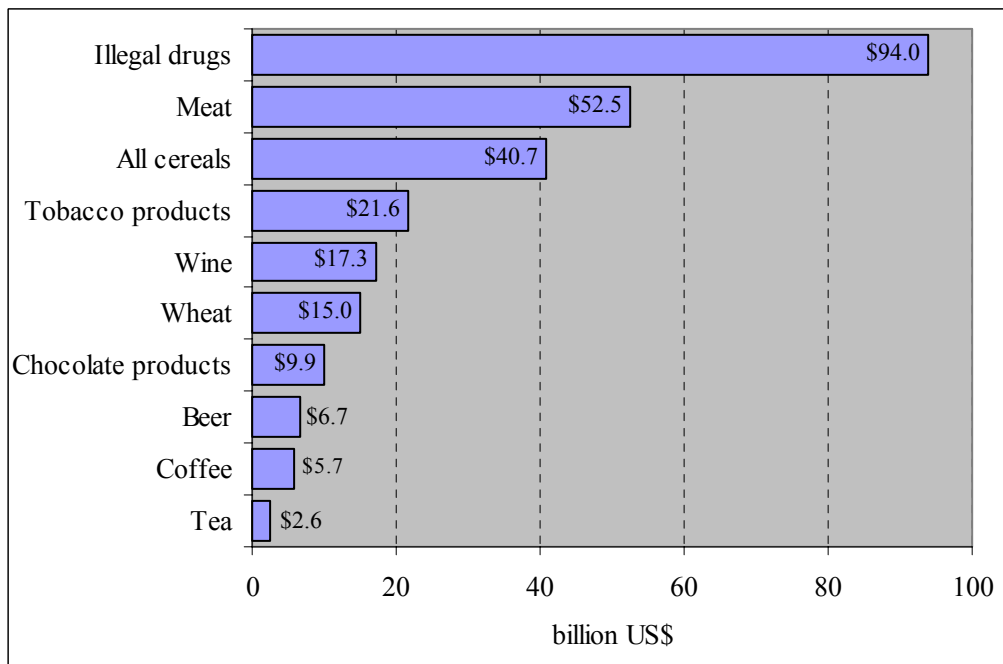


Figure 13 Value of illegal drugs at wholesale level (in billion US\$) compared to the export values of selected agricultural commodities in 2003



(Adapted from UNODC World Drug Report 2005 p.128)

1.6 Consumption patterns

Distinct opiate distribution or consumption patterns can be identified. Most of the opiates produced in the Near and Middle East/South-West Asia sub-region (which includes Afghanistan) are either consumed locally (more than a fifth) or exported to Europe (approximately half).³⁴ The rest is dissipated amongst other regions. As noted previously, according to the UNODC close to 100 metric tons of heroin are destined for the markets of West and Central Europe, about 90 metric tons for East Europe and 10 metric tons for South-East Europe. This is equivalent to 58 grams per heroin user per year, significantly higher than the global average of 28 grams per user per year.³⁵

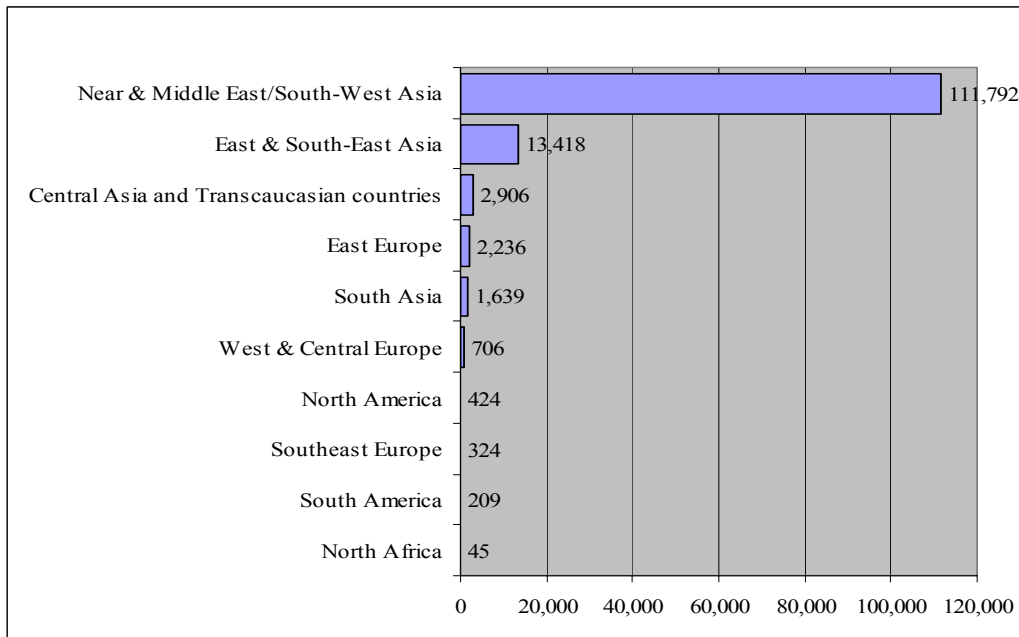
These distribution patterns can be shown in drug seizure statistics. However, it is worth noting that although drug seizures can confirm the presence of drugs in an area, the lack of seizures does not demonstrate their absence. Furthermore, the percentage of illegal drugs in circulation that is intercepted cannot be estimated with a high degree of accuracy.³⁶

Figure 14 Seizures of opium by region in kilograms (2003)

³⁴ UNODC World Drug Report 2005, p.132.

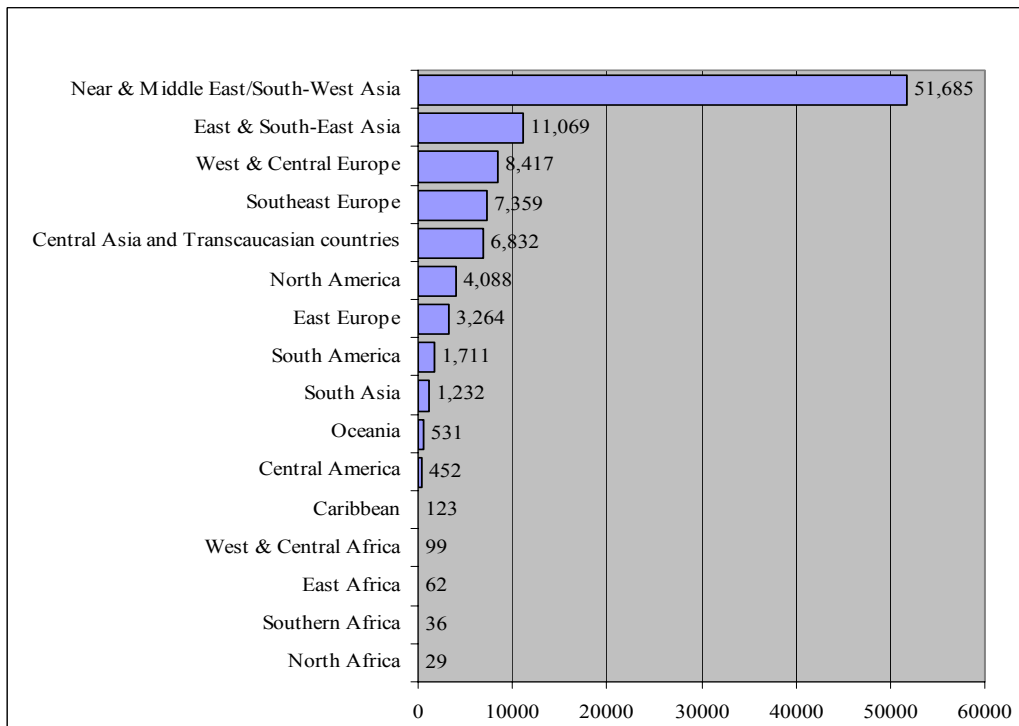
³⁵ Ibid, 132.

³⁶ Ibid, p.30.



(Adapted from UNODC World Drug Report 2005)

Figure 15 Seizures of heroin and morphine by region in kilograms (2003)



(Adapted from UNODC World Drug Report 2005)

2 Supply of heroin, morphine and opium

2.1 A steady opium production

Global opium production has remained largely stable at around 4,000–5,000 metric tons since the early 1990s. Production stood at an estimated 4,765 metric tons in 2003 and 4,850 metric tons in 2004. In 2004, global illegal opium poppy cultivation increased by 16%, due entirely to increased cultivation in Afghanistan.³⁷ Afghanistan produced 4,200 metric tons of opium in 2004, 87% of global illegal opium production. However, according to the United Nations, from a global view, increases in Afghan opium production in 2004 were offset by significant decreases in opium production in Myanmar and Laos - 54% and 64% respectively. Thus there was an overall global increase in opium production of just 2% in 2004.³⁸

In 2003, the global production of illegal opiates is estimated to have been 476.5 metric tons in heroin equivalents. Most (365 metric tons) of this was produced in the Near and Middle East/South-West Asia sub-region, which includes Afghanistan.³⁹ The size of the global opiates market at the production or farm-gate level was an estimated US\$1.2 billion in 2003, but this decreased significantly to US\$747 million in 2004. About 80% of this was generated in Afghanistan.⁴⁰

According to the United Nations World Drug Report 2005, the global heroin market was basically stable in 2003, with increases in production limited to Afghanistan and increases in consumption limited to countries neighbouring Afghanistan.⁴¹

Global *potential* heroin production in 2004 was 565 metric tons, but actual global heroin manufacture was estimated at 485 metric tons in 2004.⁴² The United Nations Office for Drugs and Crime estimates that close to 200 metric tons of heroin are destined for the European markets each year; 100 metric tons for West and Central Europe, about 90

37 UNODC World Drug Report 2005, p.39.

38 Ibid, p.35.

39 Ibid, p.132.

40 Ibid, 40.

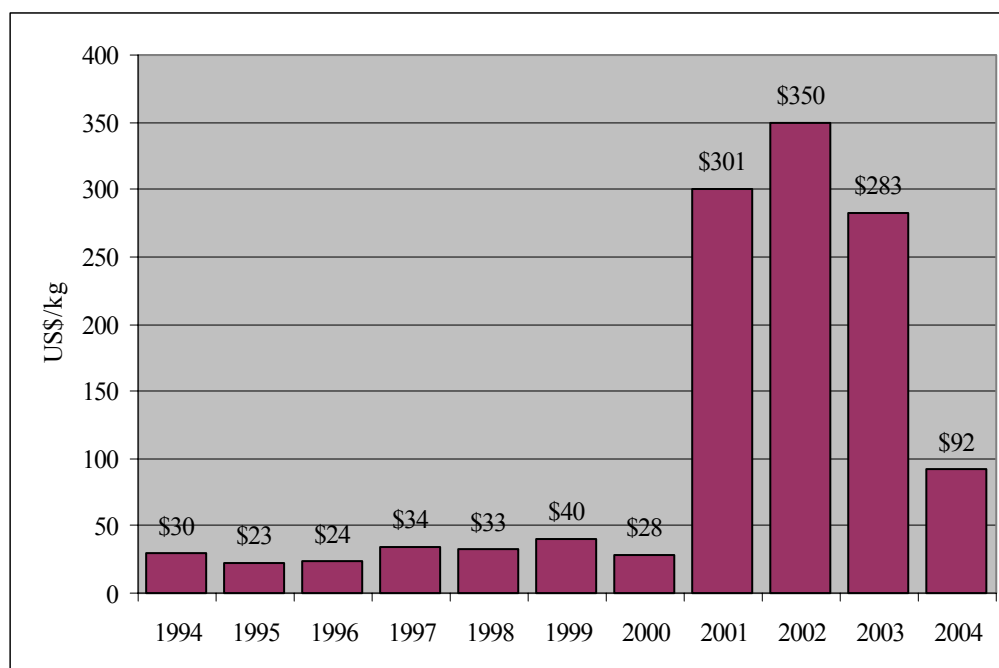
41 Ibid, p.35.

42 Ibid, p.177.

metric tons for East Europe and 10 metric tons for South-East Europe. **Deducting seizures and losses (assumed to amount to a mere 10%);**⁴³ 84 metric tons are actually available for consumption in West and Central Europe.⁴⁴

Opium prices in Afghanistan declined again in 2004, due to increasing supplies (see figure 16). **The average price for fresh opium at the time of harvest, weighted by regional opium production, amounted to US\$92 per kilogram in 2004, a 69% decline compared to the previous year. Prices for fresh opium at the farm-gate are, however, still significantly higher than in the 1990s.**⁴⁵

Figure 16 Fresh opium farm gate prices at harvest time (weighted by regional production) in Afghanistan (1994-2004)



(Adapted from UNODC World Drug Report 2005)

⁴³ Losses refer to the amount of opiates 'lost' in transit, through various means, including consumption and border 'taxes'.

⁴⁴ UNODC World Drug Report 2005., p.132.

⁴⁵ Ibid., p.40.

The price of heroin at the street level does not necessarily correspond to the farm-gate price of the opium used in the manufacture of the heroin. The margin between the final retail price of heroin and the cost of the opium used in the manufacture of opium is very significant. As such, the high opium farm-gate prices of recent years have not impacted on the steadily decreasing street price of heroin (see figure 11). Furthermore, the existence of dry opium stocks can reduce the impact of high opium prices.⁴⁶

2.2 Vertical integration of the opium industry inside Afghanistan

Originally, only opium rather than opium derivatives such as morphine and heroin was produced in Afghanistan. From the mid-1990s however, heroin manufacture began to take place within the country. Most of the early morphine/heroin laboratories were located in eastern Afghanistan, having shifted across the border from Pakistan. In recent years, heroin laboratories have been found in the border regions of most opium poppy growing areas. In northern Afghanistan in particular, the bulk of opiates are now already smuggled out of the country in the form of heroin.⁴⁷

However, it must be remembered that a variety of factors influence estimates of the extent to which Afghanistan supplies the global heroin market. These include the conversion ratios of Afghan opium to morphine, and from morphine to heroin, as well as access to the chemicals needed to refine heroin.⁴⁸ *Opium samples collected and analyzed by the United Nations Drug Control Programme in 2000 and 2001 from several parts of Afghanistan (Badakshan, Nangarhar, Helmand) showed an average morphine content of 17% (range: 10.5% to 23.5%) of dry opium.⁴⁹ This suggests that a better morphine to heroin conversion rate than the generally accepted 10:1 ratio could be possible in Afghanistan, and therefore Afghanistan could be supplying more heroin than has previously been assessed.*

46 Ibid, p.34.

47 UNODC, *The Opium Economy in Afghanistan: an International Problem*, 2003, p.132.

48 Iselin *The Afghan Rim's Heroin Economy in Cross-Border Law Enforcement Cooperation for Central South Asia*, 2004.

49 Un-weighted average based on the analysis of the morphine content of opium found in 24 samples collected from fields across Afghanistan. UNDCP, *Technical Report on Limited Opium Yield Surveys- 2000-2001 (Draft report)*, Nov. 2001.

According to the UNODC, most of the heroin produced in Afghanistan for export purposes is “number 3” brown, injectable heroin, as opposed to the more pure “number 4” white, smokable heroin. UNDCP and US Drug Enforcement Agency research in South-West Asia suggested that 6 to 7 kilograms of opium would yield 1 kilogram of brown heroin (60% pure).⁵⁰ There is some manufacture of white heroin in Afghanistan, which sells at a higher price. Uncut samples of white heroin can have purity levels of more than 90%. If white heroin is to be obtained, the brown morphine base is first transformed into a white morphine base. Out of 1 kg of brown morphine base one can obtain 0.55 kg of white morphine base. This means that for one kg of white heroin one would need 11-13 kg of opium (=6/0.55 to 7/0.55), though the 10:1 ratio continues to be used as well.⁵¹

Figure 17 Quantities of opium required for the manufacture of different heroin types

	Number 3 ‘brown’ heroin	Number 4 ‘white’ heroin
Quantity of opium required to yield 1 kg of heroin	6-7 kg	11-13 kg
Purity level	60%	90%

Currently, it is estimated that nearly 80% of Afghan opium is being processed into morphine and heroin domestically although it is likely that Afghan morphine is further refined into heroin upon exiting the country. Reports from the Afghan authorities of the destruction of some 100 rudimentary heroin-manufacturing laboratories in the period 2003-2004 support this. In addition, there have been record, though still insignificant, seizures of morphine in Pakistan and increased quantities of heroin intercepted in Central Asia and the Russian Federation.⁵² The UNODC 2004 Afghanistan Opium Survey showed that in the sub-regions surrounding Afghanistan (South-West and

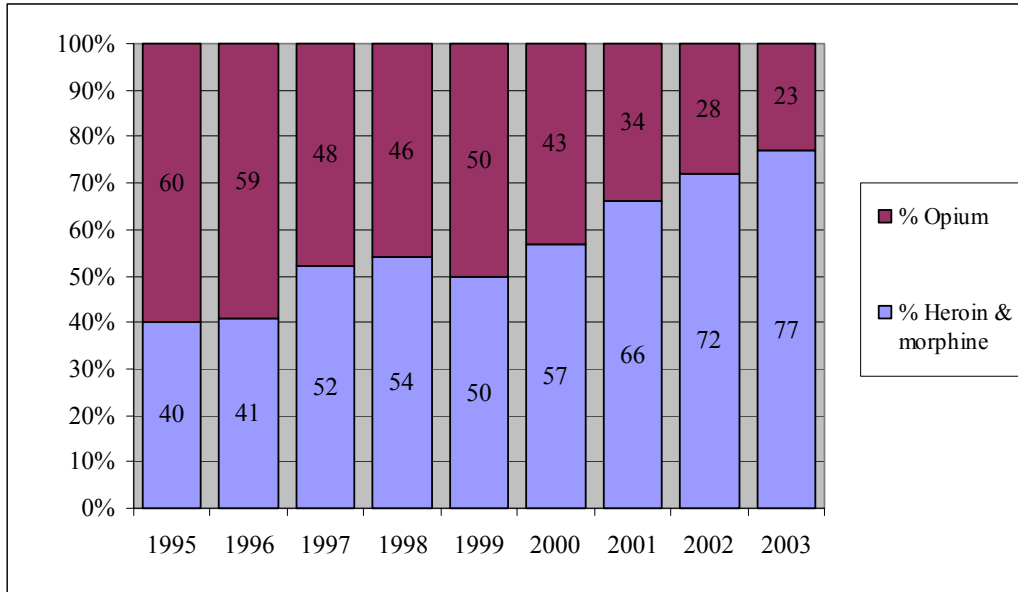
⁵⁰ UNODC Global Illicit Drug Trends 2003, p.132.

⁵¹ UNODC The Opium Economy in Afghanistan: an International Problem. 2003, p.133.

⁵² CND Report of the Secretariat on the world situation with regard to illicit drug trafficking 2005.

Central Asia), 77% of all opiates seizures are already in the form of either morphine or heroin (see figure 14), up from 40% in 1995.⁵³

Figure 18 Proportion of heroin* and morphine in opiates seizures in South-West and Central Asia (1995-2003)



*using a 6.5:1 conversion ratio of opium to heroin and a 1:1 conversion ratio for morphine.

(Adapted from UNODC World Drug Report 2005; and UNODC Afghanistan Opium Survey 2004)

⁵³ UNODC World Drug Report 2005, p.49.

2.3 Seizures: a limited impact

Global opiates seizures in 2003 amounted to 110 metric tons in heroin equivalent (see figure 16); an increase of 33% as compared to a year earlier. This compares to a total heroin equivalent production of 449 metric tons in 2002 and 479 in 2003.⁵⁴ In all, opiates made up 9% of all drug doses⁵⁵ seized in 2003.⁵⁶ The increase in seizures is thought to reflect higher rates of opiate production and trafficking as well as improved law enforcement activities, notably in the countries surrounding Afghanistan.⁵⁷

The World Drug Report notes that the 2003 increases in seizures were more pronounced for morphine and opium than for heroin.⁵⁸ However, the UNODC 2004 Afghanistan Opium Survey showed that 77% of all opiates seizures in the sub-regions surrounding Afghanistan (South-West and Central Asia) are already in the form of either morphine or heroin, up from 40% in 1995.⁵⁹

In the United Kingdom, interventions at every stage of the production, trafficking, wholesaling and dealing process have resulted overall in modest seizure rates of up to 20% of total drugs production.⁶⁰

Although drug seizures rates may reach seemingly significant percentages, they do not greatly reduce the availability of drugs to consumers. Studies have shown that “interdiction, even if it produces a high rate of seizures, will do little to decrease drug imports.”⁶¹

Simple arithmetic demonstrates how little the seizure of the drug itself can affect the retail price of cocaine. Assume for the moment that instead of seizing 20% of all cocaine shipped from Columbia, the

54 Ibid, p.49.

55 According to the UNODC for the purposes of their seized drug doses statistics, a ‘typical consumption unit’ for heroin is 0.03g, or 30 mg (UNODCa 2003).

56 UNODC World Drug Report 2005., p.31.

57 Ibid, p.48.

58 Ibid, p.49.

59 Ibid.

60 United Kingdom Strategy Unit, Drugs Project Report, 2005, p.2.

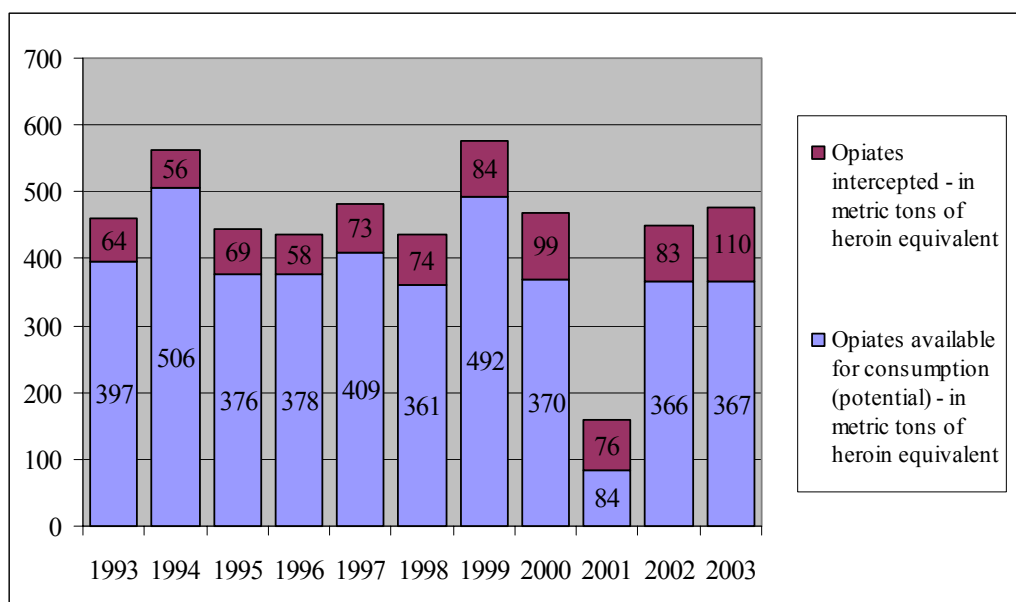
61 Reuter, Can the Borders be Sealed? Rand Note: Rand Corporation 1988.

interdiction agencies were able to seize 50%. The present retail price is (approximately) \$250,000, which includes compensation for lost drugs. If an additional 30% of drugs were seized, the kilo sold in the street would incur an additional \$6,000 in replacement costs (assuming that a kilo costs as much as \$20,000 to replace). Thus our successful drug-seizure program would have added less than 3% to the retail price of cocaine.

An analysis of labour costs is even more discouraging. The problem is simply that smugglers of cocaine need very little skilled labour per kilogram. Even if their workers demand high compensation for the risks of long prison terms, it will have little effect on the final price of the drug.⁶²

However, shortages in local availability when they do occur can influence short-term demand and drive users into treatment.⁶³

Figure 19 Global illegal supply and interception of opiates 1993-2003



(Adapted from UNODC World Drug Report 2005)

⁶² Reuter, Can the Borders be Sealed? Rand Note: Rand Corporation 1988.

⁶³ United Kingdom Strategy Unit, Drugs Project Report, 2005, p.56.

2.4 The value chain

If the cost of opium continues to decrease, the profits on heroin – at least at the wholesale level – will increase. However, according to UNODC estimates, the total producer (farmer) income for heroin is, on average, less than 1% of the final retail value.⁶⁴

Figure 20 Heroin timeline: from poppy field to street

September–February	Poppy planted <i>South Afghanistan</i> - <i>October/November</i> <i>East</i> - <i>December</i> <i>North East/West</i> - <i>December/January</i> <i>Central</i> - <i>February</i>
February–May	Poppy sprouts and develops <i>Depending on the region</i>
April–July	Fresh opium harvested (\$92/kg) <i>South Afghanistan</i> - <i>Mid-April/End-May</i> <i>East</i> - <i>April/May</i> <i>North West</i> - <i>May</i> <i>North East</i> - <i>May/July</i> <i>Central</i> - <i>June/July</i>
Several days	Opium dried in sun (\$142/kg)
Unknown	Opium bought and transported to refineries
2-3 days	Opium transformed into morphine
2-3 days	Morphine transformed into smokable and injectable heroin
Unknown	Heroin smuggled to Iran, Pakistan or former Soviet states
12–18 months⁶⁵	Heroin arrives in the United Kingdom (US\$75/g retail; US\$71,928/kg wholesale)

⁶⁴ UNODC World Drug Report 2005, p.130.

⁶⁵ Much of the opium produced in Afghanistan can take 12 to 18 months to appear as heroin in the UK. NCIS United Kingdom Threat Assessment of Serious and Organised Crime, 2003.

With current data availability it is impossible to accurately quantify levels of profit derived along the opium → morphine → heroin chain. It is assumed, for example, that 10 kg of opium are needed to produce 1 kg of heroin.⁶⁶ However, this is an average ratio, which does not take into account the different qualities of opium and heroin.⁶⁷ Furthermore, if profit estimations are to be reliable, comprehensive account must also be taken of other costs involved in cultivation and production, for example, the cost of precursors and labour. In a previous UNDCP study on Pakistan's Illicit Opiate Industry⁶⁸ the largest components of non-opium costs were found to be precursor chemicals (80%), of which acetic anhydride⁶⁹ comprises the most significant share (95%).⁷⁰

Further research and specific analysis are needed to build an accurate picture of profitability along the value chain of a possible licensed opium production system. This will be of paramount importance in addressing the multiple implementation dimensions of a licensed opium system. The construction of an accurate value chain will identify the economic room for adjustment to both the needs of farmers for financial incentives to switch to a licensed system, and the current conditions of the global opium for medicines market.

2.5 Transit routes

Heroin traders constitute the crucial link between demand for heroin outside Afghanistan and the poppy farmers within Afghanistan. For mostly geographical reasons, there exist three principal trafficking routes (North, West and South) out of Afghanistan, with Uzbekistan, Tajikistan, Pakistan, Iran and Turkmenistan providing

66 UNDCP Recommended Methods for Testing Opium, Morphine and Heroin: Manuel for Use by National Drug Testing Laboratories, 1998.

67 UNODC. The Opium Economy in Afghanistan: an International Problem, 2003.

68 Referring to the year 1993. UNDCP, The Illicit Opiate Industry of Pakistan, 1994. (UNDCP 1994)

69 Used in the manufacture of heroin.

70 Depending on the purity of the morphine base, between 1 and 4 litres of acetic anhydride are required to produce 1 kg of heroin (INCB 2001). For the production of white heroin, which is usually produced from purified morphine base, the lower range of the estimate may be sufficient, but for brown heroin, a less pure product, around 4 litres of acetic anhydride may be required. UNODC Opium Economy in Afghanistan: an International Problem, 2003.

key transit points. These countries also provide reverse-transit points for the trafficking of acetic anhydride into Afghanistan.⁷¹

Heroin then moves into the Baltic States, Poland, Ukraine and the Czech Republic. From there, it moves to Scandinavia, Germany and into Britain. The southern, or "Balkan", routes are principally from Afghanistan to Turkmenistan, across the Caspian Sea, into the Caucasus, then into Turkey. The heroin is then shipped to Albania and Italy. Other consignments cross Bulgaria and Macedonia in container trucks, into Serbia, Hungary and Austria.

Several ex-Soviet republics, including Ukraine, Belarus and Lithuania, with good road and rail routes, have been described in secret American government reports as increasingly important conduits for heroin from Afghanistan.⁷²

Primary transit countries also suffer significant 'leakage' from the traffic. Leakage comes in several forms, including drugs siphoned off from larger shipments in lieu of payment for goods and services, or drugs stolen from the traffic. This can result in transformation in opiate usage, as seen in Iran's Sistan Baluchistan province, where some traditional opium use has given way to widespread heroin use.⁷³ Proportionate to the increased quantities of heroin passing through Iran, leakage of trafficked heroin has increased.

Conclusion

Traditionally used as a cure-all in many parts of Afghanistan, opium came to serve as a form of currency during the Soviet campaign, generating cash income that enabled people to cope with the endemic winter food shortages. The increases in Afghan opium production coincided with anti-drug campaigns in Iran, Pakistan and Turkey. These campaigns, whilst reducing opium production levels in these countries, relied heavily on severe law enforcement tactics. The dramatic decline in opium cultivation and

71 Iselin The Afghan Rim's Heroin Economy in Cross-Border Law Enforcement Cooperation for Central South Asia, 2004.

72 The Economist: War and Drugs: Another powder trail, 18 October 2001.

73 Iselin 2004.

production in Myanmar and Laos in recent years has further enabled the Afghan opium industry to evolve. It is now an industry that has transformed the global supply and demand landscape, supplying approximately 90% of the world's illegal opium market.

Afghanistan itself is experiencing an increase of Afghan heroin addicts, repatriated from Iran and Pakistan, where they were first introduced to the drug.⁷⁴ Although injecting drug use is still marginal inside Afghanistan, it is widely predicted by health experts that this could become a serious problem as in neighbouring Iran. Afghanistan is in no position to cope with such an eventuality: its population is served by no more than five very small addiction treatment facilities. However, the German Federal Ministry for Economic Cooperation and Development (BMZ) has commissioned the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) to develop a development-oriented Drug Control Programme. Due for completion in October 2005, this Drug Control Programme will result comprehensive Drug Profile Analysis, where the drug-specific contexts of existing development programmes and projects are analysed, and possible entry points for the integration of drug-specific activities into project implementation are developed.

74 Dating back to 2001, thousands of Afghan refugees living in Iran and Pakistan, as well as those displaced within Afghanistan, became addicted to heroin, opium and other drugs. According to the UNDCP, nearly 40% of drug users at that time began their habit in neighbouring countries like Pakistan and Iran, either as economic migrants or refugees fleeing war and conflict. UN Office for the Coordination of Humanitarian Affairs, IRIN.news.org, Focus on drug addiction, 28 May 2001

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Reuter, P., 1988. *Can the Borders be Sealed?* Rand Note: Rand Corporation, Santa Monica.

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International Crime and Terrorism and the Illegal Opium Economy

Executive Summary

Opium Licensing: A Device to Cut the Opium – Crime Link

Global trends of the illegal opiates market

In 2004, the global illegal opiates market was relatively stable. While global opium poppy cultivation increased by 16%, actual global opium production remained constant. Likewise, Afghanistan's share of opium production is expected to remain unchanged in 2005, accounting for 87% of the world total.

Linking international crime and terrorism to the illegal heroin industry

Whereas the illegal drug industry is profit-oriented, terrorist groups primarily focus on political and ideological aspirations. Therefore, linkages between terrorism, international crime and the illegal drug industry are mainly indirect, focusing more on logistical, operational and political issues and less on financial ones. *In particular, the nexus between terrorism and illegal drug production is stronger in environments with weak and fragmented governance structures.* Regions and countries with limited government control, widespread poverty and considerable lack of legal income opportunities, appeal to terrorist groups as this lawlessness provides *safe havens*, limited banking regulation and ground for terrorist recruitment. As traditional drug cultivation and production normally take place within such environments, countries with a deeply entrenched illegal drug industry tend to attract terrorists groups.

The Afghan experience: Terrorist linkages to the illegal drug trade

Following the withdrawal of the Soviet forces from Afghanistan in 1989, the country experienced a large increase in illegal drug production and trade. In addition, the influence of international crime over the illegal drug trade originating in Afghanistan has increased. To a large extent international trafficking groups control the drug trade from the Afghan borders to the main consumer markets in Europe and the Russian Federation.

As the long-term dependence of the Afghan economy on illegal opium production has hindered economic development and undermines the establishment of the rule of law, the country provides a breeding ground to criminal and terrorist actors who may be directly or indirectly involved in the illegal drug industry. *Currently, the country is faced with a resurgence of elements of, or sympathisers with the Taliban, and the remnants of Al Qaeda.* Some of these groups are operating with hit-and-run tactics from neighbouring countries such as Pakistan. *Until now, international crime groups appear to have a limited presence in Afghanistan. However, recent signs of the increasing vertical integration of the illegal heroin trade points at the possibility of a consolidation of the criminal heroin industry in Afghanistan.* A cartel-like heroine trade in this fragile and unstable country would be a serious blow to the current reconstruction efforts.

Licensed opium production as a means to cutting the crime-opium link and establishing the rule of law

Licensed opium production has the potential of providing a considerable number of farmers, wage labourers and other actors currently involved in the illegal drug industry with a legitimate income opportunity. It can free farmers who are currently locked in the illegal drug industry from accumulated debts and the threat of punishment. *In the long-term, as the political, social and economic conditions in the country are no longer conducive to the development of unlawful activities, the linkage between terrorism and illegal drug production in Afghanistan would be substantially weakened.*



**Afghanistan: Linkages Between The Illegal Opium Economy,
International Crime and Terrorism**

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The Senlis Council

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Introduction

This paper will deal with linkages between international crime, terrorism and the illegal opium economy, both in Afghanistan and the wider region. Many linkages can be established, but there remains dispute as to the size, scope and importance that can be attached to them. Clearly, in a country such as Afghanistan, where an estimated 60 per cent of Gross Domestic Product (GDP) is indirectly or directly related to the illegal opium industry, many sectors of society are benefiting from this illegal industry and the scope for ‘spillover’ to other (international) criminal and terrorist activities is extremely significant.¹

1 Terrorism and illegal drugs: an introduction

Terrorist groups can normally be differentiated from other criminal organizations and networks because they do not primarily seek monetary gain, focusing instead on political and ideological aspirations. Funding may be a means to an end and in order to establish, maintain and expand terrorist networks, but clearly plays a secondary role in the overall terrorist strategy. On the other hand, the illegal drug industry is profit-

¹ David Brunnstrom, ‘Drug-plagued Afghan economy faces tough rehab’, Reuters (24 September 2003).

oriented and is almost exclusively focused on financial gain and the investment of profits to further increase income. Moreover, “*A demand component is fuelling this industry, while in contrast there is no addiction-based international demand for terrorism*”.²

Considering these basic differences between terrorist and other criminal organizations, the linkages between both phenomena can in principle only be indirect: the diversion of profits from the illegal drug industry to terrorist organizations, networks or activities. However, terrorist organizations certainly can have a more direct role in the cultivation, production and trafficking of illegal substances. This phenomenon is often described as *narco-terrorism*, defined by the American Drug Enforcement Administration (DEA) as:

“(...) *a subset of terrorism, in which terrorist groups, or associated individuals, participate directly or indirectly in the cultivation, manufacture, transportation, or distribution of controlled substances and the monies derived from these activities.*”³

Two main reasons explain why the illegal drug economy is being tapped by terrorists. First, the mere fact that drugs are illegal makes the commodity a highly profitable source of income. Street prices are high as is demand, which also benefits from long term stability. Secondly, traditional drug cultivation and production (as opposed to the production of synthetic drugs) normally take place in regions and countries where there is limited government control, widespread poverty and a serious lack of legal income opportunities. Such countries as Afghanistan, Bolivia, Colombia and Peru, but also countries like Morocco, Sudan, Syria, Lebanon and Somalia, appeal to terrorist organizations as they have the potential to provide *safe havens*, limited banking controls and sometimes fertile recruiting grounds for terrorists.

2 US Department of State, Terrorism: Threat Assessment in a Changing Global Environment, Statement of Raphael Perl, Specialist in International Affairs, Congressional Research Service, before the House Committee on Government Reform, Subcommittee on National Security, Veterans Affairs, and International Relations (26 July 2000).

3 Statement of Asa Hutchinson, Administrator of the DEA before the House Committee on International Relations (24 April 2002). See: <http://japan.usembassy.gov/e/p/tp-gl0290.html>.

As mentioned above, in some cases the links between terrorist organizations and drug traffickers may not be purely financial. They may range from:

*“facilitation, protection, transportation, and taxation to direct trafficking by the terrorist organization itself in order to finance its activities. Traffickers and terrorists have similar logistical needs in terms of materiel and the covert movement of goods, people and money.”*⁴

Indeed, the logistical, operational and financial needs to sustain or expand criminal networks provide key reasons for situating terrorism and the drug industry in the same policy framework, despite the fact that they share little in terms of ideals, political objectives or the desire to change the political environment. Nevertheless, there may be commonality in smuggling routes or in money laundering methods. Drug traffickers and terrorists may also benefit from the same tendencies to engage in corruption of state officials.⁵

Considering the different role money plays in both types of crime and the indirect financial relationship between them, it is clear that the relative importance of finances is much higher in the sphere of for-profit criminal organizations. During the Follow-up Conference to the United Nations Counter-Terrorism Committee Special Meeting in March 2004, it was argued that:

*“[i]ndeed, the financial flows linked to terrorist activities are often very low and remain below the thresholds of control mechanisms within financial institutions, whereas the financial dimension of organized crime is huge. The aggregate size of global money laundering is estimated at ranging between 2% and 5% of the world's GDP (roughly US\$ 600 billion to 1.5 trillion).”*⁶

4 Testimony of Mr. Rand Beers, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, U.S. Department of State (13 March 2002). See: http://judiciary.senate.gov/testimony.cfm?id=196&wit_id=331.

5 Kevin Newmeyer, Terrorism and Drug Trafficking: The Approach by the Organization of American Status (February 2004), paper prepared for the Follow-up Conference to the United Nations Counter-Terrorism Committee Special Meeting (11-12 March 2004), 2.

6 SECI Center Anti-Terrorism Task Force, Narco Terrorism. Global and Regional Review (11 March 2004).

Loretta Napoleoni, an Italian economist and terrorist expert, has stated that the “New Economy of Terror” has merged with the international illegal and criminal economy and estimates that “*together they have a turnover of \$1.5 trillion dollars, higher than the GDP of the United Kingdom.*”⁷ According to Napoleoni, the share with links to terrorism amounts to \$500 billion which can be attributed to legal business (one third) and criminal activities (two thirds), among which “*primarily drug trade and smuggling.*”⁸ That would mean that the size of the terrorism economy would be more or less the same as the illegal drug economy (estimated between \$300 and \$500 billion per annum), with overlap where the economic activities of each coincide. Unfortunately, there is no clear data that accurately quantifies this overlap and, for now, there is no more than a general understanding of the size and scope of linkages between illegal drugs and terrorism.

2 International criminal groups in Afghanistan and the region: linkages with the illegal drug trade

The end of the Cold War and the withdrawal of Soviet forces from Afghanistan in 1989 sparked an enormous increase in illegal drug production and trade, filling the vacuum created by the absence of an effectively functioning state and a lack of adequate aid and external support. In this environment, transnational networks developed in Afghanistan between different criminal groups, drug traffickers, militant and terrorist groups that facilitated the opium and heroin trade between Afghanistan and the international market.⁹ Traditionally, the most important trafficking route towards Europe had been the so-called *Balkan Route*. Since the 1980s, huge amounts of Afghan opium or morphine base have travelled along this route through Pakistan and Iran, which are refined to make heroin in these countries or taken to laboratories in Turkey. This heroin is subsequently transported via the Balkans to Western European markets. Drug-smuggling routes used in the 1980s to move drugs (and other goods such as precious

7 Loretta Napoleoni, Discussion Paper: The New Economy of Terror (1 December 2003). See: <http://www.signsofthetimes.org.uk/Loretta.html>.

8 Ibid.

9 Tamara Makarenko, “Crime, Terror and the Central Asian Drug Trade”, Harvard Asia Quarterly (Summer 2002).

stones) to Pakistan, Iran and Central Asia and – in the other direction – weapons to Afghanistan are still in place.¹⁰ Although present day illegal drug seizures in Pakistan and Iran are large, as a percentage of the whole industry they are low. UNODC estimates that still the bulk of all morphine, heroin and opium exported from Afghanistan travels through these two countries into Turkey.¹¹

The most important alternative routes which have replaced part of the Balkan Route are those which lead through the Central Asian republics to the north of Afghanistan. This partial redirection of the opium trade played an important role in increasing the involvement of new foreign criminal groups and networks in the Afghan drugs trade, especially along those parts of the trafficking routes outside of Afghanistan.

However, despite the increasing involvement of these external criminal groups, the Afghan drug lords – often also *warlords* – still play a leading and controlling role inside the Afghan territory at the initial stages of the illegal drug trade. They mainly operate from domestic bases and do not have an international network in place.¹² These criminal groups play different roles in the Afghan drug trade. In some areas, they represent the middlemen of the trade who buy opium directly from farmers and sell it to international buyers along the trafficking routes in the region.¹³ In other areas, Afghan criminal groups rely more on local structures and different local stakeholders such as landowners, small traders and shopkeepers – often coming together in small or larger opium bazaars.¹⁴ Box 1 gives an overview of the structure of Afghan criminal groups involved in drug production and trafficking in comparison to their Latin American counterparts.

10 Vanda Felbab-Brown, “Afghanistan: When Counternarcotics Undermines Counterterrorism”, *The Washington Quarterly* (2005) 28:4, 58.

11 UNODC, *World Drug Report 2005* (Vienna 2005), 49.

12 Tamara Makarenko, “Crime, Terror and the Central Asian Drug Trade”, *Harvard Asia Quarterly* (Summer 2002).

13 *Ibid.*

14 UNODC, *The Opium Economy in Afghanistan. An International Problem* (New York 2003), 54.

Box 1. A comparison between Afghan and Latin-American criminal groups involved in the illegal drug economy

For domestic criminal groups involved in the drug trade of Afghanistan – whether drug lords, traffickers, warlords or others – involvement in this illegal industry is not solely motivated by for-profit considerations. In Afghanistan, many of these actors have deep interests in tribal, regional or national political dynamics. Profits made by producing and trafficking illegal drugs such as heroin are used to expand, consolidate and defend their tribal, regional or national political power, political aspirations and influence. That is the main reason why political power is in many cases still very much correlated with the degree of involvement in the illegal drugs trade or other criminal activities. Drug money is used for bribery, to finance *private armies* and to invest in a legitimate business or a political career. Profit motivations are clearly ancillary to these overriding political aims.

In Latin America, drug cartels generally operate within countries with a democratically-elected government. Their involvement in the drug trade has been – and in many cases still is – motivated by profit rather than political considerations. Although these cartels can have enormous political influence by bribing high-profile officials, their principal aim is to defend and expand their illegal trafficking activities and international criminal networks. In present-day Colombia, for example, this industry has turned into a huge business, with more than 300 active drug-smuggling organizations involved.

For a licensed medical opium programme, it is important to ascertain the underlying motives of Afghan domestic criminal groups – and their ethnically-related partners from neighbouring countries – to be involved in the illegal drugs economy. If it is demonstrated that Afghan drug trafficking groups – or individual members of these groups – are more motivated by the interests of their specific tribe, family or region (aiming to increase power and influence), they may be more easily attracted to shifting from an illegal to a legal system. If these groups are convinced that they can aspire to the same ideals and political objectives by focusing on legitimate business, they may be prepared to abandon illegal drugs production and trafficking. The next stage of the Feasibility Study should deal with the different sets of motives of domestic and international crime groups for being involved in the illegal opium industry in Afghanistan. Further reference should be made to the research of Guillaume Fournier which investigates the history of alcohol prohibition in the United States, where certain (groups of) smugglers were able to legalize their situation following the abandonment of prohibition and were motivated to shift to the legal economy (Guillaume Fournier, *Legalization and the fate of traffickers* (Paris 2003).

By comparison, drug lords in the five Central Asian republics (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) are not so well established in the drug trade as

their Afghan counterparts.¹⁵ Although their drug-related activities are limited, direct relationships with Afghan traders have been established.

The location of criminal groups profiting from the Afghan drug economy may be closely correlated with the heroin trafficking routes leading out of the country. From the 1990s onwards, after the collapse of the Soviet Union, an increasing quantity of illegal drugs were smuggled through the Central Asian states on the northern side of Afghanistan. Many organized criminal groups are operating in this area. On this so-called *Northern Route*, groups originating from countries like Tajikistan and Uzbekistan are involved in heroin trafficking from Afghanistan into Tajikistan and from there onwards to other Central Asian countries.¹⁶ UNODC says that:

“(...) large loads of drugs are most of the time escorted by large and well-equipped groups of traffickers. These organizations avail themselves of medium-level armaments; they make use of radio communication networks, which they utilize both for the contacts necessary for drug transactions and for avoiding controls and interceptions.”¹⁷

In Kyrgyzstan, trafficking groups operate in the southern city of Osh, where Afghan heroin is repackaged and smuggled up north.¹⁸ Towards Tajikistan, opium either travels through the mountainous area of Gorno-Badakhshan (and then north to the city of Osh in Kyrgyzstan) or into southern Tajikistan.¹⁹ From the capital of Dushanbe it travels further to Tashkent. Uzbekistan also receives Afghan opium through the Gorno-Badakhshan/Osh route that reaches the Andizhan region of Uzbekistan and gets illegal drugs through Turkmenistan.²⁰ Illegal drugs travel through Turkmenistan to reach markets in Russia, Turkey and Western Europe. Lastly, Kazakhstan is an import transit

15 Ibid.

16 UNODC, online memorandum on Law Enforcement: Central Asia. http://www.unodc.org/unodc/en/law_enforcement_centralasia.html.

17 Ibid.

18 IRIN, Bitter-Sweet Harvest: Afghanistan's New War. IRIN Web Special on the threat of opium to Afghanistan and the region. Central Asia: Regional impact of the Afghan heroin trade (July 2004), 22. <http://www.irinnews.org/webspecials/Opium/regOvr.asp>.

19 Ibid.

20 Ibid.

country for drugs going to Russia.²¹ Russian and Chechen mafia play an important role on all trafficking routes north out of Afghanistan. Chechen criminal groups are said to dominate the Russian end of the Central Asian narcotics routes.²² Azeris and Central Asians (especially Tajiks) are also strongly involved in this Afghanistan-Russia route.²³

Growing numbers of heroin seizures in Central Asian republics, especially in Tajikistan and Uzbekistan, point to the establishment of more and more opium refineries operating – not only in Afghanistan or Pakistan – but also along the Northern Route.²⁴ The former Soviet republics can often still be characterised by having ineffective border control, remnants of civil war and corruption; perfect conditions for international crime to prosper. Even the post-war conflict situation in Iraq has drawn traffickers to that country to smuggle Afghan heroin to Europe through Iraq and Jordan.²⁵

According to Europol data, Turkish organised crime groups still dominated the heroin market in 2004.²⁶ They are said to be involved in every aspect of the illegal industry; from the poppy fields to the markets in Europe.²⁷ The importance of ethnic Albanian organised crime groups is increasing and there is evidence suggesting they are closely cooperating with the Turkish groups.²⁸ According to Raymond Kendall, former Secretary General of Interpol, in 2000, at least 80 per cent of the heroin entering Western Europe came through Turkey and the Balkans – with Albanian gangs playing an increasingly important role.²⁹ Albanians have been particularly active in countries as Switzerland, Norway, Sweden and the Balkan countries.³⁰ They represent the link

21 For a good account of how narcotics are smuggled from northern Tajikistan via Kazakhstan towards Russian cities like Moscow and St. Petersburg, see: US Federal Research Division, Library of Congress, *Involvement of Russian Organized Crime Syndicates, Criminal Elements in the Russian Military, and Regional Terrorist Groups in Narcotic Trafficking in Central Asia, the Caucasus, and Chechnya* (October 2002), 19-23.

22 Ibid., 25.

23 Ibid, 30.

24 IRIN, *Bitter-Sweet Harvest: Afghanistan's New War*. IRIN Web Special on the threat of opium to Afghanistan and the region. Central Asia: Regional impact of the Afghan heroin trade. <http://www.irinnews.org/webspecials/Opium/regOvr.asp>.

25 BBC news online, *Lawless Iraq is 'key drug route'* (12 May 2005). http://news.bbc.co.uk/1/hi/world/middle_east/4541387.stm.

26 Europol, *2004 European Union Organised Crime Report* (The Hague 2005), 10.

27 Ibid.

28 Ibid.

29 Jan Repa, "Europe's drug gangs", *BBC News* (15 June 2000). <http://news.bbc.co.uk/1/hi/world/europe/792290.stm>.

30 Interpol, online information about heroin traffickers. <http://www.interpol.int/Public/Drugs/heroin/default.asp>.

between Afghan domestic traffickers, Turkish producers and the world market. The UNODC World Drug Report mentions that Turkish, Kurdish and Albanian groups (operating from Kosovo, FYR of Macedonia and Albania) are involved in wholesale shipments from Turkey to Europe.³¹ The same Report also states that much of the retail trade is currently in the hands of West African criminal groups.³² Romanian organized crime groups have been involved in drug trafficking in northern Italy and Spain.³³ Romania itself remains an important transit country for Turkish and Albanian traffickers.³⁴

In conclusion, transnational criminal groups form a very important group of actors in the regional and international heroin trade originating in Afghanistan. They have a profound interest in maintaining the status quo: a flourishing drug trade combined with relatively little law enforcement capacity in the region to deal with the size and scope of this trade. Makarenko summarizes the major players in the Afghan and Central Asian drug trade as follows:

*“Major players (...) include the following: a network of Afghan, Kyrgyz and Russian syndicates who move shipments of opiates through Central Asia, Russia, the Baltic states and into Western Europe; a network of Afghan, Turkmen and Turkish syndicates who regularly traffic opiates through Turkmenistan (sometimes via Armenia and Azerbaijan) into Turkey for European redistribution; a coalition of Caucasian syndicates allegedly responsible for controlling a significant proportion of the narcotics industry in the Russian Federation; a coalition of Afghan-Iranian and Afghan-Pakistani groups: and independent Tajik and Uzbek groups with ethnic diaspora links in Afghanistan.”*³⁵

31 UNODC, World Drug Report 2005 (Vienna 2005), 49.

32 Ibid.

33 Europol, 2004 European Union Organised Crime Report (The Hague 2005), 9.

34 Ibid.

35 Tamara Makarenko, “Crime, Terror and the Central Asian Drug Trade”, Harvard Asia Quarterly (Summer 2002).

It is important to note that Afghan groups or ethnic groups linked to tribes or communities in Afghanistan are almost always at the core of the illegal drug trade inside Afghanistan. Foreign traders from Pakistan, Iran and the Central Asian republics are certainly involved in Afghanistan, but these groups normally share the same ethnic origins (e.g. Pashtuns from Pakistan, Baluch from Iran or Pakistan, Tajiks from Tajikistan and Uzbeks from Uzbekistan) as people living in Afghanistan.³⁶ Nevertheless, these “Afghan” groups have a very limited presence in the complete trafficking chain leading from the poppy fields in Afghanistan to the markets in Europe and elsewhere.

In general, Afghan traffickers ship opium to or across the border, after which traffickers from neighbouring countries take over. In 2003, the UNODC observed that:

“(...) Afghan groups, in general, do not appear to participate in the lucrative international drug trafficking operations. The involvement of Afghan groups/individuals is basically limited to the opium production, the trade of opium within Afghanistan, the transformation of some of the opium into morphine and heroin, and to some extent, the trafficking of opiates (opium, morphine, heroin) to neighbouring countries (Iran, Pakistan, Tajikistan, Turkmenistan and Uzbekistan).”³⁷

³⁶ UNODC, *The Opium Economy in Afghanistan. An International Problem* (New York 2003), 68.

³⁷ UNODC, *The Opium Economy in Afghanistan: An International Problem* (New York 2003), p. 64.

Box 2. A case study of international criminal organizations in Spain: an example of how Afghanistan could develop

Although Afghanistan still finds itself in the initial stages of economic development, democracy, stability and security, the realisation of these objectives will not necessarily entail a decrease in the involvement of international criminal organizations. The following example of Spain is illustrative. More than democracy, security and development will be necessary to break the heroin based drug trade in Afghanistan.

In 2003, it was found that organized crime organizations in Spain included 101 different nationalities, dominated by groups from Spain, Romania, Colombia, Morocco and Serbia. Spanish groups showed the highest level of collaboration with other criminal groups. Spain is Europe's main entry point for Colombian, Bolivian and Peruvian cocaine and Moroccan hashish. In 2004, 70 per cent of all cocaine intercepted in the European Union was seized in Spain. Moreover, 65 per cent of all hashish traded in Europe is said to have passed through the country. Moroccan groups in Spain organize the trafficking of hashish and control the trade of synthetic drugs. Colombian groups use Spain as bridgehead to the European market of cocaine.

The presence of international crime has many negative consequences for Spain ranging from violence, tax evasion, money laundering operations (especially in the construction and tourism sector) and relative high consumption and addiction rates for both cocaine and hashish.

It shows that the overwhelming presence of international drug-related crime is not limited to a country such as Afghanistan with a nascent democratic system, widespread poverty, limited law enforcement capacities and weak rule of law. In fact, since the opium trade inside Afghanistan is still mainly in the hands of Afghan drug lords, who function as intermediaries between farmers and foreign traffickers, it is feasible to consider that a democratic transition might even attract more international criminal groups to Afghanistan, especially if it is not accompanied by economic development, poverty reduction and an effective law enforcement system. To a large extent, the outcome in the longer term will also depend on whether opium cultivation and production moves to other areas and whether domestic and international crime groups operating inside Afghanistan will switch from illegal to legal activities following the introduction of licensed opium and alternative livelihoods.

Although international criminal groups are trying to increase their influence within Afghanistan and are forming partnerships with Afghan drug lords, the latter seem to remain in control of the industry and main trafficking activities inside the country.³⁸

³⁸ Chechen criminal groups have been sighted in Kandahar and Helmand, two of Afghanistan's main opium-growing provinces.

3 Terrorist and insurgent groups in Afghanistan: linkages with the illegal drug trade

In Afghanistan, there is a thin line between “terrorist” and “insurgent” groups. Many groups operating in Afghanistan are considered to be fighting an insurgency using terrorist means. Security is fragile, leading UN Secretary General, Kofi Annan, to express in a recent press release that the overall security situation and the rise in insurgency in Afghanistan is of paramount concern:

“It is impossible to overestimate the importance of restoring security in Afghanistan as a condition for the sustainability of the peace process.”³⁹

The key terrorist group operating in Afghanistan is Al Qaeda. This terrorist organization, claimed to be forming the largest truly global network of terrorist cells comprising thousands of members, has become the centre of attention for most law enforcement agencies since 11 September 2001.⁴⁰ The United States National Commission on Terrorist Attacks upon the United States that investigated the 11 September attacks concluded that:

“Al Qaeda has been alleged to have used a variety of illegitimate means, particularly drug trafficking and conflict diamonds, to finance itself. While the drug trade was a source of income for the Taliban, it did not serve the same purpose for al Qaeda, and there is no reliable evidence that Bin Laden was involved in or made his money through drug trafficking.”⁴¹

There is, indeed, little evidence linking Al Qaeda with the drug trade. Moreover, at present, it is unclear to what extent Al Qaeda is still active in Afghanistan. In the past few years, Al Qaeda members have been arrested in Pakistan, mostly in the area that is

39 UN press release: “Afghanistan: Despite progress, objective of stability remains to be met – ANNAN” (16 August 2005).

40 The Statement made by Rohan Gunaratna, renowned terrorist expert before the National Commission on Terrorist Attacks Upon the United States (9 July 2003) provides a good overview of what Al Qaeda is and how it has developed since 11 September 2001. See: http://www.9-11commission.gov/hearings/hearing3/witness_gunaratna.htm.

41 National Commission on Terrorist Attacks upon the United States, The 9/11 Commission Report (2004). Chapter 5.4. A Money Trail? 169. See: http://www.9-11commission.gov/report/911Report_Ch5.htm.

bordering south and south eastern Afghanistan. US intelligence suggests that Al Qaeda's leaders, Osama bin Laden and Ayman al-Zawahiri, are currently living in this mountainous border region.⁴² Some say that the forced move from Afghanistan to Pakistan was anticipated before the September 11 attacks were carried out as it was clear that the US would have to react to these attacks.⁴³ Rumours circulate that currently Al Qaeda terrorists are re-entering Afghanistan under the cover provided by the enormous flows of refugees returning to Afghanistan, *inter alia* from the tribal belts of North and South Waziristan in north-western Pakistan.

Since 1996, Al Qaeda was protected and harboured in Afghanistan by the Taliban movement which has been widely implicated in drug cultivation and trafficking. While doubts can be raised as to what extent the Taliban represents a terrorist movement, the UN Security Council has, in resolutions such as Resolution 1390 (2002) concerning sanctions, repeatedly grouped this organization together with Al Qaeda and its leader Osama bin Laden.⁴⁴ The Taliban banned opium poppy cultivation in July 2000, when Mullah Muhammad Omar issued an edict declaring opium production incompatible with the beliefs of the Islam.⁴⁵ Consequently, opium cultivation and production plummeted drastically, with cultivation down 91 per cent and production 94 per cent.⁴⁶ The economic effect of the ban was a significant rise in the price of opium and its derivatives. While this assured profits for the traffickers and revenue for the Taliban regime that taxed them, it was devastating for those many thousands of households reliant on opium as their only source of livelihood.⁴⁷

Currently, Afghanistan is faced with an insurgent movement that is made up of remnants of the Taliban, with links to Al Qaeda and other groups like Hezb-e-Islami Gulbuddin

42 Dan Murphy, "Al Qaeda to West: It's about policies", *The Christian Science Monitor* (5 August 2005).

43 Syed Saleem Shahzad, "Al-Qaeda witch-hunt in Pakistan's army", *Asia Times* (7 May 2005).

44 For Security Council Resolution 1390 (2002), see: <http://www.unis.unvienna.org/unis/pressrels/2002/sc7274.html>.

45 ODCCP Update, Afghanistan ends opium poppy cultivation (June 2001), 3.

46 ODCCP, *Global Illicit Drug Trends* (New York 2002), 6.

47 Testimony of William Bach from the Bureau of International Narcotics and Law Enforcement Affairs before the Committee on Government Reform, US House of Representatives Subcommittee on Criminal Justice, Drug Policy, and Human Resources (5 October 2001).

(HIG) that operate against the military troops of the international coalition in Afghanistan:

*“An insurgency by Taliban, pro-Taliban, and Al Qaeda remnants persists, but appears to be gaining little traction or popular support. On the other hand, narcotics trafficking appears to be a growing threat to Afghan development and stability.”*⁴⁸

The *modus operandi* of these groups is almost entirely based on terrorist-inspired tactics. They mainly conduct rocket and small arms attacks on the international coalition and international relief and reconstruction workers.⁴⁹ In addition, for many years five Pakistani terrorist groups have been involved in Afghanistan: the Harkat-ul-Mujahideen, the Harkat-ul-Jihad-al-Islami, the Lashkar-e-Toiba, the Jaish-e-Mohamad and the Sunni extremist Lashkar-e-Jhangvi (LEJ).⁵⁰ These terrorist organizations also suffered heavy casualties as a consequence of the US-led war in Afghanistan and are now said to be operating from Pakistan with hit-and-run style terrorist tactics.⁵¹ It is not entirely clear what course the evolution of terrorism inside Afghanistan will take. After the presidential elections in October 2004, one analyst said that:

*“(t)he major terrorist threat – remnants of Taliban, al-Qaeda, Hezb-i-Islami and others in a loose, largely Pakistan based coalition – apparently realized that they lacked the strength to make a significant impact on the election and decided not to disrupt it. It may also reflect an increasing overlap between terrorist and criminal activity that makes violent action without material profit unappealing. However, despite Karzai's claim, terrorism in Afghanistan has not been decisively cowed by recent set-backs but is rather searching for new and softer targets while awaiting changes that would facilitate a broader reach.”*⁵²

48 US Congressional Research Service (CRS), Afghanistan: Post-War Governance, Security, and U.S. Policy (June 2004), 10.

49 Ibid, 22.

50 B. Raman, “Afghanistan: Enduring terrorism”, Asia Times (12 June 2003).

51 Ibid.

52 David C. Isby, “Soft-targets in Post-election Afghanistan”, The Jamestown Foundation’s Terrorism Monitor (2 December 2004).

This would suggest then that the spectre of terrorism will remain in Afghanistan for the next few years at least, but that its intensity might be low given the relative weakness of the different groups involved. The upcoming parliamentary elections (which will take place on the 18th of September; within weeks of the time of writing) will prove whether the current trend of small-scale violence, sporadic suicide bombings, abductions and small pockets of resistance to the international coalition will be disrupted by more substantial acts of terrorism and insurgency aimed at protesting and disrupting the fledging central Government and coalition plans for the reconstruction of Afghanistan.

Although Afghan warlords and local commanders ought not to be included in the category of terrorist or insurgent groups, there is clear overlap in terms of involvement in the drug economy as well as their interest in political power and survival. Although their influence is still strong in Afghanistan, they are said to be slowly losing power and turning their attention either to making money through illegal drugs, legitimate businesses or solidifying their influence through involvement in the upcoming elections.⁵³

4 Terrorist and insurgent groups in Central Asia: linkages with the illegal drug trade

In Central Asia, the Islamic Movement of Uzbekistan (IMU) is the dominant terrorist group involved in drug trafficking and other criminal activities. At its peak, it had a near monopoly on Central Asia's drug trafficking business.⁵⁴ Founded in 1998, the IMU sought to overthrow the Uzbek regime of President Karimov and establish an Islamic state. They also fought alongside the Taliban and Al Qaeda during the last Afghanistan war. Unlike Al Qaeda, however, the IMU is less bound by Islamic doctrine and turned to a substantial degree to illegal drug trafficking in order to pay its fighters and to obtain

53 Netherlands Institute of International Relations Clingendael, *Afghanistan 2005 and Beyond. Prospects for Improved Stability Reference Document* (The Hague 2005), 52.

54 Tamara Makarenko, *Briefing on Central Asia's Opium Terrorists* (22 August 2002). <http://www.pbs.org/wnet/wideangle/shows/centralasia/index.html>.

arms, equipment and supplies.⁵⁵ From 1999 onwards, the IMU's activities have mainly been concentrated on drug trafficking from Afghanistan through Tajikistan and Kyrgyzstan to markets in Russia and Europe.⁵⁶ Terrorism and international crime expert Tamara Makarenko states that:

“(t)he group's success in drug trafficking is due to their knowledge of mountain routes; their ability to corrupt border officials; and, more importantly, their willingness to enter into armed engagements with border guards to distract attention from trafficking operations in nearby areas.”⁵⁷

The IMU has also suffered from the war in Afghanistan as well as from international anti-terrorism measures since 2001. The movement is often described as an insurgent group that transformed into a criminal organization, directing its regional operations almost entirely towards protecting old and opening new trafficking routes.⁵⁸ Hizb-ut-Tahrir (HT), a second Islamic organization and widespread underground Islamic movement in Uzbekistan, Tajikistan and Kyrgyzstan, has also been reported to be involved in the illegal drug trade.⁵⁹ Terrorism expert Ahmed Rashid speculates that HT is involved in narcotics sales and using the same trafficking infrastructure as IMU and other trafficking organizations in the region.⁶⁰ In general, many insurgent, terrorist and mixed groups seem to be going through a phase of re-thinking their objectives, strategy and modus operandi.

55 Ibid.

56 Tamara Makarenko, *The Changing Dynamics of Central Asian Terrorism*, *Jane's Intelligence Review* (February 2002).

57 *Central Asia's Opium Terrorists*.

58 Justin L. Miller, *The Narco-Insurgent Nexus in Central Asia and Afghanistan* (7 May 2003). <http://www.inthenationalinterest.com/Articles/Vol2Issue18/vol2issue18Millerpfv.html>.

59 US Federal Research Division, Library of Congress, *Involvement of Russian Organized Crime Syndicates, Criminal Elements in the Russian Military, and Regional Terrorist Groups in Narcotic Trafficking in Central Asia, the Caucasus, and Chechnya* (October 2002), 18.

60 Ibid.

5 The impact of licensed opium on international crime

In the context of the proposal to introduce licensed opium production in Afghanistan, it is essential to consider the impact of a system of licensed production on important actors in the illegal drug economy including terrorist or insurgent groups whose funding – in some cases – is derived from this lucrative illegal trade. In a country where an estimated 60 per cent of GDP is directly or indirectly related to the illegal opium industry, many actors are involved and take their share of this enormous underground economy. It is worth noting that a shift from an illegal to a licensed poppy industry will entail similar consequences as would a transition from illegal poppy to the cultivation of other crops as wheat, saffron or rice. If any counter-narcotics measures prove to be successful and sustainable, it is inevitable that criminal organizations will lose at least part of their income derived from illegal drugs. At the same time, some criminal actors may be able to benefit from general amnesty provisions, which could allow them to switch from the illegal to the legal economy. Such amnesty provisions are beyond the scope of this paper.

Criminal groups in Afghanistan – whether domestic, foreign or forming part of international networks – are important stakeholders in Afghanistan’s illegal opium economy. Should a system of licensed opium production be implemented in Afghanistan, it has to be taken into account that this could affect these groups substantially. Any estimation of the degree to which this impact will be felt, can only be answered once a greater level of detail is established of: 1) the size of the project; 2) the regions and specific areas that are included; 3) the farmers and wage labourers to be included; 4) who owns the land and 5) who runs, controls and manages these programmes. These questions will be fully answered at the next stage of this Feasibility Study.

Nevertheless, some observations can be made here concerning the relationship between criminal groups and the proposed system of licensed opium production. Licensed cultivation of opium poppy for opium has the potential of providing many opium farmers, wage labourers and other Afghans with a legitimate income opportunity that

will create the incentive to move away from the criminal sector. Other groups directly or indirectly linked to the illegal economy (for example, traders and shopkeepers) may also benefit from the introduction of a new licensed economic activity which could, for example, provide job security, steady incomes, access to credit and technical assistance. Furthermore, a licensed opium industry offers the clear potential for extricating farmers and wage labourers away from the accumulated opium-denominated debt.

Criminal groups – both Afghan and foreign – large-scale traders, war lords, *drug lords* and others benefiting from the current illegal trade could be influenced in a rather different way. While the Feasibility Study research will fully tackle these complex dynamics later, some possible scenarios can be outlined as follows:

- 1 Selected farmers and wage labourers move from illegal to licensed cultivation under the newly implemented licensed opium programme. This could require the Afghan government to implement general or specific amnesty provisions. It could entail that fewer farmers and other workers would work in the illegal sector, less opium could be collected by the traffickers and the prices of opium could go up.
- 2 Traffickers need to find new opium farmers or move to other areas. This could entail moving to areas where illegal opium poppy already grows, or promoting opium poppy cultivation in new areas, which can be described as a *balloon effect* as cultivation shifts to new areas following a change in policy or government action. One possibility is the introduction of large-scale illegal opium poppy cultivation in neighbouring Central Asian republics such as Tajikistan, which has a lot of fertile land where opium poppy would easily grow. For traffickers, this would not be an unattractive option as this territory of the former Soviet Union is already part of the trafficking routes to the west, has good east-west rail connections from Central Asia to Ukraine and western Russia, and features widespread corruption and relatively little law enforcement capacities. However, Afghan traders will probably have less scope to relocate abroad because of their limited presence and influence outside of Afghanistan's

borders. By contrast, international criminal groups and networks already have trafficking infrastructure in place in the region. The next stage of the Feasibility Study should assess the probability of shifting patterns of cultivation, production and the re-location of domestic and international criminal groups.

- 3 The newly established licensed industry has no or only very limited effect on traffickers working in and outside of Afghanistan. In this scenario, traffickers will most likely continue to tap the available illegal cultivation and production, until they are forced to leave the area because of other factors (for example, interdiction, law enforcement, alternative livelihood programmes, and general economic development). One of the precipitating factors of this scenario could be the possibility that the size and scope of the illegal opium economy remains substantial in the short and medium term.
- 4 International crime groups, being mostly involved in the part of the Afghan opium trade taking place outside of Afghanistan, move to other activities or try to get their opium, morphine or heroin from other sources. International or foreign criminal groups are less tightly connected to specific areas in Afghanistan. As discussed above, in most instances they receive opium through their contacts with Afghan drug “mafias”. Therefore, they may be able to get the illegal drugs from other sources within the country or from other countries in the region. Should the licensing programme have a deep impact on these criminal groups, they may even opt for shifting to different criminal activities such as smuggling of other goods or human trafficking – or shift to legal activities.

Of course, each of these scenarios is pure conjecture and calls for further research at a later stage of this Feasibility Study.

6 The ability of international groups to disrupt licensed opium programmes

This paper has shown that in most instances, it is Afghan drug “mafias” who are at the core of almost all different trafficking networks and partnerships involved in the Afghan drug trade inside the country. This limits the ability of international or foreign criminal organizations to influence, manage or control what happens inside Afghanistan. Afghan criminal groups and ethnically related groups from neighbouring countries are in most cases the middlemen between opium farmers or small traders and transnational organized crime.

International and foreign criminal groups are operating in the more lucrative part of the trafficking routes originating in Afghanistan, since profits rise substantially with the degree of removal from the source country. As such, international groups tend to have more financial clout with which to operate and influence the drug trade in the region. However, direct influence in Afghanistan appears very limited, because of the fact that specific ethnic groups control the drug trade inside the country. For the Afghan government, it is very difficult to confront the Afghan drug lords or warlords belonging to these ethnic groups as they wield enormous power in local areas.

Nevertheless, should licensed opium production substantially influence the position of domestic players in the opium trade, it is likely that their partner organizations and direct trading partners abroad will try, at least indirectly, to influence proceedings in Afghanistan or direct domestic groups towards other activities or areas. The illegal opium economy is not likely to disappear in the short term, which makes it very hard to predict the response of both domestic and international crime groups. This Feasibility Study should further investigate these dynamics and identify scenarios that could happen once licensed opium programmes are introduced in Afghanistan.

7 The effect of the licensed opium industry on income of terrorist or insurgent groups

Considerations of the impact of a licensed opium industry on terrorist and insurgency funding require statistical examination of existing revenue streams.

In broad terms, terrorist organizations derive their funding from three different sources:

- 1 Contributions from supporters and sympathizers (including states);
- 2 Channelled funds from (semi-)legal activities;
- 3 Criminal activities.

The size of the first source is difficult to measure. State support, ranging from political, financial, logistical and material support to offering safe havens to terrorists, has been decreasing since the beginning of the 1990s. First, the end of the Cold War removed patterns of ideological support to like-minded foreign insurgent groups and leftist organizations that now feature on lists of terrorist organizations.⁶¹

Secondly, since September 11, the international community has increasingly rallied round the common struggle to fight terrorism, which makes it more difficult for countries to fund groups that are or could soon be considered terrorist organizations. Nevertheless, support from sympathizers and political groups continues to fund terrorist networks.

The second source, (semi-)legal activities, comprises *inter alia* (front) businesses, charitable organizations, financial institutions, money laundering operations, fraudulent export and import schemes and informal banking systems. Examples are the *al-Barakaat* financial network, which yearly channelled several million dollars to Al Qaeda, and the *Holy Land Foundation for Relief and Development*, a large US-based Islamic charity

61 Library of Congress (LOC), A Global Overview of Narcotics-Funded Terrorists and Other Extremist Groups (May 2002), 2.

linked to the Palestinian *Hamas* terrorist organization.⁶² Terrorist organizations are said to make extensive use of *hawala* or *hundi*, which is an informal, traditional method of transferring money operating outside of normal banking channels and their control mechanisms.⁶³ It can be found in Afghanistan, India, Pakistan, the Middle East and parts of Africa.⁶⁴

The third source, criminal activities, represents a highly diverse group of activities including smuggling (drugs, arms, cigarettes, radioactive materials, precious metals, precious stones, body parts, human beings and so forth), kidnapping for ransom, extortion, robbing banks and businesses, fraud and drug production. All these activities have been linked to the *modus operandi* of different terrorist organizations. Considering this almost inexhaustible list, there is ample evidence that terrorism is indeed highly intertwined with other types of national and transnational organized crime. Part of the reason why crime has risen in importance is the above mentioned decline of ideological state support for armed groups after the end of the Cold War.

In Afghanistan, the third source, containing criminal activities like drugs and arms trafficking, will undoubtedly play a relatively bigger role than the other sources given the importance and size of the opium industry and the history of arms trade and arms-for-drugs deals in the country. The enormous amounts of income generated by the illegal drugs trade have a far reaching potential to fund terrorist and insurgent groups. ***Considering the profitability and availability of illegal drugs, selling a relatively small amount of opium or heroin on the black market could provide terrorists with enough money to perpetrate the type of small scale attacks that can be witnessed in Afghanistan almost every day.***

So long as the illegal opium economy persists, it is likely that terrorist and insurgent groups will continue operating in Afghanistan. It is anticipated, however, that the effect

62 US Senate Committee on Banking, Housing and Urban Affairs, Hearing on "Hawala and Underground Terrorist Financing Mechanisms". Opening Statement of Subcommittee Chairman Evan Bayh (14 November 2001).

63 CNN, Customs Service goes after terrorist funding (25 October 2001). See:

<http://archives.cnn.com/2001/US/10/25/inv.terrorist.funding/>.

64 Opening Statement of Subcommittee Chairman Evan Bayh (14 November 2001).

of a licensed system of opium production on general economic development and alternative livelihood creation could have an incremental and long lasting, structural impact on the ability of these groups to continue to derive income from the illegal opium trade.

On the other hand, forced eradication of opium poppy fields, as currently proposed in Afghanistan could indirectly lead to more financial and popular support for terrorist and insurgent groups. If eradication programmes are initiated without sufficient sustainable alternative income sources or compensation programmes in place, popular dissent may drive people in the hands of terrorist movements or cause them to sympathize with their political agenda.

A licensed opium industry certainly has the potential to become a substantial building block in the Afghan process of rural rehabilitation, economic development, poverty reduction and employment creation. That process could in the long term seriously reduce terrorism and insurgency in Afghanistan, not by taking away political disagreement, historical feuds and ideological extremism, but by providing jobs, income, food and development to Afghanistan.

8 Corruption and the consequent detriment to the implementation of licensing schemes

Phenomena such as war, post conflict resolution, endemic corruption, poverty, crime and human rights violations all have impact on the stability of Afghanistan. Of these, corruption is perhaps the most insidious and undermining, creating a political and juridical environment that is both unstable, unpredictable and which severely hinders the establishment of a state based on the rule of law. Corruption is therefore a key consideration in the implementation, management and control of licensed opium programmes.

Large scale drug trafficking often involves corruption on the part of officials (including elected officials, enforcement agents, prosecutors and judges, and military personnel) on the other side.⁶⁵ The World Bank underscores the importance of addressing corruption by stating that:

*“In the short run corruption – defined as the abuse of public position for private gain – undermines the nascent institutions of state, rule of law, and democracy and justice. Over the longer term corruption will also jeopardize the attainment of broad-based and sustainable economic development objectives. (...) Of notable concern in Afghanistan are the close links between corruption and the drug industry and other criminal activities.”*⁶⁶

The type of corrupting activities associated with the illegal opium industry consists of high bribes paid to provincial officials and police, concealment of illegal drugs and money laundering.⁶⁷ Besides these local or regional officials and police officers, the present day judicial system in Afghanistan also faces a deep crisis of public confidence.⁶⁸ During public consultations, people frequently cited judicial corruption and the general state of impunity exploited by commanders as major concerns.⁶⁹ The Netherlands Institute of International Relations Clingendael states that:

*“(c)riminal and corrupt official elements in the surrounding regions [of Afghanistan] are involved in the trade in opiates originating in Afghanistan, as well as other forms of trafficking (timber, persons).”*⁷⁰

65 US Congressional Research Service (CRS), *Illicit Drugs and the Terrorist Threat: Causal Links and Implications for Domestic Drug Control Policy* (20 April 2004), 6.

66 World Bank, *Afghanistan–State Building, Sustaining Growth, and Reducing Poverty* (Washington 2005), 59.

67 *Ibid.*, 60, 61.

68 Netherlands Institute of International Relations Clingendael, *Afghanistan 2005 and Beyond. Prospects for Improved Stability Reference Document* (The Hague 2005), 41.

69 *Ibid.*, 10.

70 *Ibid.*, 32.

The current nature of Afghan politics reinforces political corruption within Afghanistan. Most political dealings still occur on a local level and outside of the framework of official political institutions.⁷¹

The proposed licensed opium programmes would normally also take place in the provinces, sometimes far removed from political control of Kabul. That means that the provincial governor or local authorities would be responsible for these programmes. Moreover, local government officials would likely remain in charge of managing, controlling or supervising licensed opium production in a certain area of the country and the labourers involved.

The main risk that corruption poses for licensed opium production is the possibility that corrupt officials will permit diversion to the illegal opium trade either at the poppy cultivation or at the morphine or codeine production stage. Full control over licensed opium production programmes is an absolute necessity; diversion would undermine the basic assumptions and objectives of such a project. The objective of the licensed opium production is not about maintaining or supporting the illegal opium economy, but rather about converting the production towards productive positive goals. It is about providing an alternative to the illegal opium economy in Afghanistan. Therefore, at a later stage of the Feasibility Study, which deals with implementation issues, much attention should be given to safeguards that would rule out diversion through corruption. However, it should be noted that corruption is a general problem in Afghanistan and in no way directly tied to the initiation of licensed opium programmes.

Lastly, given that licensed opium programmes would integrate the entire value chain of opium production for medicinal purposes into a tightly controlled licensed system, corruption would be likely to decrease within the area of these projects.

⁷¹ Ibid, 51.

Glossary

Balkan Route: Traditionally the main trafficking route between opium poppy fields in Afghanistan and the European market, leading through Pakistan, Iran, Turkey and the Balkan countries.

Balloon effect: Relocation of opium poppy cultivation or opium production to new areas because of farmers and itinerant workers moving to other regions as a result of counter narcotics measures taken by the government or other factors.

Hawala / hundi: Informal, traditional system of transferring money, which operates outside of normal banking channels and their control mechanisms. No records are produced of individual transactions and the system is entirely based on trust and honour.

Narco-terrorism: Subset of terrorism, in which terrorist groups, or associated individuals, participate directly or indirectly in the cultivation, manufacture, transportation, or distribution of controlled substances and the monies derived from these activities.

Northern Route: System of trafficking routes through the Central Asian republics to the north of Afghanistan, targeting markets in Russia and Europe.

Private armies: Illegitimate forces recruited by warlords, major traffickers or local commanders in order to protect their position and activities.

Safe havens: Countries or regions where terrorists and terrorist networks can hide from law enforcement agencies or international search warrants, because of limited government control or through protection by the government or local (armed) groups operating in the area.

Terrorism: The unlawful use or threatened use of force or violence by a person or an organized group against people or property with the intention of intimidating or coercing societies or governments, often for ideological or political reasons.

Warlord: Supreme (military) leader exercising civil power in certain regions of Afghanistan, normally operating independently from any official authorities and especially in areas where the rule of central government is weak or completely absent. Most warlords have their own private armies.

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The International and National Legal Frameworks

Executive Summary

The United Nations Convention Regime

Afghanistan is party to all three UN drug conventions comprising the international drug control regime.¹ Any system of licensed opium cultivation in Afghanistan must therefore comply with this regime. The most important Convention concerning the legal cultivation of opium is the 1961 Single Convention on Narcotic Drugs which was established as a universal system for controlling the cultivation, production, manufacture, export and import, of opium poppy. It provides a clear framework within which Afghanistan could design and implement a system of opium production for medical purposes.

Different levels of licensing regimes are applicable

Different considerations will apply depending on the nature of the licensing model to be implemented.

If, for example, Afghanistan wishes to produce opium for its own domestic requirements, this will only require the establishment of one or more Afghan government agencies, to grant licences to cultivators. The same is true if Afghanistan desires to produce opium for the domestic manufacture of morphine or codeine. This is the case regardless of whether the morphine or codeine is produced for domestic use or export.

On the other hand, if Afghanistan wishes to export more than five metric tons of opium annually, then in addition to the requirement of one or more government agencies,

¹ The three Conventions are: the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol (hereinafter “the 1961 Convention”); the 1971 Convention on Psychotropic Substances (hereinafter “the 1971 Convention”); and the 1988 United Nations Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter “the 1988 Convention”).

formal approval will also be required from the Economic and Social Council of the United Nations. This formal approval from the ECOSOC is not required, if the total quantity of opium to be exported each year is less than five metric tons. However, any opium exports would still need to be reported to the International Narcotics Control Board.

Compatibility with the International Conventions control regime:

In any case, licensed opium production must be in line with the 1961 Convention. One of the key considerations here will be whether any licensing system would lead to an overproduction of opium in the world. The INCB maintains that there is already an overproduction, though it submitted that this is incorrect, and that there is in fact a global shortage of opium on account of significant unmet demand in patients with moderate to severe pain. This is a vast section of global health care that is omitted from official estimates of opiate demand. The INCB should thus be made to justify their position as regards the purported oversupply.

One of the other key considerations will be whether prevailing conditions determine that prohibition is the most suitable measure to protect public health and prevent diversion. The “prevailing conditions” in Afghanistan, however, plead *against* prohibition of all cultivation. Decades of war, multiple changes of government and an embedded tradition of poppy cultivation has made the enforcement of the opium ban extremely difficult. Moreover, it is existing strategies founded on interdiction and eradication which themselves have endangered public health and welfare and stability of the country.

International responsibility for Afghanistan’s emergency

It is undeniable that the rejection of Afghanistan’s application to ECOSOC in 1956 and the resulting ban on drug crop cultivation and production have proven far from being a correct or successful decision as developments over the last decades show. The fact that the technical assistance which was promised in return for Afghanistan’s counter-narcotic efforts did not materialise, has also had a significant impact on the country’s decline and subsequent descent into economic disintegration, poverty and war.

The international community must bear a significant degree of responsibility. It has an obligation to develop and support policy initiatives that empower Afghanistan to resolve the issues associated with opium cultivation. Eradication, and the demonisation of Afghan farmers have critically failed to address this essential policy objective.

From this perspective, and taking into consideration the failures of existing counter-narcotics policies in Afghanistan, a system of licensed opium production ought to form the basis for an open-minded and above all realistic debate on how to remove Afghanistan from its immediate development crisis and its imminent descent into a narcostate.

Thinking legally outside the box

Opportunities exist to look beyond the strict letter of the 1961 Convention control regime. In particular, the possibility of formally amending the control measures to accommodate a licensing system in Afghanistan should not be overlooked. The Conventions do not exist to put everyone in a straightjacket when circumstances change, but rather to respond to the problem in hand.

One further possibility could be to form agreements between Parties to the Conventions which, whilst not formally amending the Conventions, could make them more flexible in respect of the special situation affecting Afghanistan. One example could be an agreement between Afghanistan and (some of) its donor countries whereby Afghanistan was the recognised supplier of its own brand of opium medications to developing countries in the region.

Surely, if the international community can be mobilised to send a coalition of militaries as well as massive amounts of donor aid to Afghanistan, then it can also be called upon to generate the political interest to consider the gains to be made from innovations such as these.



The United Nations Drug Conventions Regime and Licensed Opium Production in Afghanistan

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1 Use of treaty terms

In this paper, the following terms are used in strict accordance with their definitions contained in the 1961 Single Convention on Narcotic Drugs¹:

“Drug” Any of the substances in Schedules I and II of The 1961 Convention, whether natural or synthetic. This includes: heroin, morphine, and opium.

“Manufacture” All processes, other than production, by which drugs may be obtained, including refining as well as the transformation of drugs into other drugs. It covers a wide range of substances and processes.²

“Opium” The coagulated juice of the opium poppy. Opium is the air-dried latex obtained by scoring the unripe capsules of opium poppy. It contains morphine, codeine and thebaine, and a variable mixture of other alkaloids including noscapine and papaverine. The definition of opium encompasses all three varieties of the drug; raw opium, medicinal opium and prepared opium.

¹ Article 1, paragraph (a) - (y)

“Opium poppy” The plant of the species *Papaver somniferum L.*

“Medicinal opium” Opium which has undergone the processes necessary to adapt it for medicinal use.

“Poppy straw” All parts (except the seeds) of the opium poppy after mowing. This comprises the dried upper part of the stem and the capsules of the poppy plant.

“Preparation” A mixture, solid or liquid, containing a drug.

“Production” The separation of opium from the plant from which it is obtained. Production involves an agricultural operation as distinct from the industrial process involved in the *manufacture* of drugs.³

2 Use of non-treaty terms

In addition to the above treaty-defined terms, this paper uses the following terms:

“Alkaloid” An organic compound derived from opium poppy. The most common opium alkaloids are morphine, codeine and thebaine.

“Official Commentary” Commentary on the Single Convention on Narcotic Drugs 1961 (Prepared by the Secretary-General in accordance with paragraph 1 of Economic and Social Council resolution 914D (XXXIV) of 3 August 1962)

“Cultivation”. The fostering or nurturing of the growth of the plants while they are still in the ground.⁴

² The 1961 Commentary (comments on article 1) sets out in detail the various facets of the manufacturing process as contemplated by The 1961 Convention.

³ It follows from the limitation of the production of drugs to the plants listed that the separation of drugs from any other plants will be “manufacture”. So too will the separation of any other drugs than those from the plants listed. The separation of drugs from poppy straw is not production and is covered by an entirely separate regime (see 1961 Commentary, comments on article 1).

“**ECOSOC**” (“**the Council**”) The Economic and Social Council of the United Nations, which assists the General Assembly in promoting international economic and social cooperation and development, and which established the Commission on Narcotic Drugs in 1946.

“**INCB**” (“**the Board**”) The International Narcotics Control Board. This is the independent and quasi-judicial control organ for the implementation of the UN drug Conventions, established in 1968 by the 1961 Single Convention on Narcotic Drugs. The Board is seated in Vienna. It is independent of Governments as well as of the UN; its 13 members serve in their personal capacity. They are elected by ECOSOC and supported by the expert advice of the WHO.

“**Licence**” This is used as a *general* term to denote official permission or approval. This must be seen in contrast to the use of ‘licence’ in The 1961 Convention. Here, ‘licence’ is only used in a *domestic* setting; where Parties wish to cultivate opium, poppy for medicinal use for their own requirements, they are obliged to control such cultivation under a national ‘licence’. By comparison, where Parties wish to *export* raw opium (i.e. as the drug base) that they produce, they must seek ‘*approval*’⁵ from the ECOSOC (or in some cases, the INCB). Thus, the use of ‘licence’ in this paper denotes official sanction deriving from either a national authorising body or from the ECOSOC or the INCB.

“**Medical and scientific purposes**” One of the general obligations of states is “to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs”.⁶ The term “medical and scientific purposes” is not defined in the Conventions, nor has it been uniformly interpreted by Governments.⁷ The term “medical purposes” does not necessarily have

4 N. BOISTER, *Penal Aspects of the UN Drug Conventions*, Kluwer Law International, The Hague / London / Boston, 2001, p. 79.

5 Article 24, paragraph 2, 1961 Convention

6 Preambles to the 1961 and 1971 Convention. Article 4, subparagraph (c) of The 1961 Convention.

7 A number of countries have prohibited the consumption of narcotic drugs by all addicts excepting only when necessary to alleviate suffering during withdrawal treatment. A number of other countries have permitted consumption by persons, whose addiction proves to be incurable, of the minimum quantities required to prevent painful withdrawal symptoms and to enable them to lead a normal life. There

exactly the same meaning at all times and under all circumstances. Its interpretation depends on the stage of medical science at the time in question. This includes not only modern (‘Western’) medicine but also legitimate systems of indigenous medicine such as those which exist in China, India and Pakistan.

“Opiate” Any of a group of alkaloids derived from opium poppy, such as morphine and codeine, including their derivatives, such as heroin.⁸ (The term is often incorrectly used to refer to all drugs with an opium-/morphine-like pharmacological action. These are more properly classified under the broader term opioid).

“Opioid” A generic term applied to opiates and their synthetic analogues, with effects similar to those of morphine, in particular the capacity to relieve pain.

“Party” A country that is a signatory to the three UN drug Conventions.

3 The United Nations Conventions Regime

The UN Drug Conventions regime constitutes the core international legal framework concerning drug-related issues. This regime consists of:

1. The Single Convention on Narcotic Drugs, 1954, as amended by the 1955 Protocol (hereinafter “The 1954 Convention”);
2. The 1971 Convention on Psychotropic Substances (hereinafter “The 1971 Convention”); and
3. The 1988 United Nations Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter “The 1988 Convention”).

have also been a few cases in which all consumption of narcotic drugs by addicts was prohibited, even in the course of withdrawal treatment (see 1961 Commentary, comments on article 4).

⁸ The Terminology and Information on Drugs, prepared by the Scientific Section (Laboratory) Policy Development and Analysis Branch Division for Operations and Analysis, UNODC.

Afghanistan is party to all three UN Drug Conventions and so any licensing system that would allow the cultivation of the opium poppy in Afghanistan, would have to respect the UN Conventions Regime. Although Afghanistan is not party to the 1972 Protocol, all indications point to its becoming a signatory in the near future. The analysis contained herein will therefore examine the system of licensed opium production in light of the 1961 Single Convention *as amended* by the 1972 Protocol. Where relevant, however, the text will indicate those provisions of The 1961 Convention that were introduced or altered by the 1972 Protocol.⁹

Each of the Conventions is ‘non self-executing’. This means that State Parties must introduce their own implementing legislation. Parties are thus free to interpret the terms of the Conventions as they deem appropriate, so long as such interpretation does not deviate from the Conventions’ object and purpose.¹⁰

The 1961 Convention is of primary relevance to issues concerning the licensed cultivation of opium poppy. The bulk of analysis in this paper will therefore focus on this Convention. In broad terms, The 1961 Convention establishes a dual drug control obligation on Governments: to ensure adequate availability of narcotic drugs, including opiates such as codeine and morphine, for medical and scientific purposes, while at the same time preventing the illegal production of trafficking in and use of such drugs. The 1961 Convention classifies over a hundred substances as ‘narcotic drugs’, including cannabis and cannabis resin; opium, morphine, heroin and a number of other natural and synthetic opiates; coca leaves and cocaine.¹¹

9 As of 1 January 2005, Afghanistan was not a signatory to the 1972 Protocol Amending the 1961 Single Convention on Narcotic Drugs. Afghanistan became Party to the 1961 Single Convention before the entry in force of the 1972 Protocol (8 August 1975). As a result, article 19 (a) of the 1972 Protocol stating that “Any State which becomes a Party to the Single Convention after the entry in force of this Protocol pursuant to paragraph 1 of article 18 shall, failing an expression of a different intention by that State be considered as a Party to the Single Convention as amended”, does not apply.

10 Article 31, Vienna Convention 1969

11 Although all chemical substances under control of The 1961 Convention are called “narcotic drugs”, some of them, such as cannabis or cocaine, do not produce “narcotic” effects such as stupor or sleep. The concept “narcotic drugs” is thus a term of international law describing drugs under special control, not necessarily their primary mind-altering effects.

The 1971 Convention applies a control system to psychotropic substances. According to the *WHO Lexicon of Alcohol and Drug Terms*¹², ‘psychotropic’ is in its most general sense a term with the same meaning as ‘psychoactive’, i.e., affecting the mind or mental processes. In the context of international drug control, ‘psychotropic substances’ refers to a substance controlled by The 1971 Convention. They include: amphetamine, phenmetrazine and similar synthetic central nervous system stimulants; barbiturates; benzodiazepines; ecstasy, LSD and other synthetic hallucinogens; psilocybine and other natural hallucinogens. **The 1971 Convention does not seek to control the cultivation of plants from which psychotropic substances are obtained or derived. The basic obligation imposed on the Parties is to limit the use of psychotropic substances to medical and scientific purposes.**

3.1 The Key Controls in the 1961 Convention

In this paper, an indication is provided of the key controls contained in The 1961 Convention. The interpretation and application of these control provisions to the establishment of a licensing system in Afghanistan is considered in the subsequent section of this paper.

3.2 The four Schedules and the ‘standard regime’

The 1961 Convention lays down a regime which controls narcotic drugs according to the Schedule in which they appear. The 1961 Convention contains four Schedules as follows:

Substances contained in **Schedule I** include: opium, concentrate of poppy straw, heroin, morphine and thebaine. All the general control articles apply to Schedule I, except for those which are limited to specified drugs.¹³ These general measures of control are

¹² Available at: http://www.who.int/substance_abuse/terminology/who_ladt/en/

¹³ Article 2, paragraph 1, 1961 Convention

considered the *standard regime* and are considered in detail below. The regime's principal features include:¹⁴

- Limitation to medical and scientific purposes of all phases of narcotics trade (manufacture, domestic trade, both wholesale and retail, and international trade) in, and of the possession and use of, drugs;¹⁵
- Requirement of governmental authorization (licensing or state ownership) of participation in any phase of the narcotics trade¹⁶ and of a specific authorization (import and export authorization) of each individual international transaction;¹⁷
- Obligation of all participants in the narcotics trade to keep detailed records of their transactions in drugs;¹⁸
- A system of limiting the quantities of drugs available, by manufacture or import or both, in each country and territory, to those needed for medical and scientific purposes.¹⁹

Schedule II includes codeine (and its derivatives) and is intended to represent substances used for medical purposes that require a less rigid control in view of a lesser risk of abuse.²⁰ Schedule II substances are subject to the same measures of control as those in Schedule I, with the key exception that their trade and distribution need not be under license.

Even less stringent provisions apply to the drug *preparations* in **Schedule III**, including preparations of codeine.²¹ Schedule III is the schedule of exemptions. It excludes a

14 14 1961 Commentary, comments on article 2,

15 Article 4, paragraph (c), 1961 Convention

16 Article 30, paragraph 1, 1961 Convention

17 Article 31, paragraph 4, 1961 Convention

18 Article 34, paragraph (b), 1961 Convention

19 Article 12, 1961 Convention

20 Article 2, paragraph 2, 1961 Convention

21 Article 2, paragraph 4, 1961 Convention

series of pharmaceutical preparations made from substances not entailing abuse or ill-effects, such as powders and liquids with a low dose of opium.

Schedule IV contains a list of the substances considered most dangerous, including heroin (diacetylmorphine). These drugs are subject to all control measures applicable to substances in Schedule I (the standard regime). In addition, however, State Parties are required to apply special additional control measures, extending, if necessary, to prohibition of manufacture, traffic or use of the drugs, except for medical or scientific use.²²

3.3 Five key legal provisions for the establishment of a licensing system

The establishment of a licensing system in Afghanistan requires consideration of the following five key legal provisions contained in The 1961 Convention:

*1. State Parties are obliged to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.*²³

*2. Whenever the prevailing conditions in the country or a territory²⁴ of a Party render the prohibition of the cultivation of the opium poppy the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illegal traffic, the Party concerned shall prohibit cultivation.*²⁵

22 Article 2, paragraph 5, 1961 Convention

23 Article 4, paragraph (c), 1961 Convention

24 Article 1, paragraph 1 (y) defines “territory” as “any part of a State which is treated as a separate entity for the application of the system of import certificates and export authorizations provided for in article 31”.

25 Article 22, paragraph 1, 1961 Convention

3. Production of opium must not result in overproduction of opium in the world.²⁶

4. Parties must not permit the production of opium or increase the existing production thereof if, in its opinion, such production or increased production in its territory²⁷ may result in illegal traffic in opium.²⁸

5. A Party that permits the cultivation of the opium poppy for the production of opium shall establish and maintain one or more government agencies (National Opium Agencies).²⁹

4 Application of the Controls contained in The 1961 Convention to a Licensing System in Afghanistan

A licensing system in Afghanistan may take several forms – there are several different types of licensing systems to be considered. Whether, for example, it produces opium for export, or for domestic use, for example, are two important determinants of how the control measures highlighted may be applied. The following analysis, therefore, provides an analysis of the application of the control measures under the heads of various licensing system models, and discusses which level and type of licensing systems would required for different types of production systems.

26 Article 24, paragraph 1 (a), 1961 Convention

27 The term “territory” as used in this subparagraph means “geographic area”, and is not employed in the sense of article 1, paragraph 1 (y) or article 42.

28 Article 24, paragraph 1 (b), 1961 Convention

29 Article 23, paragraph 1, 1961 Convention

4.1 A licensing system for the production of opium for Afghanistan's own requirements

If Afghanistan restricts the production of opium to the quantities needed to satisfy its own domestic requirements, the decision whether or not to initiate or increase production is left entirely to Afghanistan itself.³⁰ However, this does not grant Afghanistan complete freedom to produce opium for domestic requirements. Consideration must still be given to the key legal provisions highlighted above.

4.2 Requirement to protect public health and prevent diversion.³¹

According to the Official Commentary on The 1961 Convention, a Government which for many years, despite its efforts, has been unable to prevent large-scale diversion of drugs from cultivation will find it difficult to hold the opinion that the prohibition of such cultivation would not be “the most suitable measure for protecting public health and welfare and preventing the diversion of drugs into the illegal traffic”. This argument would likely be invoked by those seeking to oppose a licensing system in Afghanistan.

However, the requirement contains a double condition. Not only must there be a (large-scale) diversion, but the public health and welfare (not only that of the local population, but also that of foreign countries) must also be at risk.³² Such *risk must be significant*, since private opium production is always accompanied by some minor diversion, and in effect minor diversion has to be tolerated or else all Parties would be obliged to prohibit opium production.³³ In the case of Afghanistan, permitting the licensed production of opium for medical purposes would in fact decrease the production of opium for illegal

30 Article 24, paragraph 5

31 Article 22, paragraph 1

32 In accordance with the Official Commentary on article 22 paragraph 1, “this [double] condition appears to indicate that the authors of article 22 did not consider that any diversion whatsoever constitutes ipso facto a problem of public health and welfare, but only one which is sufficiently large to present such a problem”. A Party cannot therefore be expected to prohibit cultivation if diversion occurs only in relatively minor quantities.

33 1961 Commentary, comments on article 22.

heroin channels. Thus *the “prevailing conditions” in Afghanistan could forcefully be invoked as pleading against prohibition of cultivation.*

The aftermath of a quarter-century of war, multiple changes of government and an embedded tradition of poppy cultivation has made the enforcement of the ban on opium cultivation extremely difficult. Moreover, existing counter-narcotics measures aimed at the wholesale prohibition and eradication of opium ignore the profound extent to which opium has shaped and continues to shape Afghanistan’s economic, financial, political and social landscape. As a result, it is existing counter-narcotics strategies themselves that endanger public health and welfare. Crop eradication interventions fail to recognize, for example, that opium provides barely more than subsistence for most of the 2.3 million people involved in its cultivation. Opium is virtually the only means by which these people can gain access to credit and land for farming.

A sudden and enforced cessation of opium cultivation without immediate and viable alternatives, means defaulting on opium denominated debt. The catastrophic impact of this is well illustrated by the impact of the Taliban enforced ban on opium cultivation, with many farmers having to give their daughters as “wives” to traffickers or otherwise sell their children. Other severe damage caused by eradication is well-documented in light of Latin America’s experiences: destroyed livelihoods, health risks for local communities, internal displacement, environmental degradation, and human rights violations.

According to the Official Commentary on The 1961 Convention, the decision as to whether the conditions requiring prohibition exist is left to the *judgement*, but not entirely to the *discretion* of the Party concerned. The Afghan Government would be free in its judgment, so long as its decision was not wholly unreasonable.

The Afghan Government could determine that cultivation through a controlled licensing system would provide an effective response to Afghanistan’s immediate public health and welfare needs. It could also determine that such a system would help create the enabling environment necessary for the successful implementation of

other development strategies, paving the way for a sustainable and diversified rural economy. The Afghan Government is freely able to make this determination if it does so in good faith. Especially in light of the current failures of existing drugs interventions in Afghanistan, it would be extremely problematic for anyone to seek to challenge any such determination.

4.3 Requirement to establish and maintain one or more government agencies³⁴

The National Opium Agency has important functions as regards licensed opium cultivation. In particular, the Agency will have to show itself to be capable of carrying out the following key functions:

*“The agency shall designate the areas in which, and the plots of land on which, cultivation of the opium poppy for the purpose of producing opium shall be permitted”.*³⁵

The Official Commentary points to various considerations that will arise in making such designation. The Agency should first estimate the size of the opium crop needed, respecting the requirement to limit production to the quantities needed for medical and scientific purposes. It should then, in the light of past statistics on the average yield per hectare, determine the extent of land which is required to obtain this crop, and allocate portions of this extent to each of the various “areas” which it has designated for the production of opium. The total extent of all the plots of land which the Agency designates for the production of opium in all the licenses issued to the farmers in an area should be equal to the extent of land allocated to that area.

Officials of the Agency should carry out inspections from time to time of the plots sown with the poppy. The first such inspection should take place when the plants have

³⁴ Article 23, 1961 Convention

³⁵ Article 23, paragraph 2, subparagraph (a)

reached a stage of growth permitting effective control.³⁶ Inspections should also be carried out in areas in which the cultivation of the poppy for the production of opium is not permitted in order to verify that there is no such production.

“Only cultivators licensed by the Agency shall be authorised to engage in such cultivation”. “Each licence shall specify the extent of the land on which the cultivation is permitted”³⁷

The Official Commentary makes it clear that licenses to grow the poppy may be issued to individual farmers or to corporate bodies³⁸. The Commentary submits that each licence should contain, amongst other things, the particulars of the identity of the licensee and an exact indication of the plots on which opium production is authorized.³⁹ The licence should also indicate the conditions of the delivery of the crop to the Agency and should give its duration. It should be valid only for a single crop period. Licences should not be transferable and their issue and revocation should be at the discretion of the authorities.⁴⁰

“All cultivators of the opium poppy shall be required to deliver their total crops of opium to the Agency. The Agency shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest”.

It is clear that the time during which the harvested opium crop is in the hands of the individual farmer is the most critical period from the viewpoint of avoiding diversion for the heroin trade.. It is during this period that diversion of licensed opium into illegal

36 The inspectors should, when possible, estimate the amount of the prospective opium crop, and should make a note of this estimate and of other results of their inspections both on the licence of the cultivator concerned and in a file kept by the Agency. Such a file should be maintained for each farmer licensed to produce opium.

37 Article 23, paragraph 2 (b) and (c).

38 If a licence is granted to a corporate body (a corporation or co-operative, including a collective farm), the document should name an individual responsible.

39 This latter indication should be given either by reference to entries in the cadastre or by a detailed description of the situation, size and demarcation of the plots.

40 It is advised that cultivators who, according to their opium deliveries to the Agency, have obtained a high yield per unit of measurement of land in earlier years should in the issue of licences be given preference over those who had a low yield.

channels usually takes place. It is therefore important that the time between the harvest and the delivery of the crop should be as short as possible.⁴¹ Prompt payment, a good price and other favourable conditions of purchase will be incentives to producers to deliver speedily their total opium crop. Share-cropping seems incompatible with the requirements of The 1961 Convention.⁴² Adequate penal sanctions may be instrumented in securing the prompt delivery of the total opium crop.⁴³

“The Agency shall, in respect of opium, have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of opium alkaloids, medicinal opium or opium preparations. Parties need not extend this exclusive right to medicinal opium and opium preparations.”⁴⁴

Opium-producing countries may thus authorize private manufacture of, and private international and domestic wholesale trade in, medicinal opium and opium preparations. The opium other than medicinal opium needed for such manufacture must, however, be procured from the national opium agency. Stocks of opium held by manufacturers of opium alkaloids, medicinal opium and opium preparations are also excluded from the Government monopoly. However, once again this opium must be obtained from the Agency. Opium held in stock by retail pharmacists or other authorised retail distributors are also excluded from the scope of the obligatory Government monopoly.

It is clear then that the implementation of the above requirements will require planning on a national scale in order to limit production of opium to the quantities needed for medical and scientific purposes and to prevent diversion of part of the authorised opium harvest into illegal channels. A strong and effective government involvement (both

41 The Convention cannot fix a definite day of the year, since the harvesting periods are not the same in different opium producing countries. National laws or regulations should, however, set a final date after which possession of harvested opium by a private cultivator is in any event illegal and the opium subject to confiscation.

42 The cultivator, being bound to hand over the total harvest to the Agency, must of course not deliver part of the crop to his landlord. Opium must also not be used to pay part of the wages of farm hands.

43 See *infra*, under 11.1.9.

44 Article 23, paragraph 2 (e)

central and local) is thus a prerequisite for the fulfilment of these requirements. This may be of some concern in the context of Afghanistan, whose critical central government institutions are still very weak, in particular those needed for the creation of a state based on the rule of law. Political fragmentation and restricted government control in remote areas may raise questions as to the ability of government to establish an effective National Opium Agency. However, it is clear that there is significant political resolve – both international and domestic – to quickly strengthen governmental and judicial authority. It thus seems arguable that the national capacity could feasibly provide credible and realistic guarantees to control licensed opium cultivation and prevent substantial diversion into illegal channels. Further investigation into the establishment of the National Opium Agencies in India and Turkey will likely prove helpful to this argument.

Finally, it is necessary to note that under the present scenario, national authorisation from the central government is the only official sanction that Afghanistan would require. It would not be required to seek formal approval from either the ECOSOC or the INCB⁴⁵.

4.4 Requirement not to contribute to overproduction of opium in the world⁴⁶

It would appear to follow from the wording of The 1961 Convention that, if the above conditions are satisfied, Afghanistan may commence opium production to the extent needed for its own requirements, even if it may thereby contribute to overproduction of opium in the world. However, Afghanistan would not be relieved of its obligation to “co-operate with other States in the execution of the provisions of this Convention”.⁴⁷ This means that Afghanistan, in making its production plans, must give due weight to the problem of overproduction of opium. The only guidance offered on this point in the Official Commentary, states: “How this freedom to act can be reconciled with this obligation to co-operate will depend on the differing circumstances of each case.”⁴⁸

⁴⁵ Article 24, paragraph 5 (a)

⁴⁶ Article 24, paragraph 1 (a)

⁴⁷ Article 4 (c) of The 1961 Convention

⁴⁸ 1961 Commentary, comments on article 24.

5 A licensing system in Afghanistan for the manufacture of morphine or codeine for domestic use or export: A Fast Track Procedure

Identical considerations apply under this scenario as in the foregoing scenario in which production of opium was restricted to the quantities needed to satisfy its own requirements. This is because, in line with the interpretation contained in the Official Commentary, Afghanistan's "own requirements" would include the needs of opium and opium preparations (including medicinal opium) for domestic consumption, as well as the quantities of opium required for domestic manufacture of alkaloids such as morphine or codeine, whether for domestic use or export.⁴⁹

The provisions restricting the international trade in opium do not apply to opium alkaloids. **Where Afghanistan manufactured morphine or codeine from opium it has produced, it would therefore be able to export this morphine or codeine without formal approval from either a national authorising body or the ECOSOC or the INCB.** This remains the case even though Afghanistan would require formal approval for the export of the opium used for the manufacture of these alkaloids. Finally, Afghanistan would not require a formal approval to produce the opium used for this manufacture, since such opium would fall under its own requirements⁵⁰.

6 A licensing system in Afghanistan for the production of opium for export

6.1 Requirement to protect public health and prevent diversion

Where Afghanistan seeks to export opium of its own production, the Government will remain bound by the requirement to prohibit cultivation where prevailing conditions determine that prohibition is the most suitable measure to protect public health and prevent diversion.

⁴⁹ Article 24, paragraph 5 (a)

⁵⁰ Article 24, paragraph 5 (a)

6.2 Requirement to establish and maintain one or more government agencies

The Government of Afghanistan will also be bound by the requirement to establish and maintain one or more government agencies (a National Opium Agency) as per the foregoing discussion.

6.3 Requirement not to contribute to overproduction of opium in the world

It will also be necessary to give direct consideration to the *prevailing legitimate world need of opium*. More specifically, in making the plans for the initiation of opium production or its expansion, the Government of Afghanistan must ensure that new or increased production does not result in *over-production of opium in the world*.⁵¹

In determining whether its action would result in overproduction, Afghanistan would have to take as a basis the estimates of the world need for opium published by the INCB.⁵² This general limitation on the production of opium would, according to present INCB data, pose problems for Afghanistan. The estimated world requirements published by the INCB show that there are no shortages of raw opium at present. To the contrary, INCB reports indicate, in recent years, an overproduction and rising stocks of what it refers to as ‘opiate raw materials’, i.e. opium.

Yet despite this official position, quantitative analysis undertaken by the Centre for Addiction and Mental Health and contained elsewhere in this Study, has shown that ***there is a global shortage of opium*** on account of significant unmet demand for opioid medicine such as morphine and codeine in patients with moderate to severe pain. (See

⁵¹ Article 24, paragraph 1 (a). Furthermore, planning opium production even at the level existing in preceding years would be incompatible with the spirit of the Single Convention if experience has proven that a crop of that size cannot be disposed of for the purposes authorized by the treaty (Ibid., comments on article 24).

Box 1: ‘A Global Opium Overproduction?’) Indeed the analysis concludes that the shortage is in fact so large and extensive, that significant work remains to be done in order to arrive at an accurate consensus as to its total.

Given the official view maintained by both the INCB and the ECOSOC as to an oversupply in the global opium market, this would undoubtedly form the core objection to the granting of formal approval (considered below) to Afghanistan to export opium it produces domestically. It is submitted that to counter this argument, the INCB and/or the ECOSOC should justify their position on this purported global oversupply.

⁵² The Board publishes such estimates in accordance with the figures it receives from Governments (under Article 19, paragraph1) or that it establishes itself for countries or territories in respect of which Governments concerned fail to furnish the required data (Article 12, paragraph 3).

Box 1 A Global Opium Overproduction?

In 1989, the INCB, in co-operation with the WHO, issued a special report entitled *'Demand for and Supply of Opiates for Medical and Scientific Needs'*.⁵³ ***In this report, the Board concluded that the medical need for opiates, particularly that related to the treatment of cancer pain, was not being fully satisfied.*** In order to improve this situation, the Board made a number of recommendations to Governments.⁵⁴

To ascertain whether Governments had fully implemented the recommendations contained in the special report of 1989, the Board, again in co-operation with the WHO, prepared a special report in 1995 entitled *'Availability of Opiates for Medical Needs'*.⁵⁵ A review of consumption trends showed that the consumption of opiates, morphine in particular, was low and relatively stable until the mid-1980s. Since then, global consumption of morphine has begun to increase significantly. Nevertheless, the Board concluded in its 1995 report that the medical need for opiates was far from being fully satisfied in both less developed and developed countries. ***In its concluding remarks it stated that "an efficient national drug control regime must involve not only a programme to prevent illegal trafficking and diversion, but also a programme to ensure the adequate availability of narcotic drugs for medical and scientific purposes"***.

The INCB has repeatedly reiterated the shortage of essential narcotic drugs needed for medical and scientific purposes.⁵⁶ In his address to the 58th session of the World Health

53 International Narcotics Control Board, *Demand for and Supply of Opiates for Medical and Scientific Needs*, United Nations Publication Sales No. E.89.XI.5.

54 It recommended that Governments should critically examine their methods of assessing domestic medical needs for opiates and of collecting and analysing data, so as to make the changes required to ensure that future estimates would accurately reflect the actual need. It was also recommended that Governments should examine the extent to which their health-care systems and laws and regulations permitted the use of opiates for medical purposes, should identify possible impediments to such use and should develop plans of action to facilitate the supply and availability of opiates for all appropriate indications.

55 International Narcotics Control Board, *Availability of Opiates for Medical Needs*, Special report prepared pursuant to Economic and Social Council resolutions 1990/31 and 1991/43, New York, 1996, 27 p. The report included a survey of all Governments, as well as inquiries to WHO and professional organizations. Only sixty-five (31 per cent) of 209 Governments responded to the survey.

56 The INCB has recently been dealing with the issue of the availability of opiates for medical needs in an informal meeting with the Governments of India and Turkey, held pursuant to ECOSOC resolution 2003/40, as well as in two meetings with permanent representatives to the United Nations (Vienna), held in May and October 2004.

Assembly, Professor Hamid Ghodse, President of the INCB, said opioid painkillers are not always available for the people who need them, particular developing countries.⁵⁷

The WHO also continues to emphasize the need for the availability of opioid painkillers. In particular as regards cancer pain, WHO reports speak of there being a “*treatment gap*”, i.e. the difference between what can be done and what *is* done about cancer pain. Much of the treatment gap, especially in developing countries, is accounted for by the inadequate availability and use of pain medications, especially the opioid painkillers such as codeine and morphine.⁵⁸

In 2000, the WHO published ‘*Guidelines*’⁵⁹ which can be used by governments to determine whether their national drug control policies have established the legal and administrative framework to ensure the medical availability of opioid painkillers, according to the international treaties and the recommendations of the INCB and WHO. Central to these Guidelines is the principle of “*balance*” which refers to the dual purpose of preventing illegal trafficking and diversion, while ensuring their availability for medical and scientific purposes, in particular for the treatment of pain and suffering.

The worldwide demand for opiates for medical and scientific purposes has to be clearly distinguished from the supply of opiate raw materials. One of the key goals of the INCB is to maintain a lasting balance between these two variables. While the Board draws the attention to the worldwide shortage of opiate painkillers, it foresees no shortage of raw materials rich in morphine. In its 2004 Report, the INCB noted that increases in the total area cultivated with opium poppy in producing countries and in the agricultural yields obtained, coupled with technological progress, have resulted in recent years in the overproduction and increasing stocks of opiate raw materials. The Board therefore urges all producing countries “to maintain their future production of opiate raw materials at a level reflecting the actual requirements for such raw materials worldwide, thus avoiding

57 The INCB President said that developing countries, which represent about 80 per cent of the world’s population, accounted for only about 6 per cent of the global consumption of morphine, adding that this resulted in many governments not being able to provide adequate care for the thousands of patients suffering from cancer or AIDS (INCB Press release, 26 May 2005).

58 Morphine and codeine have been included in the Model List of Essential Drugs of the WHO since 1977.

59 WHO, Achieving Balance in National Opioids Control Policy, Guidelines for assessment, 2000.

an inappropriately high level of stocks, which might be a source of diversion if they are not tightly controlled”.⁶⁰

In 2005, the INCB does not seem to have changed its view. Although it appears that global production of raw materials rich in morphine will be below global demand, due to the sharp reduction in the area cultivated with opium poppy for the production of opium in India, the INCB does not expect there to be a shortage of morphine-rich raw materials on the global market.⁶¹

Finally, in an ECOSOC resolution of 21 July 2004, after calling on all Governments to “contribute to the maintenance of a balance between the legal supply of and demand for opiate raw materials and to co-operate with it in preventing the proliferation of sources of production of opiate raw materials”, the ECOSOC “urges the Governments of all countries where, in the past, opium poppy has not been cultivated for the legal production of opiate raw materials, in the spirit of collective responsibility, to refrain from engaging in the commercial cultivation of opium poppy, in order to avoid the proliferation of supply sites”.⁶²

Yet despite these official positions, quantitative analysis undertaken by the Centre for Addiction and Mental Health and contained elsewhere in this Study, has shown that there is in fact a global shortage of opium on account of significant unmet demand for opioid medicine such as morphine and codeine in patients with moderate to severe pain. This is a vast section of global health care that is omitted from official estimates of opiate demand. Only 24 percent of demand in this sector is met and even then, only in the seven major pharmaceutical markets⁶³ If anything, however, the 24 percent fulfilled demand in the seven markets is a ceiling figure for all other countries. It is clear that developing countries are far below this. The Centre for Addiction and

60 Report of the International Narcotics Control Board for 2004, United Nations publication Sales No. E.05.XI.1, p. 23-24.

61 International Narcotics Control Board, Estimate World Requirements for 2005 – Statistics for 2003, UN Doc. E/INCB/2004/2, United Nations Publication Sales No. E/F/S.05.XI.7, Part IV, p. 145

62 UNITED NATIONS, Economic and Social Council Resolution E/RES/2004/43. See Report of the International Narcotics Control Board for 2004, p. 24.

63 These are USA, UK, Germany, France, Spain, Italy and Japan, whose populations, according to INCB data, consumed 77 percent of the world's morphine in 2002.

Mental Health conclude that the shortage of opioid medications is in fact so large and extensive, that significant work remains to be done in order to arrive at an accurate consensus as to its total.

6.4 Requirements for license / approval

Having now considered the key legal constraints to the development of an opium export industry in Afghanistan, analysis turns to the key provisions concerning the requirement for Afghanistan to seek formal approval.⁶⁴ Three separate possibilities require consideration:-

(a) The country exported opium during ten years prior to 1961: (the “Grandfathering provisions”)

A Party that during ten years immediately prior to 1 January 1961 exported opium which such country produced, may continue to export opium which it produces.⁶⁵

Were Afghanistan to fall into this category, it would not require the formal approval of either the ECOSOC or the INCB. It would, however, still require national level authorisation inside Afghanistan via one or more government agencies as discussed above.

The central legal question in this respect is whether, in order to qualify for this exemption, Afghanistan must have been an exporter of opium of its own harvest *throughout* the whole period defined in that provision, or whether it is sufficient that it exported such opium in *any one of* the ten years involved? The problem consists

⁶⁴ These conditions are laid down in article 24 paragraphs (2) and (3) of The 1961 Convention

⁶⁵ Article 24, paragraph 3

therefore in the interpretation of the term “during” as “throughout” or as “at some point in”.

The answer to this question has significant repercussions on the number of countries allowed to export opium which they produce without formal approval. According to the records of the INCB, only India and Turkey exported opium for the entire period and therefore would be the only countries able to claim this exemption

If, on the other hand, it is only required that the country exported opium at some point in the ten years prior to 1 January 1961 then Afghanistan, Bulgaria, Burma, India, Iran, North Vietnam, Pakistan, Turkey, USSR and Yugoslavia would also have that right.⁶⁶

The Records of the Plenipotentiary Conference indicate that the second of these two interpretations was the view held by the authors of the Single Convention.⁶⁷ This interpretation is also confirmed by the practice of the Parties following the coming into force of the Convention.⁶⁸ Following this interpretation, Afghanistan would be automatically authorised to export the opium that it produced, without having to seek formal approval from the ECOSOC or the INCB. It would, however, still require national authorisation via one or more governmental agencies.

(b) The country did not export opium during ten years prior to 1961 and now wishes to export less than five tons annually:

A Party which as 1 January 1961 was not producing opium for export may export opium which it produces, in amounts not exceeding five tons annually, provided that it notifies the INCB in accordance with the specified procedure.⁶⁹

66 Information furnished by the Secretariat of the INCB; see also the statistical data published in the Reports of the Permanent Central Board, E/OB/8-E/OB/17; see also United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, Official Records, Volume II (New York, 1964) United Nations Doc. E/CONF.34/24/ Add.1, UN Publication Sales No. 63.XI.5 (hereinafter 1961 Records, vol. II), p. 162.

67 1961 Records, vol II., p. 162-163.

68 E.g. United Nations Doc. E/INCB/11, United Nations publication, Sales No. 70.XI.7, table I, p. 14-15 and table VIII, 1, foot-note a, p. 57.

69 This procedure is contained in article 24, paragraph 2 (a)

The only countries which produced opium for export as of 1 January 1961 were India, North Vietnam, Turkey, the Union of Soviet Socialist Republics and Yugoslavia.⁷⁰ As a result, if Afghanistan does not qualify under the previous section, it is required to comply with this provision.

The procedure referred to would involve Afghanistan notifying⁷¹ the INCB and furnishing relevant 'notification information' regarding: (i) the 'controls in force'⁷² according to The 1961 Convention and (ii) the name of the country or countries to which Afghanistan expects to export its opium.

The Board's disapproval of a notification and its recommendation to the Party concerned not to engage in the production of opium for export do not create any legal obligation for that Party or for other Parties⁷³. Whatever the Board's decision, the Party's notification has the effect of admitting annually five tons of opium produced in its territory to the international trade authorized under article 24.⁷⁴

In any event, it is worth reiterating that a Party may not initiate the production of opium, or increase its production for this purpose, if this action would be incompatible with the requirement not to contribute to overproduction of opium in the world.⁷⁵

(c) The country did not export opium during ten years prior to 1961 and now wishes to export more than five tons annually. To do so it must first obtain the approval of the ECOSOC in accordance with the specified procedure.⁷⁶ This is a Fully National and International Licensing Procedure.

70 1961 Commentary, comments on article 24, paragraph 2 (a).

71 The notification need not be repeated for each year in which a Party desires to export up to five tons of opium which it produces.

72 These are those required by the provision of article 23 and article 31, paragraphs 4 to 15.

73 See article 24, paragraph 4 (a) (ii).

74 1961 Records, vol. II, p. 161-163.

75 Article 24, paragraph 1

76 This procedure is contained in article 24, paragraph 2 (b).

The procedure referred to would involve Afghanistan notifying its intention to the ECOSOC, furnishing information on: the estimated amounts to be produced for export; the controls existing or proposed respecting the opium to be produced; and the name of the country or countries to which it expects to export such opium.⁷⁷ *ECOSOC may then approve the notification or may recommend to the Party not to engage in the production of opium for export.*

The relevant questions in the Council's consideration of a notification by Afghanistan will be :

- whether the controls existing or proposed by Afghanistan are satisfactory under the terms of the 1961 Convention,
- whether there is any need for the additional opium particularly in the countries indicated by Afghanistan as potential importers,
- whether Afghanistan would in fact be able to exercise effective controls to prevent the diversion of significant quantities of opium into the illegal traffic. (See earlier discussion).

The Council is unlikely to give its approval if prevailing conditions are such in Afghanistan as to warrant prohibition (see earlier discussion), or if it deems that to do so would result in overproduction of opium in the world. (For detailed discussion on the global shortage, see separate paper in this Feasibility Study by the University of Toronto's Centre for Addiction and Mental Health).

The Council's recommendation not to engage in the production of opium for export is legally binding upon the notifying Party.⁷⁸ The 1961 Plenipotentiary Conference

⁷⁷ The Party's estimate of the amount of opium which it intends to produce for export and the names of the countries to which it expects to sell the drugs represent important factors for the Council's consideration; however, these data do not legally obligate the Party after it has obtained the Council's approval. It may be entitled to produce more, or it may be bound to produce less; it may also export to other countries than those named in the notification (1961 Commentary, comments on article 24, paragraph 2 (b)).

⁷⁸ The Commentary justifies this interpretation by an a contrario reading of article 24, paragraph 3 ("notwithstanding the provisions of subparagraph (a) and (b) of paragraph 2") and by referring to the object and purpose of The 1961 Convention which in regard to opium are those of regulating and limiting to medical and scientific purposes the production of and trade in opium in the whole world and not only in the territory of Parties (1961 Commentary, comments on article 24, paragraph 2 (b)).

rejected a motion that the Council should be required to consult the INCB before taking a decision on the Party's notification. It seems, however, that the Council may find it necessary to undertake such a consultation in order to obtain all the technical data that it requires for its decision.⁷⁹ Consequently, the INCB's power to influence the Council's decision could prove significant.

7 Cultivation of opium poppy for the production of poppy straw

The final scenario for consideration in this paper, concerns the cultivation of opium poppy not for the production of opium but for its straw. Poppy straw plays a significant role in the legal manufacture of morphine. If Afghanistan cultivated opium poppy for this purpose then it would be subject to a far less stringent control system. In general terms, "the Single Convention controls poppy straw only after it has arrived in a drug factory or entered the international trade."⁸⁰ In particular, the conditions concerning overproduction would not have to be addressed.

The reason for this less stringent regime is that at the time of drafting The 1961 Convention, no clandestine manufacture of morphine from poppy straw had been discovered, nor had there been any international illegal traffic of significance in poppy straw. Under the 1961 Convention, the regime controlling poppy straw provides that:

A Party that permits the cultivation of the opium poppy for purposes other than the production of opium shall take all measures necessary to ensure:

(a) That opium is not produced from such opium poppies;

(b) That the manufacture of drugs from poppy straw is adequately controlled.

⁷⁹ 1961 Records, vol. II, p. 167.

⁸⁰ UNITED NATIONS, Commentary on the Single Convention on Narcotic Drugs 1961, United Nations Publication Sales No. E.73.XI.1, New York, 1973, comments on article 25

7.1 Requirement to establish and maintain one or more government agencies

Once again, effective government control is necessary, and so the same remarks as those made above in respect of the requirement to establish and maintain one or more government agencies applies here.

7.2 No requirement to apply estimate system

The estimate system is considered in detail in the following section. It is to be noted that the estimate system does not apply to poppy straw (as it does to opium). At the time of drafting The 1961 Convention, however, it was considered that the significant role that poppy straw plays in the legal manufacture of morphine made it essential, for the proper functioning of the statistical accounting system, that the amounts of poppy straw used for the manufacture of alkaloids⁸¹ be made known to the authorities. The Plenipotentiary Conference rejected the application of the full narcotics system to poppy straw, providing instead for a limited regime requiring Parties to furnish to the INCB statistical data on the quantities of poppy straw which they use for the manufacture of drugs, and on those which they import or export.

8 The INCB, the Estimate System and the Statistical Returns System

Central to the operation of The 1961 Convention's control system is the INCB's role in the administration of an 'Estimate System'⁸² which is complemented by a 'Statistical Returns System'. These systems enable an audit of Parties' estimates and reveals possible diversion of drugs into the illegal traffic.⁸³

81 Small quantities of codeine may appear as a by-product in the manufacture of morphine from poppy straw.

82 Article 12 of The 1961 Convention

83 Only a general overview of both systems is provided in this paper, and only insofar as they apply to opium production.

The INCB must endeavour, in co-operation with Governments, to limit the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purposes, to ensure their availability for such purposes and to prevent illegal cultivation, production, manufacture of, and illegal trafficking in and use of drugs.⁸⁴ The INCB is required to cooperate with Governments and to lend assistance to and facilitate effective national action to attain the aims of the Convention.⁸⁵

8.1 The Estimate System

The estimate system as originally adopted by the 1931 Convention and superseded by the Single Convention was intended to determine the maximum quantities of narcotic drugs which each country or territory may under the Single Convention obtain by manufacture or import or both.⁸⁶ Its broad aim is to limit the amount of drugs that a country obtains to the quantities needed for medical and scientific purposes. This original estimate system had nothing to do with the production of opium.⁸⁷ The 1972 Protocol, however, extended the estimate system to the *production* of opium. The system of estimates thus applies as regards both the area to be utilised for the cultivation of opium poppy as well as the amount of opium to be produced.

The INCB is responsible for determining the manner in which and the date by which estimates must be furnished. The INCB will examine the estimates and may either confirm or amend them (with the consent of the Government concerned). The procedure is intended to be as quick as possible. If there is no agreement between the Government and the Board, the latter has in any case the right to establish, communicate and publish

84 Article 9, paragraph 4 of The 1961 Convention, as inserted by article 2 of the 1972 Protocol. In reality, article 9, paragraph 4 simply codifies the practice of the INCB under the unamended 1961 Convention (see United Nations Conference to consider amendments to the Single Convention on Narcotic Drugs, Official Records, Volume II (New York, 1973) UN Doc. E.CONF.63/10Add.1, United Nations Publication Sales No. E.73.XI.8 (hereinafter 1972 Records, vol. II), p. 107).

85 Article 9, paragraph 5 of The 1961 Convention. This provision is similar to the new article 14bis of The 1961 Convention (see *infra*, under 11.1.8).

86 Provisions governing the system are contained in articles 12, 19, 21 and 31(1)(b) of The 1961 Convention

87 The 1953 Protocol also did not determine by the estimate system the amount of opium which a country or territory may produce.

its own estimates. The INCB must issue information on the estimates at least once a year. This information may also be included in the annual report and in additional reports which are submitted to the ECOSOC and published.⁸⁸

The 1972 Protocol introduced new information to be furnished to the INCB⁸⁹. In addition, it create the following important obligation:⁹⁰

Each Party is required to limit the quantity of opium produced to the amount that it has estimated to the INCB.⁹¹ Where, however, the INCB finds that the Party has not limited opium produced within its borders to ‘licit purposes’ and that ‘a significant amount of opium produced has been introduced into the illicit traffic’⁹², it may deduct from a nation’s annual opium production quota the amounts of opium produced within that country which were introduced into the ‘illicit traffic’. In this way, the INCB can ‘punish’ a Party that does not control its illegal opium traffic by imposing an economic sanction on its opium production.

After notifying the Party concerned of its decision to make a deduction, the INCB will consult with that Party in order to find a “satisfactory solution”. If no such solution is found, the INCB may “where appropriate” use the enforcement machinery available to it in the Convention⁹³ (including the possibility of recommending an embargo⁹⁴). (This is considered in more detail below).

A country or territory which in good faith implements the requisite controls,, including authorising opium poppy cultivation in an area of such size as according to past experience can be expected approximately to yield the estimated opium

88 Article 15 of The 1961 Convention. These reports shall contain an analysis of the estimates and statistical information, the explanations given or required by Governments and the observations or recommendations from the Board. The reports are submitted to ECOSOC, communicated to the Parties and published. While the annual report is mandatory, the additional report is optional.

89 See subparagraphs (e) to (h) of article 19, paragraph 1. The information to be furnished by the estimate system to the INCB will be further discussed (see infra, under 11.1.6 (f)).

90 Article 21bis, of The 1961 Convention

91 Article 19, paragraph 1 (e) of The 1961 Convention

92 Article 21bis, paragraph 2, of The 1961 Convention

93 Article 14 of The 1961 Convention, entitled “Measures by the Board to Ensure the Execution of Provisions of the Convention”

94 See infra, under 11.1.8.

harvest, would be deemed to have complied with the new obligation created in the 1972 Protocol, even where its opium production greatly exceeds its estimates for the year in question.⁹⁵

It is worth reiterating that Afghanistan, at the time of writing, is not a signatory to the 1972 Protocol, although its accession is indicated in the very near future. As such, the estimate system regarding opium production does not at present apply.

8.2 Statistical returns system

When the original estimate system was absorbed into The 1961 Convention, it was supplemented by a system of statistical returns by which the Board and each Government can establish whether the limits (on manufacture and import) have been exceeded by a particular country or territory.⁹⁶

The purpose of the Board's examination of the statistical returns is the determination of compliance of any Party or any other State with the provisions of The 1961 Convention.⁹⁷ Beyond that, the Convention does not define the scope of the examination which the Board is required to undertake, nor the kind of information which it may use for its examination or whose supply it may require to this end.

The returns which have to be furnished to the INCB by Parties in respect of the production of opium and the manner in which this must be done will be discussed below.

⁹⁵ It is submitted that such a country or territory would have to be held to have "organized and controlled" opium production "in such a manner as to ensure that, as far as possible" its opium production does not exceed its estimates for the year in question (as required by article 21bis, paragraph 1) See 1972 Commentary, comments on article 21bis.

⁹⁶ Articles 13 and 20 of The 1961 Convention

⁹⁷ Article 13, paragraph 2 of The 1961 Convention

8.3 Estimates of drug requirements

The 1961 Convention defines the estimates of narcotic drug requirements for medical and scientific purposes which Parties to The 1961 Convention must furnish to the Board.⁹⁸

Estimates must be supplied in respect of the quantities required to be consumed⁹⁹ for medical and scientific purposes; quantities to be utilized for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention; and quantities necessary for addition to special stocks.

The “total of the estimates” for a particular territory is an aggregate of estimates for (a) opium (b) synthetic drugs, and (c) all other narcotic drugs, that is to say, for all “natural” drugs other than opium.¹⁰⁰ This total may not be exceeded by the Parties.¹⁰¹

The definition of “*the total of estimates*” in subparagraph (b) applicable to opium has two distinctive features:

- the total is not only subject to the deductions referred above, and;
- subject to any deductions, the “total” is whichever is the higher of (1) the amount computed for all drugs¹⁰², or (2) the figure provided by the Government

98 Article 19 of The 1961 Convention

99 The Official Commentary states that the phrase “quantity to be consumed” means the quantity to be supplied for retail distribution, use in medical treatment or scientific research, to any person, enterprise or institute (retail pharmacists, other authorized retail distributors, institutions or qualified persons duly authorized to exercise therapeutic or scientific functions: doctors, dentists, veterinarians, hospitals, dispensaries and similar health institutions, both public and private; scientific institutes) See 1961 Commentary, comments on article 19, paragraph 1 (a).

100 Article 19, paragraph 2, as amended by the 1972 Protocol

101 Article 19, paragraph 5

102 As under article 19, paragraph 2: “the sum of the amounts specified under subparagraph (a), (b) and (d) of paragraph 1, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in subparagraph (c) of paragraph 1”.

concerned as its estimate of the “approximate quantity of opium to be produced”¹⁰³.

Of these two alternative computations of the “total of estimates” provided for opium, the first would have to be used in regard to a country or territory whose own estimated opium needs exceed its estimated opium production¹⁰⁴. The second would be used for a country or territory whose estimated opium production exceeds its estimated opium needs.¹⁰⁵

8.4 Statistical returns to be furnished to the INCB by Parties

Parties are required to furnish the INCB with annual statistical reports which include information on:

- the production or manufacture of drugs;
- the utilization of drugs for the manufacture of other drugs;
- the utilization of poppy straw for the manufacture of drugs;
- consumption of drugs;
- imports and exports of drugs and poppy straw;
- the ascertainable area of cultivation of opium poppy.¹⁰⁶

This latter requirement is the statistical counterpart of the requirement for Parties to supply to the INCB annual estimates of “the area (in hectares) and the geographical location of land to be used for the cultivation of the opium poppy”.¹⁰⁷

All statistical returns must be prepared annually and sent in the manner and form prescribed by the INCB no later than 30 June following the year to which they relate.

103 Article 19, paragraph 1 (f) of The 1961 Convention

104 Estimated according to article 19, paragraph 1 (f)

105 1972 Commentary, comments on amendments to article 19.

106 Article 20, paragraph 1 of The 1961 Convention

107 Article 19, paragraph 1 (e) of The 1961 Convention

This excludes the statistical returns relating to imports and exports of drugs and poppy straw which must be prepared quarterly and sent within one month after the end of the quarter to which they relate.

The INCB examines the reports and may ask for further information. It cannot evaluate statistical information regarding drugs required for special purposes. Returns regarding these drugs must be furnished separately. There is no obligation to furnish statistical information referring to special stocks.

The statistical returns system (as amended) does not merely indicate whether a country or territory has exceeded its manufacturing and import limits. To a degree, it also reveals the extent of illegal traffic and the effectiveness of the enforcement organs fighting it.¹⁰⁸

8.5 Other Information to be furnished to the INCB by Parties

As mentioned above, the 1961 Convention as amended, requires Parties to furnish to the Board each year estimates of: the area and the geographic location of land to be used for the cultivation of the opium poppy; the approximate¹⁰⁹ quantity of opium to be produced; the number of industrial establishments which will manufacture synthetic drugs; and the quantities of synthetic drugs to be manufactured by each of these establishments.¹¹⁰

These estimates directly determine the limits of the quantities of the matters to which they relate.¹¹¹ The other estimates to be furnished by Parties to the INCB¹¹², i.e. the

108 A study of the figures on the area in a country cultivated with the opium poppy for the production of opium and of those on the extent of the opium harvest may throw some light on the size of the diversion of opium from the legal crops into the illegal legal traffic. It may also lead to the conclusion that legal opium production is not profitable in the country concerned, and that its farmers can undertake it only because many of them sell a part of their crop at the higher prices of the illegal legal market (1961 Commentary, comments on article 20).

109 The 1972 Conference recognized that advance estimates of opium production cannot be exact.

110 Article 19, paragraph 1 (e) to (h), as established by the 1972 Protocol.

111 Article 19, paragraph 5.

112 Article 19, paragraph 1 (a) to (d) and paragraph 2.

estimates of narcotic requirements (see supra under (d)), only form the basis for computing the limits of narcotics supplies by manufacture or import.

A Party may furnish to the INCB supplementary estimates during the year to which the original¹¹³ estimates relate. A Government therefore could by a supplementary estimate avoid an excess¹¹⁴ and thus the consequences that this would entail.¹¹⁵

In brief, the estimates used to consider whether the obligation of article 21bis, paragraph 1 is respected and which accordingly should “*as far as possible*” not be exceeded by actual opium production are either those furnished by the Governments under article 19, paragraph 1 (f), or those established by the INCB pursuant to article 12, paragraph 3, or those revised by supplementary estimates under article 19, paragraph 3. They are not those established by the INCB in accordance with article 12, paragraph 5.

9 Measures of supervision and inspection

*Parties must ensure that all persons or legal entities who obtain licences to cultivate opium poppy for the production of opium, or those who have managerial or supervisory positions in a State enterprise, shall be adequate qualified.*¹¹⁶

113 Or earlier supplementary estimates. Supplementary estimates may also be furnished prior to that year (1961 Commentary, comments on article 19, paragraph 3).

114 Under article 21bis, paragraph 1

115 It could furnish a supplementary estimate even after the produced opium has been collected, so long as it does so during the calendar year to which the original estimate relates. Such a supplementary estimate furnished to the Board after the opium harvest, although not incompatible with the letter of article 19, paragraph 3 and article 21bis, paragraph 1, would not be in accord with the intention of the authors of article 21bis (1972 Commentary, comments on article 21bis).

116 Article 34 of The 1961 Convention. In accordance with the 1961 Commentary (comments on article 34) legal persons may be considered to have adequate qualifications if their managerial or supervisory personnel has them.

'Adequate qualifications' are meant to include moral as well as technical qualifications.¹¹⁷ Persons convicted of an offence against laws or regulations governing narcotics control should not be granted a licence, nor should licensed cultivators be permitted to employ them in the cultivation of the poppy and in the harvesting of the opium. (Absence of criminal record is thus one of the criteria raised for consideration in the Amnesty paper elsewhere in this Study).

Governmental authorities (National Opium Agencies)¹¹⁸, manufacturers, traders, scientists, scientific institutions and hospitals are required to keep such records as will show the quantities of each drug manufactured and of each individual acquisition and disposal of drugs, and to preserve such records for a period of not less than two years.¹¹⁹

The records serve two principal purposes. Firstly, they enable the record keepers to furnish to the supervisory government authorities the data needed to compile estimates of drug requirements and for the periodic statistical returns which must be furnished to the INCB. Secondly, they assist the supervisory authorities in the control of the activities of the persons, enterprises and institutions with a view of uncovering any diversions of drugs into illegal channels, or any illegal use of them.

Production records are not required, although the national opium agency would have to record the amounts of drugs which they purchase from the cultivators, in fulfilment of their obligation to record "each individual acquisition"¹²⁰.

117 United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, Official Records, Volume I (New York, 1964) UN Doc. E/CONF.34/24, United Nations Publication Sales No. 63.XI.4 (hereinafter 1961 Records, vol. I), p. 36; 1961 Records, vol. II, p. 283 (foot-note 14) and 288 (foot-note 45).

118 The term "governmental authorities" is submitted also to refer to the national opium agencies required to be maintained in countries authorizing the cultivation of the opium poppy for the production of opium (1961 Commentary, comments on article 34).

119 Article 34, paragraph (b) of The 1961 Convention

120 Ibid., comments on article 34.

10 Measures by the Board to ensure the execution of provisions of the Convention

The role of the INCB in general and, in particular, with regard to the control of the production of opium, was strengthened by the 1972 Protocol. Although in practice it relies mainly on informal pressure, the INCB has wide powers under The 1961 Convention to enforce implementation by the Parties.

Where the INCB has “*objective reason*” to believe that the aims of the Convention are threatened by a Party’s failure to carry out its obligations, the INCB has the right to start (confidential) consultations with that Party or to request it to supply information. After taking such action the INCB may call upon this Party to adopt appropriate remedial measures. If, however, none of such measures produce the desirable results, the INCB is able to call the attention of the Parties, ECOSOC and the CND to the matter if (i) the aims of the Convention are being seriously endangered and it is impossible to resolve the matter satisfactorily in any other way; or (ii) the INCB finds that there is a serious situation that needs co-operative action at the international level; or (iii) where this is the most appropriate method of facilitating co-operative action.

The INCB can then make a special report including the views of the defaulting Party to the ECOSOC,¹²¹ in which it may even recommend that Parties cease the import and export of all drugs for a designated period or until it is satisfied with the situation in that country¹²². This then gives the INCB both a prosecutorial role and a quasi-judicial role. Nor can its decision cannot be overturned by a higher body.¹²³

Finally, the INCB may at any time, with the agreement of the Government concerned, recommend to the competent UN organs and to the specialised agencies that technical or financial assistance be provided to that Government for the implementation of the provisions of the Convention.

121 Under article 14, paragraph 3

122 Under article 14, paragraph 2

An important issue which could determine the approach of the INCB towards licensed opium production in Afghanistan will be consideration of any previous measures which it has had to take concerning Afghanistan's compliance with the Conventions regime.

In its 2004 Report, the INCB states that the overall drug control situation in Afghanistan appears to have deteriorated. In particular, it recognised that opium poppy cultivation continued to expand in 2004, occurring in almost all the provinces of the country and involving an increased number of farmers. It also recognised that Afghanistan faces growing problems involving illegal manufacture of and trafficking in opiates, as a result of increased opium production. Opium and heroin continue to be smuggled on a large scale into other countries in West Asia and, through those countries, into Europe.¹²⁴

According to the INCB Report, there is a clear indication that illegal opium cultivation will continue to thrive unless firm action is taken to eliminate such production and other illegal drug-related activities, including illegal drug manufacture and trafficking. It therefore urged the Afghan Government to establish law and order in rural areas, to extend the enforcement of the ban on opium and with the assistance of the international community to provide alternative livelihoods to opium poppy growers.¹²⁵

The Afghan situation is of evident concern to the INCB.¹²⁶ It is to be expected that the INCB would take a cautious attitude towards growing licensed opium.

Nevertheless, they have an obligation to not only meet the global pain crisis issue, as well as to design an appropriate response to the needs of Afghanistan. A response such as they have made to date is no response at all and non fulfilment of their mandate.

The INCB has called upon all parties involved in drug interventions in Afghanistan to continue their co-operation and provision of technical and financial support in a well co-

123 N. BOISTER, *Penal Aspects of the UN Drug Conventions*, Kluwer Law International, The Hague / London / Boston, 2001, p. 484.

124 Report of the International Narcotics Control Board for 2004, p. 34-35.

125 *Ibid.*, p. 35.

ordinated manner, in order to establish law and order throughout the country and find sustainable solutions for drug control in Afghanistan. The “sustainable solutions” the Board apparently has in mind are enforcing the ban on opium poppy cultivation, ensuring the effectiveness of eradication efforts, in co-ordination with alternative development activities.¹²⁷ These solutions are, however, uninformed and hence wholly unrealistic given the reality of the opium economy and security situation in Afghanistan.

11 Afghanistan’s 1956 Application to Export Opium

Illustrative, perhaps, of the considerations that may form in any application by Afghanistan to legally export opium, is an examination of its previous application to the ECOSOC.

Afghanistan previously brought a claim to export opium it produced before ECOSOC and the UN Secretary-General in 1956.¹²⁸ Initially, the Commission on Narcotic Drugs (CND) supported Afghanistan’s claim and suggested that the Secretary-General include Afghanistan as a legal opium-producing country.¹²⁹ Several country representatives supported the request, stating that it would not be fair to prevent Afghanistan from exporting its opium merely because it had not participated in the 1953 Conference, and pointing out that if exports were prohibited, much of the opium produced might find its way into the illegal traffic.

126 This concern was recently repeated, by Prof. Hamid Ghodse, President of the INCB in his address to the substantive session of the ECOSOC on 21 July 2005. The President said “the drug control situation in Afghanistan poses a severe threat to national security with the potential of even endangering the country’s political transition”.

127 Ibid., p. 68.

128 At the tenth session of the CND, the observer for Afghanistan had requested that the 1953 Protocol should be revised in such a way as to permit Afghanistan to produce opium for export and that a clause in this effect should also be included in the proposed Single Convention. He repeated this request at the eleventh session where he said that Afghanistan had not been represented at the 1953 Conference through an unfortunate combination of circumstances (UNITED NATIONS, Commission on Narcotic Drugs, Report of the Eleventh Session (1956), nr. 246).

129 UNITED NATIONS, Commission on Narcotic Drugs Resolution CND/RES/II(XI)A.

The superior quality of Afghanistan's crops and the fact that there was not a massive supply in the opium market and that a new producer would not have significantly destabilized the market were also elements backing Afghanistan's claim.

One of the main causes for the ultimate rejection of Afghanistan's claim was its relationship to Iran's pledge at that time to completely ban drug cultivation. During the eleventh session at CND in 1956, Iran's representative requested the Commission to postpone the consideration of Afghanistan's request until its twelfth session. Eventually, during the meeting of the Social and Economic Council Subcommittee, it was decided to send the claim back to the Commission for further review.¹³⁰ Excerpts from the delegates' statements show that this decision was ostensibly based on the mixed messages that would be sent to countries regarding opium cultivation in the event that Afghanistan was given an authorization.¹³¹

Passing a resolution to send Afghanistan's claim back to CND "for further revision", implicitly meant that ECOSOC would not support the claim and delivered the finishing stroke to Afghanistan's application. By 1958, Afghanistan had fallen in step with the prevailing mood at the time and pledged its commitment to a full ban on drug crop cultivation and production. This prohibition was of course tied to a promise of the international community to provide support to the country.¹³² As is obvious from three further resolutions promising more international technical assistance for Afghanistan's and other countries' counter-narcotics efforts, this pledge did not materialize in a substantial form.¹³³

Almost fifty years have passed since Afghanistan's application in 1956 and it is undeniable that its rejection and the resulting ban on drug crop cultivation and

130 UNITED NATIONS, Economic and Social Council Resolution E/RES/1956/626(XXII)G.

131 As the United Kingdom delegate stated: "the CND cannot reward Iran for banning cultivation while at the same time rewarding its neighbour for cultivating opium" (Minutes from the Social and Economic Council Subcommittee meeting to discuss Afghanistan's claim (1956)).

132 UNITED NATIONS, Economic and Social Council Resolution E/RES/1958/689(XXVI)H.

133 UNITED NATIONS General Assembly Resolution A/RES/1259(XIII), UNITED NATIONS, Commission on Narcotic Drugs Decision CND/Dec.1-24(XIV), UNITED NATIONS, Commission on Narcotic Drugs Resolution CND/RES/11(XIV).

production have proven far from being a correct or successful decision as developments over the last decades show.

The fact that the technical assistance which was promised in return for Afghanistan's counter-narcotic efforts did not materialise, has also had a significant impact on the country's decline and subsequent descent into economic disintegration, poverty and war.

The INCB now maintains, in the face of clear evidence to the contrary, that there is an oversupply in the global opium market. It would most likely raise the objection that a new legal producer would contribute to the overproduction of opium in the world, thus destabilizing the balance between supply and demand of opiate raw materials. To counter this argument, it will be necessary for the INCB to justify their position as regards this global oversupply..

12 Overview of the licensing system in other countries and analysis of these systems in the light of the conditions unique to Afghanistan

At present, only a limited number of countries are authorised to license cultivation of opium poppy for export of raw materials. Among the main producing countries are Australia, India, Turkey and France.

Countries such as the United Kingdom that only produce opium for their home market and not for export; do not need to an export approval from the ECOSOC.

The licensing systems for the production of opium in these producing countries are examined in some detail elsewhere in this study. For now, the focus will lie on the analysis of the general international legal framework governing opium production and export in these countries. The question will be raised as to why only a limited number of countries are licensed to produce and export opium? Could this small group of licensed opium producers be extended to include Afghanistan?

Incontrovertibly, each of the opium producing countries has in place the necessary legal and organisational structures in order to comply with the provisions of The 1961 Convention.

The 1961 Convention does not explicitly limit the number of opium producing and exporting countries to those which currently dominate the international opium market. It is suggested that the reason why the list of opium producing countries is so small must be sought on another (politico-economic) level.

In 1979, the CND passed a resolution to address the overproduction of opium gum, unprocessed poppy straw and excess stocks in India and Turkey. Amongst other objectives, the resolution sought to restore the balance between the demand and supply of opium by calling on manufacturing countries to purchase their opium from India and Turkey.

*In 1981, the United States gave legislative effect to the CND resolution through the extension of the special protected market status to India and Turkey. This administrative practice has commonly been called the 80/20 rule. The philosophy of the rule was the intention of the Government of the United States “to support the concept of traditional suppliers and to make maximum efforts to ensure imports of at least 80% of the requirement of opiate raw materials from the traditional supplier countries like India and Turkey”.*¹³⁴

The 80/20 rule stipulates that India and Turkey share 80 per cent of the legal US opium market, while others such as Australia, France, Spain, Belgium, Austria, Hungary and Poland share the remaining 20 per cent.

In early 1999, the United States’ authorities placed the 80/20 rule under review, in order to decide whether the share should be adjusted to 60 per cent and 40 per cent. After a long and intense debate, the US Drug Enforcement Administration has decided to

¹³⁴ See, inter alia, article 2 of the Mutual Co-operation Agreement between India and the USA of 1990.

maintain the 80/20 rule until 1 January 2006 at which time it will be up for review by the congress once again.

The 80/20 rule finds support among relevant UN bodies such as the INCB and ECOSOC. In its 1999 Annual Report, the INCB declared that “the 80/20 rule has greatly contributed to global efforts to maintain a lasting balance between the supply of and the demand for opiates used for medical and scientific purposes”.¹³⁵ The INCB expressed its concern over the possible impact and unforeseen effects that a modification of the rule might have on the balance between the supply of and demand for opiates for medical needs.¹³⁶ ECOSOC similarly expressed its satisfaction with the rule in a 2001 resolution.¹³⁷

The 80/20 rule clearly provides international legitimacy to opium production in India and Turkey while forming a barrier to entry into the opium market for Afghanistan. What of the possibility of modifying or relaxing the rule to accommodate Afghanistan? It would be difficult to defend the argument, for example, that Afghanistan could not also be considered a “*traditional opium cultivating country*”. This is clearly an area for further investigation.

Poppy cultivation in Australia and France provide an illustration of the circumvention of the 80/20 rule. Thebaine-rich poppy straw (used, for example, in the production of codeine) is exempt from this 80/20 rule and production of thebaine-based medicinal products forms a key component of the French and Australian opium industries.

The large scale cultivation of opium poppy in Australia is driven by economic interests of its two manufacturing companies, Tasmanian Alkaloids Pty (a subsidiary of Johnson and Johnson) and GlaxoSmithKline Australia ltd. In France, it is driven by Francopia (a subsidiary of Sanofi), which is also responsible for farmer selection, seed distribution and harvesting,

135 Report of the International Narcotics Control Board for 1999, p.24.

136 “As the United States is the largest importer of opiate raw materials in the world, the proposed amendment may destabilize the world legal market for opiate raw materials” (Ibid., p. 24).

137 UNITED NATIONS, Economic and Social Council Resolution E/RES/2001/15.

In line with The 1961 Convention, the primary stated aims of the 80/20 rule are the need to avoid overproduction of opium in the world, and the need to maintain a balance between demand and supply of opiates for medical and scientific purposes. In view of the (patently erroneous) position maintained by the INCB, namely that there is an oversupply, it could be expected that including Afghanistan among the countries legitimised for export according to the 80/20 rule, would be considered unjustified for the achievement of this aim.¹³⁸ Alternatively in the 80/20 rule is seen as mechanism to use a trade device to encourage a transition from the illegal production to licensed production, then of course the replication of such a trade initiative by the US and other Coalition countries interested in peace and stability in Afghanistan would be interesting.

13 Adapting the international framework to enable licensed opium production in Afghanistan

A strictly legal mechanism to overcome any perceived incompatibility of licensed opium production in Afghanistan with the UN Conventions regime would be to *amend* the 1961 Convention. An amendment denotes a formal change in the UN Conventions regime intended to alter its provisions with respect to all the Parties. By way of brief overview of the amendment procedure¹³⁹, Parties must notify the Secretary-General of a proposal for an amendment. The Secretary-General then communicates the proposed amendment and the reasons for it to the Parties and to the Council. It is then the ECOSOC's decision to either call a conference to consider the amendment, or ask the Parties if they accept the amendment. The amendment only comes into force if *no* Party rejects it within 18 months after circulation by the Council. If one or more Parties reject the amendment and submit to the ECOSOC their comments, the Council can decide whether or not to convene a conference to consider the amendment.

138 As mentioned earlier, the main approach of the INCB towards Afghanistan is a mixture of enforcing the ban on opium poppy cultivation, ensuring the effectiveness of eradication efforts while co-ordinating alternative development activities (Report of the International Narcotics Control Board for 2004, p. 65-68).

139 Under article 47 of The 1961 Convention,

Ordinarily, the amendment procedure is considered neither realistic nor technically viable given the blocking obstacles that exist and the time involved in such a step. ***However, in view of the current emergency situation affecting Afghanistan, States must fully take on board the point that the international Conventions do not exist to put the international community in a policy “straightjacket” when circumstances change, but rather to respond to the problem in hand.***

Indeed, providing a response to emergencies such as Afghanistan is exactly what the UN system is designed for. Since, as we have seen, the international community can be mobilised to send a coalition of militaries as well as massive amounts of donor aid to Afghanistan, then it should also be able to devote the requisite resources and geo-political effort to considering the enormous gains to be had from granting Afghanistan formal approval to develop a nation-wide broadly based opium licensing system and provide the necessary political and economic support for its implementation? There is clear and substantial international support, as well as significant pre-existing commitment to responding to the realities of the Afghan opium situation. It is thus incontrovertibly in the collective interests of the international community to formulate an effective response to the current drug policy impasse in Afghanistan.

14 *Ad hoc* measures to create flexibility in the UN Drugs Conventions Regime

It can also be argued that amending the existing international legal framework is not necessary if political agreement was reached on a practical solution that would allow Afghanistan to easily and immediately produce (and export) raw opium.

Such a practical solution could be found in the formulation of an *ad hoc* measure that would take a flexible and creative approach towards the UN Conventions regime, but would nevertheless not detract from its object and purpose. This *ad hoc* measure could be based on a political agreement between Afghanistan and (some) of its international donor countries to facilitate licensed opium production in Afghanistan.

Further, it could be codified in a legal instrument. In this case, an ‘*inter se* agreement’ (as described in the Vienna Convention on the Law of Treaties) between Parties to the

UN Conventions would be appropriate.¹⁴⁰ Such an agreement would not formally amend the UN drug Conventions regime but could have the effect of making it more flexible in respect of the special situation affecting Afghanistan.

Whilst none of the three drug Conventions provide for the possibility of Parties concluding an ‘inter se agreement’, nor do they prohibit it. Recourse must therefore be had to the Vienna Convention which provides that such an agreement is possible if (i) it does not prejudice the rights or add to the burdens of the other parties and (ii) it does not relate to a provision derogation from which would be incompatible with the effective execution of the object and purpose of the treaty as a whole.¹⁴¹

Such an ad hoc measure could focus on the main challenges of opium production in Afghanistan, while taking into account the country’s specific characteristics and its particularly significant global security situation.

The crucial element in any system of licensed opium production, would remain to ensure effective governmental control of such system. As has been discussed in this paper, The 1961 Convention requires a strong Government to exercise effective control over licensed opium production. Since at this stage the local level in Afghanistan is more relevant than the state level, one possibility could be to set up *local opium agencies* in Afghanistan, co-ordinated by the National Opium Agency. Although the requirement of a governmental monopoly applies to Afghanistan as a whole, there is nothing in The 1961 Convention that prohibits the setting up of such local opium agencies, complementary to the National Opium Agency.

The creation of local opium agencies could strengthen local governance and control. As a result, the system of licensed opium production could meet the requirements of the UN Conventions regime, at least at local level. Taking into account the exceptional situation of the country, the importance of opium in society and economy and the fact that the country is still building its state institutions, such a bottom-up approach could be a

¹⁴⁰ Article 41, Vienna Convention

successful solution to allow licensed opium production of opium in Afghanistan while respecting the purpose of the UN Conventions regime by ensuring effective control in those areas where the production is concentrated.

Another possible element of the geo-political agreement aimed at the specific situation of Afghanistan could be the selection of certain countries with a high need for opium and painkillers to which Afghanistan could deliver its opium. This could lead to the establishment of an international consensus whereby Afghanistan is recognised as a supplier of its own brand of opium medications to fulfil the need of certain (mostly developing) countries. Donor countries (and pharmaceutical companies within these countries) could act as the primary intermediaries in such a system. In a sense, this could operate in a similar way to the 80:20 rule currently in force in the USA that offers preferential trade treatment to India and Turkey regarding their licensed opium production.

15 Measures to eradicate illegal cultivation of narcotic plants

15.1 The 1961 Convention provisions concerning eradication

One of the amendments to The 1961 Convention made by the 1972 Protocol provides: “A Party prohibiting cultivation of the opium poppy or the cannabis plants shall take appropriate measures to seize any plants illicitly cultivated and to destroy them, except for small quantities required by the Party for scientific or research purposes”.¹⁴²

This provision applies to all cases in which the cultivation is prohibited for any reason, and not only to those cases in which that measure is taken under paragraph 1 of that article, no matter whether the ban is effected by the text of a law or by a policy of refusing required licenses.

141 M. Andenas and D. Spivack, The United Nations Drug Conventions Regime and Policy Reform, Study conducted by The British Institute of International & Comparative Law, The Senlis Council, August 2003, p. 4-5.

142 Article 22, paragraph 2

The measures used by the Parties to destroy illegally cultivated plants must be “appropriate”, that is measures that are practical and can be reasonably expected of them under their special conditions.¹⁴³

The above requirement does not oblige Parties to destroy the products of illegally cultivated plants such as poppy straw. Nor does it oblige Parties to destroy legally cultivated opium poppies, where these plants are being used for the illegal production of opium.¹⁴⁴

As an alternative to destroying the illegally cultivated plants, the 1972 Protocol introduces the option of using the plants for scientific or research purposes, an option which accords with existing state practice. The domestic law of most states allows the authorisation of the use of these plants for such purposes.¹⁴⁵ The provision does not allow the use of seized plants to supplement legal drug production.

15.2 The 1988 Convention provisions concerning eradication

Before 1988, the international community appeared to be moving hesitantly towards a blanket obligation to eradicate drug-containing crops as a method of source reduction. This hesitancy had much to do with the fact that even at that time crop eradication was one of the most controversial of all source reduction methods.¹⁴⁶ The issue of accountability (between the poorer producer states and the rich consumer states) was central to the debate.

143 United Nations, Commentary on the 1972 Protocol amending the Single Convention on Narcotic Drugs, New York, comments on amendments to article 22 of the Single Convention.

144 This would in particular be the case of opium poppies planted for seed or decorative purposes (Ibid., comments on amendments to article 22 of the Single Convention).

145 The exact scope of “scientific and research purposes” is uncertain, but it must include the use of these plants as evidence in criminal cases because such evidence would be of a scientific nature (N. BOISTER, Penal Aspects of the UN Drug Conventions, Kluwer Law International, The Hague / London / Boston, 2001, p. 432).

146 N. BOISTER, Penal Aspects of the UN Drug Conventions, Kluwer Law International, The Hague / London / Boston, 2001, p. 433.

The eventual solution was to adopt a compromise position. As a result, the 1988 Convention contains in its articles, the provision ‘Measures to Eradicate Illegal Cultivation of Narcotic Plants and to Eliminate Illegal Demand for Narcotic Drugs and Psychotropic Substances’.¹⁴⁷ The following is an analysis of the key aspects of this provision as regards the context of this study.

The measures taken by Parties to eradicate illegal cultivation (and eliminate illegal demand) as required in The 1988 Convention must not be less exacting than the eradication measures taken for these purposes under the provisions of The 1961 Convention, The 1971 Convention and the 1972 Protocol. Therefore, measures in The 1988 Convention should supplement pre-existing measures.¹⁴⁸

As in The 1961 Convention, Parties must take appropriate measures to prevent the illegal cultivation of drug containing plants within their territories and to eradicate drug containing plants cultivated within their territories such as opium poppy.¹⁴⁹ The choice of methods to be used in the eradication of these plants is left to the Parties, although the prevention and eradication measures adopted must:

(i) Respect fundamental human rights

The reference to human rights is not specific about which rights could be endangered by eradication of illegal crops. It is clear, though, that the right to health may be directly affected by use of herbicides.¹⁵⁰ And that chemical eradication has led to widespread displacement of poor farmers in other countries such as Columbia.

147 Article 14, 1988 Convention

148 Article 14, paragraph 1's obligation is reiterated more generally by article 25 which provides that nothing in The 1988 Convention derogates from the obligations undertaken by Parties under the earlier conventions.

149 The use of the terms “cultivation” and “cultivated” implies that parties are not under an obligation to eradicate or prevent the growth of wild plants.

150 Rights to work in the cultivation of drug-bearing plants and rights to property in these plants are easily limited by overriding societal interests in this context (N. BOISTER, *Penal Aspects of the UN Drug Conventions*, Kluwer Law International, The Hague / London / Boston, 2001, p. 435).

(ii) Take due account of traditional legal uses, where there is historical evidence of such use

There was genuine concern at the 1988 Conference that the reference to traditional legal usage would present the illegal traffic with a loophole allowing continued undisturbed cultivation of drug bearing plants.¹⁵¹ Article 49 of The 1961 Convention indeed made provisional arrangements for traditional medical usage of, inter alia, opium. These were, however, temporary arrangements which ended in 1988.¹⁵²

(iii) Take due account of the protection of the environment.

The importance of environmental factors in the choice of appropriate measures has been intensely discussed since 1988. The Official Commentary submits that the use of toxic chemicals, especially when they are sprayed from aircraft, may prove highly effective but the environmental risks associated with that and similar practices need to be weighed.¹⁵³

Parties are also obliged to create the necessary foundation for international co-operation and communication on eradication.¹⁵⁴ Such co-operation may include support for integrated rural development programmes leading to economically viable alternatives to illegal cultivation.

Finally, allowance is provided for the early destruction or lawful disposal of the narcotic drugs which have been seized or confiscated and for the admissibility as evidence of

151 Especially as The 1988 Convention does not define such traditional usage other than to insist on evidence of a history of use (United Nations Conference for the Adoption of a Convention against Illegal legal Traffic in Narcotic Drugs and Psychotropic Substances, Official Records, Volume II (New York, 1991) UN Doc. E/CONF.82/16/Add.1, UN Publication Sales No. E.91.XI.1 (hereinafter 1988 Records, vol. II), p. 297).

152 1988 Records, vol. II, p. 299.

153 The Commentary refers to the report of the Expert Group Meeting on Environmentally Safe Methods for the Eradication of Illegal legal Narcotic Plants, held at Vienna from 4 to 8 December 1989 (E/CN.7/1990/CRP.7, paragraph 9) which stressed that the use of control agents to eradicate such plants would depend on, and must respond to, a complex of factors such as geography, climate, topography and prevailing socio-economic conditions (see UNITED NATIONS, Commentary on the United Nations Convention against Illegal legal Traffic in Narcotic Drugs and Psychotropic Substances 1988, United Nations Publication, New York, 1998 (hereinafter 1988 Commentary) p 301 and 306).

duly certified necessary quantities of such substances.¹⁵⁵ The primary object is to prevent the renewed diversion of seized drugs into the illegal market.¹⁵⁶

In sum, the measures in the UN Conventions regime aimed at source reduction may be considered limited and uneven; an awkward and ineffective compromise between consumer and producer states. Besides the political obstacles, the implementation of source reduction measures suffers from a number of handicaps such as physical accessibility to cultivation areas, getting to the plants once they have been identified and the inevitable negative environmental impact.¹⁵⁷

Conclusion

Of the three UN drug Conventions, the 1961 Single Convention on Narcotic Drugs is of prime importance to issues concerning the licensed cultivation of opium poppy. The 1961 Convention establishes a dual drug control obligation on Governments: to ensure adequate availability of narcotic drugs, including opiates such as codeine and morphine, for medical and scientific purposes, while at the same time preventing the illegal production of trafficking in and use of such drugs.

This paper has provided an exposition of the key control features of the 1961 Convention in the context of their application to an opium licensing system in Afghanistan. It is clear from the analysis that the control regime creates a number of possible avenues for consideration in the design and implementation of such a system. That is also to say that the application of the control measures will vary according to the nature of the licensing system model.

154 Article 14, paragraph 3

155 Article 14, paragraph 5

156 1988 Commentary, p. 304.

157 See N. BOISTER, *Penal Aspects of the UN Drug Conventions*, Kluwer Law International, The Hague / London / Boston, 2001, p. 437-438.

Where, for example, Afghanistan desires to produce of opium to satisfy its own domestic requirements, this will not require formal approval from the ECOSOC or the INCB.

The same holds where Afghanistan desires to produce opium for the domestic manufacture of morphine or codeine, be it for domestic use or export.

If, on the other hand, Afghanistan wishes to export opium itself, then formal approval will be required from the INCB (where the intended annual export quantity is less than five tons) and from the ECOSOC (where it exceeds five tons annually).

In all cases, Afghanistan will be required to establish and maintain one or more government Agencies which are invested with a range of important functions as regards opium cultivation. Not least, the Agency will grant licences to cultivators in order that they may engage in cultivation. The Agency will also designate the plots of land on which cultivation shall be permitted, and will purchase the total opium crop from cultivators following harvest.

Another of the key control measures concerns the restriction on cultivation where this would lead to an overproduction of opium in the world. In making such determination, Afghanistan would have to take as a basis the estimates of the world need for opium published by the INCB which would indicate that there is an overproduction (and rising stocks). However, it is submitted that on the basis of research undertaken by the University of Toronto's Centre for Addiction and Mental Health which is contained elsewhere in this Study, there is in fact a global shortage of opium on account of significant unmet demand for opioid medicine such as morphine and codeine in patients with moderate to severe pain.

The research indicates that this is a vast section of global health care that is omitted from official estimates of opiate demand. In any consideration of this control measure in the context of the establishment of an opium licensing system in

Afghanistan, the INCB should be made to justify their position as regards the purported global oversupply. The INCB is out of step with the state of the global pain crisis, the management of opium production and the situation in Afghanistan. The INCB needs to become part of the solution and no longer an impediment to an appropriate response.

The final key control measure considered here, concerns the requirement to prohibit cultivation where prevailing conditions determine that prohibition is the most suitable measure to protect public health and prevent diversion. In the case of Afghanistan, permitting the licensed production of opium for medical purposes would decrease the production of opium for illegal heroin channels. Thus the “prevailing conditions” in Afghanistan could forcefully be invoked as *pleading against prohibition* of cultivation. The aftermath of a quarter-century of war, multiple changes of government and an embedded tradition of poppy cultivation has made the enforcement of the ban on opium cultivation extremely difficult. Moreover, it is existing strategies founded on interdiction and eradication that ride roughshod over well-established economic and social structures, and thus which themselves endanger public health and welfare.

Also considered in this paper are the opportunities that exist to look beyond the strict letter of the control regime. In particular, it is submitted that formally amending the control measures to accommodate a licensing system in Afghanistan, should not be overlooked as a possibility. State Parties to the Conventions ought not to feel hamstrung by procedural obstacles. Rather, the very possibility of amending the Conventions exists in order to allow their evolution in response to changing global conditions.

One further area for greater investigation is the formation of so-called ‘*inter se* agreements’ between State Parties which, whilst not formally amending the UN drug Conventions regime, could make it more flexible in respect of the special situation affecting Afghanistan. One example provided in this paper is an agreement between Afghanistan and (some of) its donor countries whereby Afghanistan was the recognised supplier of its own brand of opium medications to certain developing countries in the region.

Finally, it is undeniable that the rejection of Afghanistan's claim in 1956 and the resulting ban on drug crop cultivation and production have proven far from being a correct or successful decision as developments over the last decades show. Although, according to UNODC figures, 67% of the global opium poppy cultivation in 2004 took place in Afghanistan, this industry operates 100 percent outside the law, supplying an estimated 87% (or 4,200 metric tons) of heroin illegally consumed worldwide.¹⁵⁸

The fact that the technical assistance which was promised in return for Afghanistan's counter-narcotic efforts did not materialise, has also had a significant impact on the country's decline and subsequent descent into economic disintegration, poverty and war.

The international community must bear a significant degree of responsibility. From this perspective, and taking into consideration the failures of existing counter-narcotics policies in Afghanistan, it is submitted that the system of licensed opium production being proposed here ought to form the basis for an open-minded and above all realistic debate on how to extricate Afghanistan from its immediate development crisis and its imminent descent into a narcostate.

Given the global demand for illegal opiates, the international community must bear a significant degree of responsibility for the current opium crisis in Afghanistan. It has an obligation to develop and support policy initiatives that empower Afghanistan to resolve the issues associated with opium cultivation. Eradication, and the demonisation of Afghan farmers have critically failed to address this essential policy objective.

158 United Nations Office on Drugs and Crime, "World Drug Report 2005." http://www.unodc.org/unodc/world_drug_report.html

Afghanistan's Domestic Legal Framework

Executive summary

Compatible with Domestic Law

The Afghan legal system: a juxtaposition of traditional and modern practices

Afghanistan's official legal system is based on Islamic law (*Shari'a*), the Afghan Constitution, and primary legislation. This system is governed by the Ministry of Justice and the Public Prosecutor's Office in conjunction with a hierarchical court structure with the Supreme Court at its head. This formal system co-exists with traditional justice mechanisms in the form of *jirga* or *shura*. Over the centuries, these traditional institutions have operated as an important mechanism of collective decision-making and dispute settlement in Afghanistan, and have significantly contributed to the maintenance of social order in the country.

No Domestic Legal Obstacle to Licensed Opium Production

Afghanistan's formal legal system contains no impediment to the licensing of opium production. In fact, there is a clear basis in domestic law for a licensing system. Although *Shari'a* prohibits the use and production of anything that is harmful to humans, *fiqh* (Islamic jurisprudence) deems that necessity – in particular, *medical* necessity – allows for the use of what would otherwise be forbidden. Also, in the Afghan Constitution, the consumption of intoxicants/ *muskirat*, (such as alcohol) is prohibited; the production of narcotics also whilst the consumption of narcotics (such as opium medicine) is not. Finally, the new piece of Afghan legislation¹ specifically referring the production of opium makes express provision for the licensed cultivation of opium poppy and production of opium. *In sum, both the Afghan formal legal system*

¹ The New Law on the Classification of Drugs and Precursors, Regulation of the Licit Activities, Drug Related Offences (October 2003)

and Shari'a law provides a framework within which an opium licensing system can be implemented with no legal obstacles to the implementation of such a structure.

Mobilising existing structures and mechanisms for the opium licensing scheme

The notions and importance of *jirga* and *shura* are deeply rooted in the culture and history of Afghanistan and are vital elements in the maintenance of social order in Afghan society. *Both the Jirga and shura will have an important role to play in the effective implementation and control of opium licensing in Afghanistan.* The “mobilisation” of *jirga* and *shura* would be part of a wider strategy that would also involve formal Afghan national law enforcement agencies, and international security forces, at different levels of the opium licensing enforcement strategy.

The licensing system itself should make full use of the drug policy structures developed in the last few years and its development need not run counter to the current inroads already being made. One of the factors that the licensing scheme must take into account is the relationship between the formal legal system and transitional institutions of informal justice. *Whilst there may be areas of conflict, the two systems can nevertheless also be complementary, and both must be utilised fully in the implementation of the licensing scheme. This will be a pre-condition for opium licensing to bridge the divide between rural communities and central authorities*

The principles fundamental to traditional justice in Afghanistan closely resemble the principles of restorative justice. Elements of restorative justice are central to the process, proceedings and outcome of the Afghan *jirga*. They can therefore be of use in implementing the licensing system, and in particular an amnesty scheme – facilitating the transition from illegal to licensed opium production by use of a collective “bottom up” process. *Moreover, the proposed project would not disrupt existing justice mechanisms and traditional social control systems.* In addition, a licensing system would provide farmers with a means to be brought into Afghanistan’s legal framework without the upheaval created by eradication and the need to learn a new cultivation

technique. *By invoking both traditional and formal governance systems, opium licensing will reinforce Law and Order initiatives in Afghanistan.*

Opium licensing makes a major contribution to Law and Order efforts

To a certain extent, the licensing system also depends on the progress of current reconstruction projects– for example institutional strengthening and anti-corruption efforts. *However, it is predicted that opium licensing will directly reinforce law enforcement and justice capacity building efforts. As such, the implementation of opium for medicine licensing would come at an extremely timely moment for Afghanistan’s capacity-building agenda for this very reason:* Requirements for the system’s implementation would be:

- To reconcile the current Counter Narcotics Implementation Plan with the licensing system’s goals, principally by linking law enforcement operations with alternative livelihood strategies.
- To harmonise formal systems of enforcement – such as the counter narcotics police – with traditional enforcement mechanisms.
- To gain the support of the international community, whose assistance and backing are essential to the success of the scheme.



Afghanistan's Domestic Legal Framework

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1 The Afghan Legal System in General

Afghanistan's official legal system is based on a combination of Islamic law (*Shari'a*) and civil law. This mixed system has been influenced, in the different stages of its existence, by Western legal thought and moderate Islam, radical Marxism, and by radical interpretations of Islam. Generally, these influences have represented the ideologies and politics of the various governments that have ruled Afghanistan since the creation of the modern Afghan State nearly two centuries ago (Wardak, 2004). From the early phases of the establishment of the Afghan legal system until the 1950s, the *Hanafi* School of Islamic laws - alongside tribal customary laws - provided the main sources of law in Afghanistan. The *Hanafi* School enjoyed in a close relationship with Afghan customary laws and with 'folk Islam' in Afghanistan. *Ulama* (Islamic scholars) interpreted this moderate version of Islam and the *Shari'a*; they also worked as qadi (judge) in state courts (Olesen 1995). Therefore Islamic Law and *Ulama* played a central role in the creation and in the administration of the Afghan legal system during this period.

However, in the 1950s when Afghanistan began to interact more closely with the outside world, the then rulers of the country started work on modernization of the Afghan and legal system and the judiciary. In order for the modern Afghan judiciary to be administered by professional judicial personnel, the faculties of Islamic Law, and of

Law and Political Science, were created at Kabul University. Graduates of these institutions were recruited as judges and prosecutors throughout Afghanistan. In addition, from early 1960s graduates were also required to complete a nine-month legal training course, which included 3 months' practical training. Some legal academics were also provided with opportunities to gain higher legal qualifications in the USA, Egypt and Lebanon. This modernization process was also accompanied by the codification of several Afghan laws in the late 1960s and 1970s (Wardak, 2004).

The modernization process of the Afghan domestic legal system gradually resulted in a noticeable degree of secularization, especially in the areas of criminal law, commercial law, and general civil law. Thus state law, rather than *Shari'a*, became the primary source for the legal system. Nevertheless, *Shari'a* remained secondary source. As Article 69 of the 1964 Constitution states: 'In area[s] where no such law exists, the provisions of the *Hanafi* jurisprudence of the *Shariaat* of Islam shall be considered as law'. The position of Islamic law in relation to secular law is further elaborated by the new Constitution as follows: 'When there is no provision in the Constitution or other laws regarding ruling on an issue, the courts' decisions shall be within the limits of this Constitution in accord with the *Hanafi* jurisprudence and in a way to serve justice in the best possible manner'¹. It is clear from this article that the *Hanafi* jurisprudence is only a secondary source of law in post-war Afghanistan.

After years of civil war and various political regimes in Afghanistan, the new Afghan government has a complex task in rebuilding a viable and effective legal system in the country. After briefly describing the background of the Afghan domestic legal system, the discussion in the next two sections will focus on the post-war- legal system, and traditional justice institutions in Afghanistan.

¹ (The Constitution of the Islamic Republic of Afghanistan 2004: Article130)

1.2 The Courts and the Judiciary

Following the collapse of the Taliban regime and the establishment of the Afghan Interim Administration (AIA) in December 2001, strong emphasis was placed on the rebuilding and reform of the Afghan domestic legal system and Judiciary. Under the Bonn Agreement on which the Afghan Interim Administration was based, the 1964 Afghan Constitution and ‘existing law’ were reinstated in modified form, and the establishment of an independent Afghan Judicial Reform Commission was formally authorized. The Bonn Agreement states that:

‘The judicial power of Afghanistan shall be independent and shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the Interim Administration. The Interim Administration shall establish, with the assistance of the United Nations, a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions.’²

While the 1964 Afghan Constitution and ‘existing law’ (or ‘applicable law’) provided an interim legal framework, the Afghan Judicial Reform Commission (JRC) embarked on the rebuilding and reform of the Afghan legal system that was devastated by a quarter of a century long civil war in Afghanistan. The JRC’s main tasks included law reform, development of technical, logistical and human resources, a review of the structure and functions of the justice system, legal aid and access to justice. The JCR’s precise role and activities are further described below:

‘... As a creation of the Bonn Agreement, JRC has no formal role in the administration of justice. Its role is limited to proposing reform strategies and seeking international donor assistance. Thus, the success of JRC depends on the willingness of the formal judicial institutions — the Supreme Court, the Ministry of Justice and the Attorney-General’s Office — to implement its suggested reforms. Nonetheless, JRC has facilitated the compilation of applicable laws and it has convened working groups that

² Bonn Agreement of 5 December 2001

are currently redrafting legislation, including the criminal law, for presentation to ATA. JRC has also successfully initiated the establishment of the Legal Education Centre (LEC) and members of JRC have recently carried out a survey of the judicial system. Training of the judiciary is organized for young lawyers by LEC under an agreement with the Supreme Court and the Ministry of Justice.³

Despite its criticism by some researchers (USIPS 2004; ICG 2003), the JRC, which was dissolved in June 2005, has had noticeable success with regard to the training of judges and prosecutors, in the drafting of new laws and producing amended versions of certain existing laws. Nevertheless, the most important laws, such as the Civil Code and Criminal Code, that were introduced in mid 1970s remain untouched, and constitute much of the substantive elements of the legal system in Afghanistan. These laws are generally seen to be compatible with the spirit of the new Constitution of the Islamic Republic of Afghanistan that was passed in January 2004. Similarly, the fundamental structure and functions of the judiciary that were envisaged in the in the 1964 Constitution are largely left intact in the new Constitution. However, an important addition to the authority of the Supreme Court, in the 2004 Constitution, is granting this highest Afghan judicial institution is the power of judicial review of the laws, legislation, international treaties and conventions.⁴ On the other hand, the Law on the Jurisdiction and Organisation of the Courts in Afghanistan that was passed in 2004 has imposed some restrictions on the authority of the Supreme Court with regard to the cases that are referred to it. Previously, the Supreme Court had the authority to retry, and pass a new judgment on a case. According to the new law, however, the Supreme Court has only the authority to review cases in order to determine whether the existing laws and procedures have been properly applied or not. That is to say that if there has been a flaw in the application of law or procedure, the Supreme Court would merely instruct the Court of Appeal to review the case and pass a new judgement. Furthermore, the new law of the Jurisdiction and Organisation of the Courts also grants all Provincial Courts the power to act as Court of Appeal in cases relating to commercial, family and public rights issues.

³ Report of the Special Rapporteur of the Commission on Human Rights in Afghanistan 2003:19

⁴ The Constitution of Afghanistan 2004, Article 121

According to Article 116 of the 2004 Constitution, the judiciary is ‘independent’ from the executive and legislative branches of the government. The judiciary is the main organ of the government responsible for applying the laws and constitution of Afghanistan, including litigation brought against the state.

The Supreme Court, which is currently headed by a senior Islamic theologian, is granted the highest judicial authority in Afghanistan. According to the new Law of the Jurisdiction and Organisation of the Courts in Afghanistan, the Afghan court system is generally split into two categories, between ‘general’ and ‘specialised’ courts. The former category comprises the Supreme Court, Provincial Courts (also termed Courts of Appeal), and Primary Courts. Each of these judicial institutions is briefly described below:

The Supreme Court (Stara Mahkama), which is based in Kabul, is the highest judicial authority in Afghanistan and consists of the Chief Justice and nine senior judges. It is responsible for the overall administration of the judicial system in Afghanistan, the appointment of judges, and the impeachment and constitutionality of law. The Supreme Court has several colleges: of civil, criminal, commercial law, and public rights. It reviews these cases at the highest level of judicial hierarchy in Afghanistan.

Provincial Courts (also called Courts of Appeal under the new law) essentially appeal courts which hear appeals against judgments pronounced by Primary Courts. However, according to the new law, Provincial Courts now hear cases relating to commercial, public security, and public rights issues both at primary and at appeal levels. A Provincial Court has separate branches for civil, criminal, commercial law, and public rights. Each of Afghanistan’s 34 provinces has a Provincial Court.

The Primary Court (Mahkama-i-Ibtedaia) is at the lowest level court in the judicial hierarchy of the Afghan court system. Primary Courts hear both civil and criminal cases (with the exception of commercial, public security and public rights cases) in the first instance. Each district in Afghanistan has a Primary Court. Most cases are dealt with by this court.

The Second Category of the Afghan court system is referred as ‘Specialized Courts’. This category of courts includes the courts for offences against national security, issues relating to property issues, and the newly established court of counter narcotics. ‘Specialized Courts’ are created whenever the needs arise, in order to deal with specific situations.

1.3 Links between Justice Sector Institutions and the Overall Coordination of Legal Policy

It is important to mention that the Ministry of Justice and the Public Prosecutor’s Office are the other two main institutions within the current domestic and legal framework of Afghanistan. The authority of Ministry of Justice extends to the drafting and review of new legislation, representation of the government in civil litigation and taking responsibility for juvenile justice in Afghanistan. The Public Prosecutor’s Office (which is dominated by Shora-i-Nazzar *loyalists*), on the other hand, is mainly responsible for the investigation and prosecution of criminal cases. However the current study found that there continues to be a level of tension among then Supreme Court the Ministry of Justice and the Public Prosecutor’s Office. This has resulted in the lack of effective coordination of the activities among these institutions. This division is political in nature, as well as resulting from competition over jurisdiction between these institutions.

Political influence over the various components of the Afghan legal system, especially the judicial, has important implications for its independence from the executive where powerful warlords and factional leaders are represented in various forms. However, this is not to say that the Afghan legal system has been independent from the executive since its establishment. The main obstacles towards the independence of the judiciary are spelled out by an authoritative study in this way:

‘In reality, Afghanistan’s judiciary, in the short time it had, achieved neither independence nor coherence. The judiciary faced three primary obstacles in its development. First, there were far too few qualified judges and lawyers to ensure the

fair and even application of the law. Second, local traditional practices for resolving disputes were entrenched, and undermined formal judicial power. In many cases, this meant that judges either supported the local practices, even when at odds with the law, or they became irrelevant. The third obstacle to independence was the pre-eminence of the King and the Prime Minister.’ (Johnson, Maley, Thier, Wardak 2003:24).

There remains a certain amount of truth in this analysis; the judiciary has been, and still appears to be, an extension of the authority of the executive. The independence of the Judiciary can be more specifically compromised when the State has an Islamic character - The Islamic Republic of Afghanistan - where the head of the State is the highest judicial authority, and therefore, has the duty to enforce Islamic Law. In this situation, the head of state delegates his judicial authority to the judges, and thus the separation between the judicial and the executive powers disappears (see also Thier, 2004; Kamali, 1985). Some members of the JCR shared this view; two members have stated that: ‘The independence of the judiciary is only independence on paper. In fact, none of the institution of the current legal system in Afghanistan is independent from political influences’.

Furthermore, this study has also found that corruption and nepotism in all these three institutions of the Afghan legal system – the Supreme Court, The general Prosecutor’s Office and the Ministry of Justice - is widespread. Political and ethnic favouritism and pressure from warlords and commanders make judges and prosecutors favour those who have guns and money. Bribery is rampant; one legal academic at Kabul University commented that ‘today, in our legal system, it is money that speaks and defends. Whoever among the defendants pays more bribes is the ultimate winner’.

This problem is further compounded by the fact that Supreme Court and the Public Prosecutor’s Office in Kabul have little effective control over judges and prosecutors at district and even at provincial courts. This not only reflects the overall problem of the authority of the central government outside Kabul (and some major urban centres), but also the absence of modern means of communications among the Supreme Court and the Public Prosecutor’s Office and district and even at provincial level judges and

prosecutors. Officials at the Ministry of Justice confirmed that most district courts do not have electricity, telephones and fax machines. More surprisingly, one senior official at the Ministry of Justice said that less than two dozen of the 380 designated courts in Afghanistan have the buildings and appropriate infrastructure necessary for holding hearings.

This issue is closely connected to the problem of the adequacy of funds at the disposal of the Afghan legal system and its reconstruction. Although various international donors fund the reconstruction of the justice sector in Afghanistan, the bulk of funding has been provided by Italy, the USA and Germany. Italy's funds are channelled through the International Law Development Organisation (IDLO), UNDP, and UNODC. They have been used mainly for the training of judicial personnel, payment of the salaries of members of the JRC, prison construction and the rehabilitation the High Court of Appeal in Kabul. US funding is mainly channelled through USAID, the Asia Foundation (AF), and Management Systems International (MSI), and is used to provide logistic and technical assistance to the Judicial, Constitutional and Human Rights Commissions. Funding from Germany has mainly focused on the formation and of the Afghan National Police force. However, much of this funding has been spent on short term projects. The continuous day-to-day financial needs of the Afghan legal system remain unresolved. This situation appears to be one of the main contributory factors to the ineffectiveness, bribery and corruption within the system. This requires to be thoroughly addressed in the context of the proposed licensing system.

1.5 Traditional Justice Systems

1.5.1 Traditional Systems and *Jirga*

Jirga has, over the centuries, operated as an important mechanism of collective decision-making and dispute settlement in Afghanistan, and has contributed to the maintenance of social order in the country significantly. Consideration is made here of *jirga*'s process, proceedings and outcomes, with a view to examining how *jirga* may be effectively incorporated into a system of licensed opium production.

The term *jirga* is widely used in Pashto, but is also found in Dari, Persian and Turkish. In all these three languages, *jirga* has very similar meanings – a wrestling circle, gathering of people and consultation among a group of people (Pashto Descriptive Dictionary 1978; Ghyathul-Lughat, 187; Faiz-zad, 1989). In the cultural and political context of Afghan society, *jirga* is more closely associated with the rituals and processes of the Pashtun traditional tribal institution of dispute settlement, where people gather and sit in a large circle in order to resolve disputes, or make collective decisions about important social issues. Rafi, (2002: 6) a contemporary Afghan scholar has generically described *jirga* as '... that historical and traditional institution and gathering of the Afghans, which over the centuries, has resolved all our nation's tribal and national political, social, economic, cultural and even religious conflicts by making authoritative decisions'.

Although *jirga* is more strongly bound up with the tribal economy and society of the Pashtuns of Afghanistan – the largest ethnic group in Afghanistan - recent works show that *jirga* (in its original or locally adapted form) is also used as informal mechanisms of conflict resolution in rural, or less urbanized parts of Afghanistan where Afghan Tajiks, Hazaras, Uzbaks, predominate as the main (or sole) ethnic group (See Farhadi 2000; Malekyar 2000; Hashemi 2000, International Legal Foundation Report 2004). These accounts indicate that there are close similarities between the Pashtun *jirga* and the non-Pashtun *shura*. Carter and Connor (1989) reveal that among Afghan Tajiks, Hazaras and Uzbaks, *jirga*-like councils, which have in recent years been referred as *shura* operated

as a mechanism of conflict resolution. These groups dealt with disputes and other social problems informally through *shura* which, Carter and Connor (1989: 9) operationally define in this way: ‘A *shura* is a group of individuals which meets only in response to a specific need in order to decide how to meet the need. In most cases, this need is to resolve a conflict between individuals, families, groups of families, or whole tribes.’

This description would seem to indicate that *shura* and *jirga* are similar informal (non-state) mechanisms of conflict resolution that operate in varying social and tribal contexts in Afghan society. However, according to the International Legal Foundation field Report (2004), many *shuras* have been created or infiltrated by warlords and militia commanders in order to force their authority over local people in different parts of Afghanistan. Nevertheless, the report reveals that the pre-war councils of elders still exist in Afghanistan, which are referred to as *majlis –e- qawmi* in Hazarajat, *awri* or *awar* in Nuristan, and as *shura -e- islahi* in parts of Northern Afghanistan. According to the report, these concepts have been used interchangeably with the centuries-old traditional Pashtun institution of *jirga*, which is more commonly associated with southern and eastern Afghanistan. This point lend support to Carter and Connor’s (1989: 10) study, which has revealed that because of Pashtuns’ expertise in conflict resolutions, and their large population dispersed throughout much of Afghanistan, ‘...it was not uncommon for a non-Pashtun groups to request local Pashtun elders hold a *jirga* to settle a non-Pashtun conflict, suggesting that the Pashtun *jirga* traditionally had more impact than its non-Pashtun counterpart, the *shura*.’

Although *jirga* is a pre-Islamic institution, its fundamental spirit and philosophy is generally compatible with Islamic teachings. The Holy *Qura’n* (1980: 360) advises that good Muslims ‘resolved their disputes through consultations with one another.’ Thus, since the overwhelming majority of the Afghan population is followers of the Islamic faith, the philosophy and spirit of *jirga* (but not some of its practices) are compatible with their religious beliefs. It is this cross-tribal and cross-ethnic character of *jirga* that has been translated into the national political life of Afghan society - the two houses of Afghan parliament have been named as *wolasi jirga* (lower house) and *mashrano jirga* (upper house), and the periodically held grand Afghan assembly as *loya jirga*. These

points would seem to indicate that *jirga* (or its equivalents) is a cross-ethnic Afghan institution that is used as a mechanism of collective decision-making and dispute settlement among various Afghan ethnic and tribal groups to varying degrees.

As mentioned above, a *jirga* may be held at different levels of the social organization of Afghan society – national, tribal (or regional) and local levels. At national level, a grand Afghan assembly of elders and political figures - *loya jirga* - is periodically held in order to make decisions on issues of national importance such as declaration of war, or treaties of peace, adopting a constitution, and so forth (Roashan, 2001). However at sub-national levels, it is *qawmi jirga* and local *jirga* (or *maraka*) that operate as agencies of informal dispute settlement at tribal and local village levels, respectively (Wardak, 2002; Atayee, 1979). As it is the local village based *jirga* that is more commonly used to deal with the day-to-day problems and disputes in Afghan society, the present discussion will mainly focus on this form of *jirga* as an important mechanism of informal dispute settlement in Afghan society.

1.5.2 The Village- Based Kinship Group and Local *Jirga*

It is important to mention that local *jirga* normally operates within the context of a kinship group, or *khel*. It is the social and economic context of the village (*kalay*) based kinship group within which local *jirga* operates as an informal mechanism of collective decision-making and dispute settlement in Afghanistan. However, a *khel* may sometimes be based in more than a village, and a local *jirga* is held to make collective decision that involves more than one village. But first it is important to shed some light on the nature of a kinship group in the context of the present discussion.

When members of several clusters of extended families (or kahols) trace their roots to a common ancestor, they form a kinship group that is referred to among Afghan Pashtuns as khel. Khel is the sub-section of a tribe and its members have intense reciprocal relationships among themselves. It is usually the single village-based khel within the context of which, ‘public’ issues and disputes (as opposed to ‘private’

matters or disputes that are dealt with by kahol – extended family) among kin are resolved.

Members of a *khel* who usually live in a single *kalay* (village) normally share public facilities such as the mosque, water spring, mill, and water canals etc. But members of a large size *khel* may live in more than one *kalay*. Occasionally, a very large *khel* may comprise of tens of smaller *khels*, and therefore form a tribe in its own right (See Wardak 2002; Glatzer 2001). The average size of *kalay* may range from about 50 to 200 individuals. It is generally a self-sufficient socio-economic unit within which people are not only related to one another through blood ties, but also through general reciprocal relationships. They reciprocate agricultural tools, goods, gifts, favours and services. At this level, the norms of reciprocity are governed by *trabgani*. *Trabgani* refers to the established patterns of behaviour which guides members about who to cooperate with, who to compete with, who to marry, and in a word how to live as *tarboor* - an equal and respectable member of the kin group. *Trabgani* is both a source of cohesion and divisive rivalry among members of a *khel* in different circumstances (*Trabgani* is sometimes mistakenly interpreted as a mere rivalry). However at a more general level, it is *Pashtunwali* that guides the normative aspects of social relationships (including reciprocal relationships) among members of the *khel*, and constitutes an important aspect of the social order of *kalay*. *Pashtunwali* refers to the explicate code of behaviour of the Pashtuns, which specifies the individual's rights as an equal autonomous member of the community, and his or her obligations towards his or her family, kinship group, and tribe; for Pashtuns, it is their unwritten constitution (see Olesen 1995, Newell and Newell 1981, Glatzer 1998).

1.5.3 Local *Jirga* and its Constituent Elements

As mentioned earlier, contemporary scholars have described the institution of *jirga* in general terms. But these scholars have not formally defined local *jirga*, and have not spelled out its key elements. After an extensive study of the existing body of both theoretical and empirical literature on the subject, local *jirga* in the context of the

present discussion, may be defined as: a local institution of collective decision-making and dispute settlement that incorporates a prevalent (time and space-bound) *narkh*, institutionalized rituals, and a body of *marakachian* whose *prikra* about the settlement of a dispute (or local problem) is binding on the parties involved. This definition implies that an assembly of a *khel*'s members without the materialization of all the key constituent elements of local *jirga* does not have binding institutional consequences. These elements as spelled out in the above definition are: *narkh*, institutionalized rituals, *marakachian* and *prikra*. Each of these elements is describe below:

i. Narkh

The term *narkh* in Pashto and Dari languages literally means price, or value. But in the context of *jirga*, it refers to the centuries-old body of civil and penal tribal 'customary laws' that are used as general guides and flexible rules in the process of dispute settlement in Afghanistan (See International Legal Foundation Report 2004 for details). While these 'laws' are totally unwritten, they are part of the collective conscience of *kalay*. These laws have a profound existence in the minds of the local people. However, it is the *narkhay* (expert of *narkh*) who has a detailed knowledge of these laws, their applications, interpretation and related procedures. According to Atayee (1979:67), the best known *narkhs* are the *Ahmadzai narkh* and the *Razmak narkh*. The *Ahmadzai narkh* has two versions, namely the *Esa narkh* and the *Musa narkh*. While the first is considered as strict and precise, the second is more general, although sufficiently flexible to suite different situations. Some *khels* and tribes in eastern and southern Afghanistan have developed their own *narkhs* that are more applicable to their changing local social and economic conditions. Nevertheless, the *Ahmadzai* and the *Razmak narkhs* are generally followed as sources of reference among Pashtuns in Afghanistan. It is important to point out that *narkh*, at a more general level, reflects the fundamental values and norms that are associated with *pashtunwali*. These show that *narkh* represents a general approximate code - not an absolute one. This is why that *narkh* has to be placed in the social context of a specific conflict and thoroughly discussed by *marakachian* – the second constituent element of local *jirga*.

ii. Marakachian

The singular of *marakachian* is *marakachi*, which in Pashto means ‘mediator’ or ‘negotiator’. In some parts of Afghanistan, the term *jiragmaran* is used, interchangeably with *marakachian*. In other parts of the country, the former is used only for tribal and local *jirgas*. In the context of local *jirga*, *marakachian* refers to all the *Mashran* (elders), *speengiri* (people with grey beards), and *speenpatkian* (people with white turbans, which means mullahs in the current context) who form the main body of *jirga*. According to the International Legal Foundation study (2004:8) *marakachian* ‘... are volunteers, who are neither elected nor appointed but are genuinely eager to serve and to find solutions to disputes.’ They are selected on the basis of specific social qualities that constitute high social status within a *khel*. These qualities include piety, religiosity, a proven record and reputation of *milmopalana* (hospitality), possession of good family *nang aw ghairt* (‘honour’), a large number of men in the family, political influence within the government, verbal eloquence and a proven record of sound judgments in past *jirgas*. As mentioned earlier, while *Mashran* and *speengiri* represent the *khel*, *speenpatkian* join them, in order to bless the local *jirga* and to lead the religious aspect of the *jirga* rituals. *Mashran* and *speengiri* are rarely religious leaders, but they often have a working knowledge of ‘folk Islam’, especially of the general principles that relate to dispute settlement. Although, some *Mashran* and *speengiri* are normally experts in *narkh*, they may be accompanied by a *narkhay* who often belongs to a different *khel*. This is to ensure that the relevant customary laws are properly interpreted and fairly applied.

iii. Institutionalized Rituals

Elaborate rituals form an important element of local *jirga*. The nature and quality of local *jirga* rituals vary in accordance with the nature of the issue that is dealt with. For instance, the rituals of *rogha* (reconciliation or mediation) in a criminal case are different from those of making a collective decision about the construction of a local road, or a village bridge. Nevertheless, local *jirga* is

normally held in a specially designated public place, in the village mosque, or under the shadows of trees during the summer (International Legal Foundation Report, 2004). Only some local *jirgas* that involve sensitive local issues are conducted secretly in a private chamber without the participation of ordinary people. Some local *jirgas* are scheduled for the arrival of *eid* (the first non-fasting day after Ramadan, and the day of pilgrimage of Makka). Since *eid* is day of communal joy and celebration, it is a uniquely appropriate occasion for making a consensus-based decision by villagers who are tied to each other in various ways. The local *jirga* usually starts with the recitation of verses from the holy *Qura'n*, and ends with *du'a* (prayer); these rituals are led by the *speenpatkay*.

iii: Prikra

The fourth and a very important constituent element of local *jirga* is *prikra*. The literal meaning of *prikra* in Pashto is 'decision' or 'resolution'. But in the context of local *jirga*, it stands for the final decision declared by *marakachian* about the settlement of a specific social problem, and which has binding effects on the parties involved. The nature of *prikra* varies in accordance to the specific form of a local *jirga*. According to Atayee (1979), a local *jirga* may generally be categorized into *wak jirga* and *de zhabi shorawalo jirga*. In *wak jirga*, *marakachian* are empowered to investigate, discuss, and agree on *prikra* about a case in the absence of the disputants. But in *wak jirga*, *prikra* is final and binding on the disputants' behaviour soon after it is agreed upon and announced by the *marakachian* alone. In this latter form of *jirga*, the disputant parties and the village generally trust the use of 'competent authority' (Wrong, 1979) of the *marakachian* – an authority that is based on the recognized expertise and skills of *marakachian*. In *de zhabi shorawalo jirga*, however, the disputants are summoned, and they present their cases, arguments, and witnesses throughout the process of *jirga*. In this latter form of local *jirga*, *marakachian* try to find common ground between the disputants and resolve the dispute in such way that is acceptable to both parties as well as to the village as a whole. It is this form of *jirga* that is more commonly used as a mechanism of

dispute settlement in Afghanistan. However, in both forms of the local *jirga*, *prikra* is based on consensus rather than on a majority vote (Glatzer, 1998, Rubin, 1995).

1.5.3 The Process of Local *jirga* and the Enforcement of its Decisions

As mentioned earlier, local *jirga* is normally held in a specially designated open and public place, in the village mosque, or under the shadow of trees. In some parts of Afghanistan, the place where *jirgas* are held may also have a special symbol, such as a flag. Members of local *jirga* sit in a circle, where they deal with village issues such as the construction of a village bridge, roads, disputes over the boundaries of agricultural land, minor bodily harm, and also more serious issues including murder, and disputes over property and inheritance. This physical organization of local *jirga* helps create a social atmosphere where men - despite their different socio-economic statuses - see one another as equals. Glatzer (1998: 176) describes the egalitarian nature of *jirga* in this way: ‘According to tribal equality, every free and experienced male person of the tribe has the right to attend, speak and to decide.’ Indeed, there is no hierarchy of speakers and no chairman in the *jirga* process. Unlike tribal *jirgas*, where deliberations may take several days or even weeks, a local *jirga* is often concluded within a few days (often within one or two days). It is important to mention that a local *jirga* is usually hosted by either relatives of the disputants or by influential members of the village based *khel*.

Depending on the physical location of the place where a local *jirga* is held, participants sit in a circle. While *marakachian* form the inner circle of the gathering, ordinary members of the village sit in an outer circle. The International Legal Foundation’s field Report (2004:8) describes the proceedings of *jirga* in this way: ‘Typically, each member begins by sharing short stories, narratives, examples and proverbs before addressing the issue. Then they freely discuss and evaluate the issue before them in a calm atmosphere. Every member is entitled to state his point of view and make suggestions.’

Although the negotiation is mainly conducted by *marakachian*, the disputants and ordinary members of the village have an active presence; they can make their own points and object to arguments (or to a decision) that are not acceptable to them. They carefully observe the *jirga* process; their presence is a reminder to the *marakachian* that the village is watching what they say and what they decide on. In this way, the local *jirga* is not only a process of communication among *marakachian*, it is also a form of communication among *marakachian*, the disputants, and the village. This process of direct and indirect communication among members of the village functions as the main source of its social cohesion. The village is a unified community bonded together not only by blood ties and reciprocity, but also by *pashtunwali*: a code of behaviour that has a profound existence in the collective mind of the tribe.

In cases where damage is caused to a person, repairing the damage and seeing to reintegrate the wrongdoer into the village is an important feature of a local *jirga*. For this reason *nanawate* (seeking forgiveness or pardon and the obligatory acceptance of a truce offer) is one of the most common outcomes of *jirga*. *Nanawate* (*Ozrana* and *Ozr* among the Hazaras and Nuristanis of Afghanistan respectively) takes place when local *jirga* makes a *prikra* that relatives of the offender send a 'delegation' to the victim's house. This consists of a group of people that include *speengiri* (people with white beards), *torsary* (a female relative of the offender) holding a copy of the Holy *Qura'n*, and *speenpatkian* (religious leaders) alongside with offender's close relatives (and sometimes the offender himself) who bring a sheep and flour to the victim's house. The sheep is often slaughtered at the door of the victim's house. Then, members of *nanawate* ask for permission to enter the house. Once inside the house, they seek pardon on behalf of the offender (who may or may not be present). As it is against the principles of *Pashtunwali* to reject a *nanawate*, the victim's relatives usually pardon the offender, and the two parties are consequently reconciled. This reconciliation process is called *rogha* among Pashtuns and *rogha jura* among Nuristanis of Afghanistan (International Legal Foundation Report, 2004). What is important in this ceremony is that the offender is re-accepted into the village after being publicly held responsible, and told that what he or she has done is wrong. But at the same time, he or she is treated with respect as a fellow kinsman.

1.5.4 The Element of Restorative Justice in *Jirga*

It is mainly the ‘traditional authority’ of *marakachian*, which plays a central part in achieving a collective decision that is satisfactory to all the stakeholders. The main sources of *marakachian*’s legitimacy are their personal qualities (piety, religiosity, generosity, virtuousness, social status, and leadership skills, and knowledge of *jirga* rules and prevalent customary laws). In addition, *marakachian* also skilfully use persuasion through invoking the fear of Allah and threat to the *nang aw namos* - collective honour - and to the unity of *khel* as important techniques in the process of *jirga*, and for arriving at an acceptable outcome.

Local *jirga* as an informal village-based institution of local decision-making and dispute settlement has its own informal mechanisms of enforcing its *pikra*. It is extremely difficult for a disputant to go against a *jirga* decision. Should any of the parties choose not to adhere to the *pikra*, he or she may face *ratal* - a collective social boycott of the disobedient party by the whole village. In other cases; the disobedient may be ordered to pay *nagha* (a fine). In some part of Afghanistan, *jirga* decisions are forcefully executed by *arbakian* (Atayee 1979, Glatzer, 1998, Rafi 2002, International Legal Foundation Report 2004). *Arbakian* are normally young unmarried male members of the village, sub-tribe, or the tribe who have the responsibility to implement *jirga* decisions.

The processes, rituals and outcome of *jirga* as a traditional Afghan institution resemble closely the spirit, values and principles of restorative justice – one of the most recent concepts in modern penology and criminal justice. Although the phrase ‘restorative justice’ is defined differently in different social contexts, it nonetheless proposes a community based model of justice. Restorative justice emphasizes on a number of key points including the restoration of dignity, peace, and relationships between offenders and victims; providing restitution to victims; and promoting the reintegration of offenders into the community. More specifically, a criminological practitioner (Marshall, 1999: 5) defines restorative justice as ‘a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.’ This definition indicates that the central elements in

restorative justice are the importance of process, stakeholders, and restorative outcomes. ‘Process’ in this context means dialogue, negotiation and agreement, where the stakeholders are assumed to be to the victim, the offender and the community. And by ‘retroactive outcomes’ is meant whatever aspect of restoration that matters to the main stakeholders. These elements of restorative justice are central to the process, proceedings and outcome of the Afghan *jirga*. They can therefore be of use in implementing the licensed system of opium production, and in particular the amnesty scheme – facilitating the transition by use of a collective process with little recrimination. These elements also make *jirga* well suited to play a more structural role in the running of any licensing system. *Marakachian* can, for example, choose who is to run the licensed field, and under what terms. *Jirga* can also be used in an enforcement capacity. Where, for example, diversion takes place by a farmer, he or she may face *ratal* or may be ordered to pay *nagha*.

The integration of local *jirga* into a licensed opium system will form the cornerstone of a “bottom-up” approach. This process will have two-fold benefit of (1) rooting legal opium framework in the fabric of Afghan society and (2) formalizing traditional social systems. It thus avoids the pitfalls of seeking to impose an additional layer of control on top of social and economic control systems already in existence. Managed effectively, this could lay the ground for the progressive consolidation of a licensing system towards the formation of a comprehensive nationwide licensing system.

1.5.5 The Abuses of Jirga

As mentioned earlier, *jirga* decisions are normally enforced without resorting to means of physical violence. However, in some cases, *arbakian* may be authorized to burn the house of the offender who does not adhere to *jirga* decisions or persists in his offending behaviour. In other cases relating to disputes settlement, *jirga* may recommend the marriage of a woman from the par's (blameworthy or convicted person) side to the victim's close relative as a settlement of a dispute. In other cases, *jirga* may recommend the burning of the house of those offenders who persistently disobey the decisions made

by *jirga*. Although these practices have become increasingly rare in areas where the institution of *jirga* has resisted the influence of warlords and militia commanders (Johnson et al, 2003), they are widespread in areas where warlords and commanders continue to rule (Woman and Children and Legal Research Foundation Report 2003). The influence of *jirga* or *shura* by warlords and militia commanders has been revealed a report of the Feinstein International Famine Centre as follows:

Armed political groups, commanders, and warlords have strategically targeted traditional customary justice systems (*jirgas* and *Shuras*) throughout rural Afghanistan in attempt to control local populations. In many instances, these predatory forces have successfully positioned their loyalties within these groups, thus undermining this avenue of justice for rural Afghans – which often is the only avenue available in rural Afghanistan. (Feinstein International Famine Centre, 2004: 7)

Warlords and militia commanders' illegitimate influence over *jirga* and its abuse has been further confirmed by the International Legal Foundation Field Report (2004). However, this report also reveals that in some parts of Afghanistan, those *jirgas* and *shuras* that have been dominated or created by warlords are gradually being replaced by the more independent traditional local *jirgas*, and the authority of respected village and tribal elders is being restored. This is mainly because that the local councils that have been created or dominated by warlords have lost their credibility and legitimacy among local people.

Nevertheless, some of the practices of the traditional *jirga* (or *shura*) need to be strongly criticized: burning of an offender's house is in direct violation the Afghan State laws as well as the fundamental principles of human rights. But more importantly, forcing a woman into marriage (as a kind of compensation to the victim) does not only violate Afghan State laws, it also violate Islamic law, and the fundamental principles of human rights. Such decisions by *jirga* or *shura* further perpetuate exclusionary practices against Afghan women who have been victims of both cultural and structural violence for centuries.

2 The Relationship between the Formal Legal System and Traditional Institutions of Informal Justice

The issue of the relationships between the formal legal system and traditional institutions of informal justice in Afghanistan is neither clearly addressed by the Afghan government, nor fully explored by research. One of the main reasons for this is variability in the prevalence and the use of *jirga* in different parts of Afghanistan. This regional variation is described by a recent field report in this way:

The relationship between informal and formal justice systems is also regionally diverse. In some areas, there is a strong relationship between the formal and informal justice systems. For example, in Nangarhar province, eastern Afghanistan, Amnesty International found that primary courts would refuse to deal with some criminal and civil cases that had not been initially referred to the local *jirga* and that they would send such cases to the *jirga* for resolution. However, in other areas, the organization found that no relationship existed between the courts and the *jirga* or the *shura*. For example, in Herat, judges stated that they would never refer cases to the *jirga* or the *shura* and that there was no interaction between the two systems. At the present time, the relationship between the formal and informal justice systems and the competence of the informal system is largely unregulated. (Amnesty International, 2003: 19)

This variation is particularly observable when rural areas are compared to urban centres and cities. While in much of rural Afghanistan where *jirga* (or *shura*) is commonly used as the main mechanism of collective decision making and dispute settlement, the local formal justice institutions implicitly recognized this. But, in most urban centres and cities, disputes are generally resolved through formal legal institutions, which may not recognize *jirga* as an authorized institution. Nevertheless, even in urban areas, the relationship between informal institutions and formal legal institutions are not oppositional as a study by the International Crisis Group found that:

‘Central government courts are generally not permitted to interfere in tribal disputes but the relationship between local institutions and urban-based formal legal institutions is

not necessarily oppositional. In some cases, deciding which should adjudicate a particular dispute depended on whether the parties believed they stood to benefit more from one than the other' (International Crisis Group, 2003:9).

This would seem to indicate that despite the fact that the relationship between informal institutions and formal legal institutions is not officially recognized, they may still be complementing one another. However more recently, the Afghan Judicial Reform Commission has drafted a new law – 'The Law of Conciliatory *Jirgas*' – that includes 22 articles. The main objectives of this draft law are: reconciling disputants, assisting and reducing the workload of courts, and preventing the wastage of the time of both the courts and the disputants. The draft law also spells out the necessary qualities of the members of the conciliatory *jirgas*, and the mechanisms for electing its members. However, the draft law does not clearly spell out the relationships between the conciliatory *jirgas* and formal legal institutions. A member of the Afghan Judicial Reform Commission has stated that the 'draft law does not say much about the relationships between the conciliatory *jirga* and the courts of justice. I hope that further debate on the draft will make these relationships clearer'. Indeed, this clarity is needed for the relationships between the two systems of justice that have a strong potential to provide justice expeditiously and cost-effectively.

3 Potential Legislative Issues in the production of Opium for Medical and Scientific Purposes

3.1 Compatibility with Existing Laws

In terms of domestic law, there are three standards which have to be examined: the Afghan Constitution, the requirements of *Shari'a* law, and current legislation. From the point of view of the Afghan Constitution, the *Shari'a* and domestic law there is no impediment to the licensing of opium production. In fact, there is a clear basis in domestic law for a licensing system.

3.2 The Afghan Constitution and Primary Legislation

Article 7 of the Constitution says that “The state prevents all types of terrorist activities, production and smuggling of narcotics”. This provision rather reflects the international community’s twin concerns on the threat of terrorism and drug abuse. The establishment of a distinction between *muskirat* and narcotics is necessary here. This distinction appears to rely on the effects of these substances, namely the uninhibited behaviour caused by intoxicants, such as alcohol, in comparison with the calm state produced by narcotics, such as opium or cannabis. It is relevant to note that, normatively, the Afghan Constitution treats alcohol and opium in an identical manner except concerning consumption. In fact, the Constitution discourages the consumption of intoxicants but not narcotics. This may be an indicator of a stricter treatment of alcohol than drugs, in agreement with Islamic values that in general totally forbid the consumption of alcohol.

In addition, the Constitution should be read together with *Shari’a* law tenets and the current domestic law regime. Both point 1 of the preamble to the Afghan Constitution, and article 1 expressly state that “Afghanistan is an Islamic Republic,” and article 2 states that “The religion of the state ... is the sacred religion of Islam.” As such, Islam is the starting point of all legal order in Afghanistan, and this is expressly stated in article 3; “no law can be contrary to the beliefs and provisions of the sacred religion of Islam”.

Afghanistan’s Penal Code (7 October 1976) clearly defines the parameters concerning the use of narcotic substances. Article 1 is the *Ta’zeeri* crime covered by the *Hodot*, *Qassass* and *Diat* incorporated in *Hanafi* jurisprudence. Article 349 penalizes the use of narcotic substances, as well as alcohol, with “imprisonment of three to six months or cash fine of three to six thousand Afghani or both punishments”. Articles 350 and 351 refer namely to the forcing of another person to use narcotics in spite of his unwillingness to do so and the designation of a place for the use of that substances. However, no direct grounds for the punishment of opium cultivation can be found.

The New Law on the Classification of Drugs and Precursors, Regulation of the Licit Activities, Drug Related Offences (October 2003) is the main piece of Afghan legislation specifically regulating the production of opium.

Opium, morphine, codeine and their pharmaceutical derivatives, fall under Table 2 (Strictly controlled plants and substances with a medical use) and Table 3 (Controlled plants and substances with a medical use) of the New Law. As such, they fall under Article 7, entitled ‘Licit Activities’, which states that:

- “1. The cultivation, production, manufacture, wholesale and retail trading and distribution, international trading, and use of the plants, substances and preparations listed in tables II and III shall be prohibited to any person not expressly licensed for that purpose and at any establishment or on any premises not expressly licensed for that purpose.
2. The license mentioned in paragraph 1 of the present article shall be issued by the Ministry of Health.”

In addition, under Article 12 the Ministry of Health can issue such a license to authorize selected persons for the purpose of scientific research. Paragraphs 2, 3 and 4 of this Article make various stipulations as to the conditions for such license, as follows:

2. The quality and quantity of the plants, substances and precursors mentioned in paragraph 1 of this Article cannot exceed than what is required for the fulfilment of the stated purposes.
3. The licensed/authorized person should obey the following:
Register and record his name.

Record the quality and quantity of the plants, substance and precursors that is being imported, bought or sold, used or destroyed.

Record the Date of the operation and the names of people who are providing the material.

Prepare an Annual report to the Ministry of Health about the remaining, used and destroyed material.

The relevant agency is liable to keep the records and registers for five years.

Article 13 goes on to stipulate conditions concerning *monitoring* by the Ministry of Health and the Anti-Narcotics Agency, *inter alia* requiring that “Persons, firms and state agencies, medical and scientific organizations, and the institutes that are dealing in anyway with plants, substances and precursors included in the Tables of this Law, are liable to open, to the relevant authorities, their facilities, storage/hangars, and documents for inspection and control.” This is of clear application to the running of the Pilot Projects.

In terms of penalties and offences, Article 23 paragraph (1) sanctions those “illicitly cultivating opium poppy”. Paragraph (2) requires Government authorities to immediately destroy illicitly cultivated opium poppy. These provisions seem therefore to expressly exclude the legal cultivation of opium poppy.

Finally, under Chapter 5 entitled ‘‘Illicit Use of Narcotic Drugs and Related Offences’’ Article 45 gives clear legal sanction to the medical use of opium. It provides:

Any person who illicitly uses drugs will be punished according to the provisions of this law in observance of article one of the Penal Code. An exception will be made in case of medical treatment.

3.3 Compatibility of Opium Production for Medicine with Islamic Law

Islam is opposed to the use of any drugs except for those which are medically prescribed. The Prophet Muhammad said that every *khamr* is an intoxicant and all intoxicants are *haram* (unlawful, or not permitted). According to Professor Abdul Aziz, the Dean and a Professor of Islamic law of the Faculty of Islamic Law of the University of Kabul, “*Shariah* law prohibits use and production anything that is proved to be harmful for human beings. It is well-known that the poppy itself and many other narcotics drugs that are made out of poppy are dangerous for the health of people not only in Afghanistan but also in other countries. Thus it is prohibited to be cultivated, and this is clearly stated in the sayings of Prophet Mohammad.

Professor Abdul Aziz points out that “according to the fundamentals of Islamic *fiqh* that necessities allow the use of prohibited things. In case where something that is prohibited can be used for the benefit of people, especially for medicine. If the doctors or experts state that it is a necessity that the illegal or prohibited substance should be used for the cure, in that case it is allowed that, that substance be used for making medicine. However, on the condition that it is proven by the experts that apart from this medicine nothing else can cure the disease, and it should not be based on an assumption. In this case then the Islamic *Shariah* permits the use of these kinds of substances, even in the case of extreme necessities”.⁵

4 Afghanistan’s Existing Counter Narcotics Institutions and their Mandates

4.1 Current Principles and Priorities

The current policy choice adopted by the Government of Afghanistan in response to the impediment posed by illegal opium production is to attempt to eliminate the production, consumption and trafficking of illegal drugs in Afghanistan,. To this end the National

⁵ Interview with Professor Abdul Aziz, the Dean and a Professor of Islamic law of the Faculty of Islamic Law of the University of Kabul.

Counter Narcotics Implementation Plan has been drawn up, identifying key elements to implementing illegal drug reduction in all aspects of Afghan life.

To complement this process, alternative livelihood provisions are being made for Afghan poppy farmers, allowing for a viable transition from illegal to legal crop production. At the same time, drug law enforcement is being extended throughout Afghanistan, as a measure to strengthen the State's ban on opium production.

Extensive legislation has been passed in support of the current policy on the illegal opium trade. Institutions established to implement the transition from and enforce the ban on illegal poppy cultivation are vital to cover all aspects of the trade, from the monitoring of crop eradication, vigorous interdiction, prosecution of narcotics producers, and the introduction of programmes and facilities for drug prevention treatment centres.⁶ In addition, relations with regional and international bodies are critical to effective and sustained opium cultivation reduction.

The Government is aiming towards a 70% reduction in opium cultivation by 1386 (2007), with complete elimination planned for 1391 (2012). Where possible, the Government is aiming to achieve complete illegal drug elimination in advance of target dates, assuming alternative livelihoods have been made sufficiently available.⁷ There have been limited signs of progress. For example, traffickers are being prosecuted, corruption has been addressed by the government, a Ministry of Counter Narcotics has been created and the government has begun its eradication campaign combined with efforts at persuading farmers towards alternative crops.⁸

⁶ "National Drug Control Strategy: 5-Year Strategy (1381-1386) For Tackling Illegal Drug Problems In Afghanistan", Executive Summary, by the Afghanistan Transitional Authority (May 18, 2003)

⁷ Ibid.

⁸ Ibid.

4.2 The Current Counter Narcotics Legal Framework

Since its ratification of the 1961 United Nations Single Convention on Narcotic Drugs, Afghanistan has pledged its official support to the international community's approach to the illegal drugs trade. Again, in 1971 and 1988, the Government participated in United Nations conventions against the illegal traffic of narcotic drugs and psychotropic substances, reaffirming its opposition to the illegal narcotics trade. Previously, the Government enacted national laws in an effort to control narcotics in 1957, 1969, and 1991.⁹ The recent legislative and diplomatic progress that the Government has made in its efforts towards eradication is summarised briefly below.

On 14 November 2001, United Nations Security Council Resolution 1378 expressed strong support for the Afghan people to establish a new and transitional administration leading to the formation of a government, which "should respect Afghanistan's international obligations, including cooperation fully in international efforts to combat terrorism and illegal drug trafficking within and from Afghanistan".

On 5 December 2001, an agreement was signed between the international community and the Interim Afghan Authority, stating that "The Interim Authority shall cooperate with the international community in the fight against terrorism, drugs and organized crime".

At the International Conference on Reconstruction Assistance to Afghanistan, in Tokyo on 21 January 2002, it was affirmed that international assistance to Afghan parties would remain contingent on adherence to the process and goals agreed in Bonn "with the aim of establishing peace, representative governance and eliminating terrorism and narcotics production and trafficking". Conference participants were committed to steady and irreversible progress through continued attention to issues of security and counter narcotics.

⁹ "National Drug Control Strategy: 5-Year Strategy (1381-1386) For Tackling Illegal Drug Problems In Afghanistan", Chapter 1: Present Situation – Legal and Institution Framework, by the Afghanistan Transitional Authority (May 18, 2003)

In March 2002, the Joint Appeal for Afghanistan, issued in Geneva, identified drugs as the highest priority underpinning the activities of all agencies working in Afghanistan, dictating the terms for all stages of Afghan programmes, from conception stage to post-implementation evaluation.¹⁰

The Afghan Interim Administration issued Decree No. 67 on 17 January 2002, banning the cultivation, production, processing, drug abuse and illegal trafficking of narcotics. 4 April 2002 saw a Decree by President Karzai announcing the implementation of an eradication campaign by the Government. A second decree was issued on 4 September 2002 for the enforcement of the ban on the cultivation, production, drug abuse and trafficking.

On 7 October 2002, President Karzai announced the post of National Security Advisor would take the lead position in tackling the illegal drug problem. Also in October 2002, the Counter Narcotics Directorate was established by the National Security Advisor to coordinate national policies and programmes for drug control, to combat the poppy trade with the aid of international participants, such as the United Nations Office for Drugs and Crime and the United Kingdom.¹¹

In 2004, the New Law on the Classification of Drugs and Precursors, Regulation of the Licit Activities, Drug Related Offences (October 2003) is enacted.

¹⁰ “National Drug Control Strategy: 5-Year Strategy (1381-1386) For Tackling Illegal Drug Problems In Afghanistan”, Statement by the National Security Advisor, by Dr. Zalmay Rassoul (May 18, 2003)

¹¹ “*Drug Control in the Afghan Context*,” by the Counter Narcotics Directorate, the Ministry of Rural Rehabilitation and Development, and the Afghanistan Transitional Authority (2005)

4.3 Specific Institutions and Recent Developments

4.3.1 The Counter Narcotics Ministry (CNM)

The CNM has a lead role in the development, co-ordination and general implementation of strategies concerning drug affairs, following the government's policies. The CNM is the former Counter Narcotics Directorate (CND), established as part of the National Security Council (NSC) in October 2002, which gained its current form at the end of 2004. It directs law enforcement agencies as far as seizures and drug trafficking investigation are concerned. The Ministry chairs the Cabinet Sub-Committee on Counter Narcotics. Using the resources of the Counter Narcotics Trust Fund, the CNM will establish a survey unit within the Ministry with supporting capacity building for data collection and analysis. The CNM is directed by the Counter Narcotics Minister (currently Mr Habibullah Qadiri). As a government body, its remit is national in scope.

The CNM liaises with all other ministries concerned with drug control, in particular the Ministries of the Interior, Rural Rehabilitation and Development, Agriculture, Public Health, and the Ministry of Education, as well as other Government agencies, provincial administrations, drug control institutions of other countries and members of the international community. In addition, the CNM reports to the President and advises the National Security Council and the Cabinet on drug control matters, coordinates joint drug control programmes with neighbouring countries, and acts as clearing house for all project proposals related to drug control.¹²

The Counter Narcotics Minister is charged with chairing the Cabinet Sub-Committee on Counter Narcotics, which brings together ministers of Finance, Rural Development, Agriculture, Public Works and Interior. The Minister also chairs, alongside the British Ambassador, the Counter Narcotics Consultative Group.

¹² "National Drug Control Strategy: 5-Year Strategy (1381-1386) For Tackling Illegal Drug Problems In Afghanistan", Executive Summary, by the Afghanistan Transitional Authority (May 18, 2003)

The CNM has also been given responsibility of the Counter Narcotics Trust Fund, established to fund priorities in the Government's counter narcotics programme. The fund, alongside the National Development Budget, is intended to service all elements of drug control, but is currently concentrating efforts on alternative livelihoods, guided by the priorities identified in Provincial Development Plans. Internal resources, as well as donor funding, will be funnelled into these Plans.

Emphasis on local implementation and representation are considered of great importance to the Afghan Government. As such, various provincial level bodies have been created to provide regional reporting to central authorities. District Development Councils and Provincial Development *Shuras* exist in each province, charged with identifying district and provincial development priorities, along with compliance with the ban on opium cultivation. Once identified, these priorities are passed on as recommendations for the Provincial and District Development Plans.

Provincial Development Committees (PDCs) have also been created, acting as final decision-makers on all provincial reconstruction projects. Chaired by each province's governor, members of relevant ministries (Agriculture, Rural Development, and Counter Narcotics) sit on the committee, as do UN agencies, international partners and NGOs. Ultimately, it is the PDCs who formulate the Provincial Development Plans, managing provincial development budgets, and coordinating and monitoring development projects.

Alongside these development institutions are law enforcement organisations and the judicial system, charged with dealing with individuals who remain involved in the illegal opium trade. The Afghan Special Narcotics Force (ASNF) and the Counter Narcotics Police of Afghanistan together dispose of illegal opium that comes into the possession of authorities, disrupt black-market operations, and incarcerate those involved in the illegal trade. On the prosecution side, the Counter-Narcotics Criminal Justice Task Force processes counter narcotic cases within the criminal justice system.

Finally, eradication campaigns to dispose of the poppy crop itself fall under the responsibility of the Central Poppy Eradication Force – backed by the US, UK, and UNODC representatives - with security provided by the provincial chiefs of police.

4.3.2 The Counter Narcotics Criminal Justice Task Force

The Counter Narcotics Criminal Justice Task Force was established in February 2005. It is aimed at the rapid processing counter narcotics cases within the criminal justice system. Secure Court and Prison facilities are being developed at Pul-e-Charki prison to deal with major drug trafficking cases with above mentioned countries and organisations. These developments are being funded by the UK, US, Canada, Norway and the UNODC.¹³ The Task Force has already dealt with 69 drug cases during a pilot phase in early 2005.¹⁴

4.4 Monitoring and Enforcement

4.4.1 Monitoring

Current monitoring takes place through the UNODC's activities and opium surveys. In 2004 it produced its first report together with the Afghan government, entitled Opium Report on Afghanistan. However, the current capacity of Afghan authorities to monitor opium cultivation is limited by administrative shortcomings. In this context, the US government has promised to provide assistance for eradication, alternative crops, and effective law enforcement. US-trained Afghan police will be assigned to controlling opium production, providing the essential 'shock troops' for a local war on drugs. In addition to this, one of the objectives of the Counter Narcotics Trust Fund is the

¹³ Ministry of Counter Narcotics, The 1384 (2005) Progress Against Counter Narcotics Implementation Plan, 9 August 2005, 14.

¹⁴ Counter Narcotics Criminal Justice Task Force becomes operational, 28 July 2005.
<http://www.reliefweb.int/rw/RWB.NSF/db900SID/EVOD-6EQJ2A?OpenDocument>

establishment of a Survey Unit within the CNM with supporting capacity for data collection and analysis.

4.4.2 Enforcement

The Afghan Special Narcotics Force (ASNF) is the main law enforcement agency in Afghanistan. Its responsibility is to target illegal opium production, trafficking, processing and opium bazaars.¹⁵ The Afghan Special Narcotics Police ('Force 333') is said to have already destroyed already 80 tonnes of opiates, 30 tonnes of precursor chemicals, 70 drug laboratories and disrupted 2 opium bazaars. It will be expanded to increase its effectiveness against major drug targets with UK funding and advice.

The National Interdiction capability will be established within the Counter Narcotics Police of Afghanistan (CNPA) with assistance from the US, UK, France and UN Office for Drugs and Crime (UNODC). This institution was created as a specialist counter narcotics department of the Ministry of the Interior in 2003. CNPA units have been developed with international assistance in Kabul and seven key priority cities (Jalalabad, Kandahar, Lashkargar, Herat, Mazar-e-Sharif, Kunduz and Feyzabad).

The CNPA aims to achieve 750 officers by the end of 2005 with an effective presence in all major opium producing provinces, and an interdiction capacity of over 300 CNPA members.¹⁶ This includes 200 officers trained by these international partners and further nine Mobile Detection Teams trained and mentored with assistance from the UK. A Counter Narcotics Intelligence Fusion Cell linked to the CNPA has already been operational since January 2005. This is intended to establish intelligence systems within the CNPA. It is beginning to develop target packages to task CNPA interdiction teams.

¹⁵ *Ministry of Counter Narcotics*, The 1384 (2005) Progress Against Counter Narcotics Implementation Plan, 9 August 2005, 11.

¹⁶ *Ministry of Counter Narcotics*, The 1384 (2005) Progress Against Counter Narcotics Implementation Plan, 9 August 2005.

4.5 The Courts

As mentioned in detail previously, there are still difficulties in Afghanistan relating to judicial personnel and the court system, which need to be remedied both as part of the counter narcotics programme as well as the opium licensing scheme. In terms of court management, centrally-based judges and prosecutors need to have improved communication with their regional colleagues. The process of judicial appointments requires to be strengthened, eliminating all forms of political or personal bias. A sound structure for the court system is needed as well as developments in court management techniques. In addition, anti-corruption efforts which address the problem in the judiciary must be stepped up.

4.6 International Assistance to Afghanistan's Domestic Enforcement

UNODC has played a key role in supporting the former Counter Narcotics Directorate (now the Ministry of Counter Narcotics), particularly in the area of research and advising on strategies for creating alternative livelihoods. UNODC has also played a key role in awareness campaigns, diffusing counter narcotics messages in cooperation with partners such as the BBC World Service, GTZ and the Afghan government.¹⁷ Currently, the BBC, in conjunction with UNODC, runs a weekly radio drama that addresses many social issues, including the demand for and supply of drugs.¹⁸

The Counter Narcotics Ministry's programme has been supported by the United Kingdom, in its role of 'lead nation' among international donors on counter-narcotics efforts. The UK has provided effective coordination of international and Afghan initiatives, and has contributed funding and political support for the government's eradication programme. It has pledged \$12 million over the next three years for the Afghan Special Narcotics Police. British customs agents are training a new police

¹⁷ UNODC data suggests that religious messages can be a significant factor in reducing drug demand.

¹⁸ Counter Narcotics Conference on Afghanistan 2004. Appendix "Public awareness action plan".

enforcement unit of the CNM. They have also pledged drug-related equipment for the Afghan border police.¹⁹

The US is also supporting the Counter Narcotics Police through the training of 600 strong counter-narcotics force. This is aimed at increasing the capability of the CNPA in eradication of opium plantation and drug trafficking investigation.

Germany has also played a major role in qualification and training of the Afghan Police. Germany developed a plan for police training and announced the commitment of \$70 million towards renovating the police academy in Kabul. Germany has also accepted responsibility for training an Afghan border patrol, but needs to further increase its efforts.²⁰ The future of the border police will depend on the capacity of the Afghan authorities to remove local commanders and heavily armed forces that control the border, and also the smuggling of drugs and other contraband across it.

Japan has played a major role in resolving the warlord issue. As well as the UN, Japan's role of "leading nation" has begun by implementing a programme to disarm, demobilize and reintegrate as many as 100 000 soldiers and militia members. The programme began by demobilizing a group of 1,200 fighters in Kunduz and Paktia provinces in October 2003. On 9 December 2003, two thousand former Northern Alliance soldiers surrendered their weapons in Kabul and agreed to participate in a job-training programme to prepare for civilian life.²¹

4.7 Other Developments which may Assist Implementation

As mentioned before, the provision of alternative livelihoods for Afghan farmers will be essential to the transition from illegal poppy cultivation to licensed programmes. The Government is endeavouring to supply as much support and incentives as possible to ease the transition of the Afghan poppy farmer away from illegal poppy cultivation to

¹⁹ Op. Cit. United States Institute of Peace.

²⁰ Op. Cit. United States Institute of Peace.

²¹ Op. Cit. United States Institute of Peace.

other, legal forms of support. These attempts are long term in scope, and must focus as much on poverty-reduction as they do on crop substitution.

Micro-credit schemes are seen as an essential element to end the cyclical nature of poppy farmer debt. In many regions of Afghanistan, opium is the only source of credit; this in turn influences farmers' decisions to grow poppies.²² *On 3 April, 2002, a decree by President Karzai banned all loans based on opium production. Despite this, a legacy of debt has continued, which will only be exacerbated by planned eradication efforts.* To counter this, the Afghan Ministry of Rural Rehabilitation and Development has announced the creation of a new task force led by the World Bank and DFID to examine "remodelling options for opium indebtedness" on 14 December 2004, through the Micro-Finance Programme.²³

Farm efficiency is also set to be optimised in order to maximise profits which will serve as incentive for traditional poppy farmers to concentrate their cultivation on legal crops. The Ministry of Rural Rehabilitation and Development and the Ministry of Agriculture are currently concentrating on increased farm accessibility to water, irrigation and improved natural resource management. It also seeks to diversify farming arrangements.²⁴ These schemes seek to make the best use of available manpower; for example, irrigation system development, under the National Irrigation Programme, is serving as an attractive rehabilitation project that can bring alternative employment for former poppy producers, returning refugees and demobilized soldiers, while other labour intensive public works projects are also under consideration for the National Emergency Employment Programme.

These alternative livelihood programmes are currently being concentrated on seven key provinces, where the reduction in poppy cultivation is most urgent. A rewards system is in place wherein provinces who can demonstrate a marked reduction in opium crops will

²² "National Drug Control Strategy: 5-Year Strategy (1381-1386) For Tackling Illegal Drug Problems In Afghanistan", Alternative Livelihoods, by the Afghanistan Transitional Authority (May 18, 2003)

²³ Available at:

<http://www.worldbank.org.af/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/AFGHANISTANE/XTN/0..contentMDK:20297380~pagePK:141137~piPK:217854~theSitePK:305985,00.html>

²⁴ "The 1384 (2005) Counter Narcotics Implementation Plan," by the Islamic Republic of Afghanistan (2004)

be selected as recipients of additional aid from the Counter Narcotics Trust Fund. Provinces such as Helmand, Kandahar, Nangahar, and Badakshan pose the potential for the greatest gains in opium reduction, and will therefore for the near future, be receiving a large amount of donor support. *However, the effectiveness of the programmes moving farmers away from poppy cultivation is still not significant.*

5 Current Eradication Efforts

In the area of eradication, the Afghan Special Narcotics Force takes responsibility for the dismantling of opium trade institutions and contraband material. It has destroyed some 80 tonnes of opiates, 30 tonnes of precursor chemicals and 70 drug laboratories, as well as having disrupted 2 opium bazaars prior to 2005.²⁵ The agency also tracks drug traffickers, beginning the process of prosecution of participants in the illegal drugs trade. Working in tandem with the ASNF, the Counter Narcotics Police of Afghanistan have an effective presence in 13 of the most prolific opium-producing provinces in Afghanistan. The CNPA is coordinating with provincial governors, using intelligence and information gathering to ensure proper steps are being taken eradication, and incarcerating those who inhibit the programme's progress. Comprising a 200 member-strong National Interdiction Unit trained by the US, the UNODC and France, as well as nine mobile detection teams, the CNPA has the personnel necessary to closely monitor the situation on the ground in Afghanistan's opium-growing hotspots.

Led by the Central Poppy Eradication Force, provincial governors and police forces, the eradication initiative is said to be "credible, targeted, and verified."²⁶ 15 ground-based verifications teams are deployed to key provinces to assess the effectiveness of the eradication programmes, and then report their findings to provincial authorities. The practice is now that eradication takes place early enough in the year so that farmers may still have time to grow legal crops in place of opium. *Nonetheless, eradication is limited*

²⁵“The 1384 (2005) Counter Narcotics Implementation Plan,” by the Islamic Republic of Afghanistan (2004)

²⁶“The 1384 (2005) Counter Narcotics Implementation Plan,” by the Islamic Republic of Afghanistan (2004)

and there are loudly-voiced concerns amongst domestic and international stakeholders regarding the impact of eradication on peace and security.

Following the Counter Narcotics National Conference on 9-10 December 2004, the Afghan Government has been keen to uphold Article 7 of the Constitution, which states that Afghanistan will prevent “all types of terrorist activities, production and consumption of intoxicants (*muskirat*), production and smuggling of narcotics” through an information campaign. The Fatwa issued by the National Council of Ulema is currently being circulated throughout the country.

Drug consumption by Afghan users is also being approached by the Afghan Government in a compassionate manner. A building programme is currently underway with NGO collaboration, which will result in the construction of drug addiction treatment centres in Herat, Kandahar, Mazar-e-Sharif and Nangahar, in addition to the existing centres in Kabul, Gardez, and Faizabad. The Counter Narcotics Ministry has also launched a spiritually-based campaign against drug consumption, reminding Afghans (of which it is believed as many as 100,000 are opiate addicts) that drug consumption is contrary to Islam.²⁷ This campaign is being deployed through religious channels, with imams and mosques serving as the main conduits for this message.

5.1 Effectiveness in Addressing Afghanistan’s Illegal Opium Trade

Afghanistan’s National Drug Control Strategy aims to be a comprehensive approach to the nation’s largest hurdle that must be overcome as part of national reconstruction. It will, however, take time to curb the opium trade, and there are the structural flaws in the eradication paradigm itself. In the interim, one problem is that at the local level, farmers are not immediately being provided with the alternative livelihood options necessary to be convinced that legal crop cultivation can sustain families in a similar way to opium cultivation. Until this becomes the case, it is likely many farmers will continue to

²⁷ <http://www.irinnews.org/report.asp?ReportID=48311&SelectRegion=Asia>

depend on illegal opium cultivation in order to support themselves. In turn, reconstruction efforts, alternative livelihood efforts and eradication campaigns remain heavily contingent upon donor support. This necessitates comparisons with the proposed licensing system, which would provide farmers with a means to remain inside Afghanistan's legal framework without the upheaval created by eradication and the need to make extraordinary efforts to learn a new cultivation technique.

5.2 Challenges to Licensed Opium Production

Various obstacles still remain in the path of the current counter-narcotics drive, and by extension these must be addressed in the development of the licensing system. The activities of warlords, for example, may impede effective centralised control of opium cultivation, to law enforcement and to successful opium licensing supervision. These local leaders remain a major impediment to law enforcement. In many cases they have refused to disband their private armies, and routinely engage in armed clashes over control of territory, border crossings, and transportation routes. Intimidation and violence are frequently used to control the local population. Warlords also rely upon narcotics trafficking to finance their activities. In addition, many senior warlords hold official positions, but refuse to accept direction from or provide revenue to the central government. Furthermore, it is stated that some government cabinet members are warlords and leaders of previous parties²⁸. As a result corruption and private interests may pose a significant threat to successful supervision of opium licensing, as they have shown to be a significant threat to the drug policy responses being currently pursued. The reality of these dynamics must be considered by all policy initiatives in Afghanistan.

The possibility of attracting widespread support and compliance with a licensing system from these significant actors in Afghanistan society, is discussed elsewhere in this study. In particular, a proposal for an amnesty scheme in Afghanistan is put forward as a

²⁸ Anne Evans, Nick Manning and Yasin Osmani, *A Guide to Government in Afghanistan*, The World Bank, 2004.

measure by which licensed opium production can be successfully implemented. The amnesty itself would form part of the incentive to shift to licensed cultivation and could offer a response to the needs of justice, stability and economic development in Afghanistan. Rather than detracting from legal institution building, the amnesty will recognise existing Afghan law enforcement structures and help strengthen the rule of law. Large-scale pragmatic measures of this sort should be considered favourably in a fledgling state such as Afghanistan, which needs to bring about drastic shifts in patterns of activity whilst strengthening its law enforcement institutions.

Conclusion

This paper shows that the licensing system has to integrate into existing formal and informal legal systems, which are complex and evolving. One of the many factors that the licensing scheme will have to take into account, for example, is the uncertain relationship between the formal legal system and traditional institutions of informal justice.

However, both traditional and formal justice systems offer a useful vehicle for change. The institutions of *jirga* and *shura* have the strong potential to be mobilised for an effective enforcement of opium licensing in Afghanistan. This mobilisation of *jirga* and *shura* can be part of a wider, ‘bottom-up’ strategy that also involves formal Afghan national law enforcement agencies, and international security forces, at different levels of the opium licensing enforcement strategy.

It is clear that the domestic narcotics law efforts towards interdiction and in response to opium production for heroin must continue to be strengthened. This will ensure that the response to diversion from the envisaged licensed production is equally strong. The current counter narcotics structures in Afghanistan provide foundations for the institutional apparatus of the proposed licensing system. The licensing system itself can make full use of the structures developed in the last few years; its development need not run counter to the current improvements already being made.

The domestic law of the licensing proposal will present complex challenges, such as the limitations on the effectiveness of the Afghan legal system and judiciary brought about by decades of conflict. However, the licensing proposal's successful implementation in the domestic legal framework is far more promising than the possibility of an effective response within the counter narcotics scheme currently in action. The proposed licensing system would provide farmers with a means to subsist inside Afghanistan's legal framework without the upheaval created by initiatives founded on interdiction and eradication.

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Broad Analysis of the Social Implications of an Opium Licensing in Afghanistan

Executive Summary

Opium licensing: formulating and implementing a response tailored to social realities in Afghanistan

Deeply embedded opium practices in rural communities

Socio-economic realities play a determining role in the nature and scale of illegal opium production in Afghanistan. *Firstly, traditional opium practices in Afghanistan date back long before the establishment of the 1961 Single Convention on Narcotic Drugs and are deeply embedded in the traditions of rural communities. Secondly, despite recent government efforts and religious edicts to ban opium poppy cultivation it continues; the motivations of farmers engaged in this activity appears to be a complex combination of economic and social factors.* The illegal heroin trade also provides political leverage to actors higher up in the illegal drug chain such as regional warlords and major traffickers.

Rising levels of addiction

For centuries rural communities in Afghanistan have been using opium for its medicinal properties but also as an integral part of their traditional culture. *However, domestic consumption of opium and drug addiction are currently increasing largely due to poverty and lack of access to health services.* Additionally, Afghanistan is experiencing an increasing influx of Afghan heroin addicts repatriated from Iran and Pakistan, where they were first introduced to the drug. Health experts predict that drug addiction could become a serious problem in Afghanistan. The country is currently served by only five small addiction treatment facilities.

Rule of Law and development at an impasse

Both the Afghan Government and the international community have repeatedly drawn attention to the urgent need to effectively address the opium production/heroin trafficking problem and of meeting the expectations and needs of the Afghan people for security, stability and justice. Currently, warlords and groups opposed to the central government derive much of their funding from the illegal drug industry. This undermines state building and reconstruction efforts. Additionally, the control of large areas by regional powerbrokers has led to political fragmentation, further undermining the development of the rule of law. Formal governance systems which are being established by the Central government conflict with informal, local systems which are being reinforced by the illegal drug industry and those participating in it. This tension threatens to bring the development of the rule of law and stable government in Afghanistan to a halt.

Licensed opium to unlock the Afghanistan socio-economic blockage

By re-directing a wealth-generating commodity such as the opium poppy in the formal rural economy, opium licensing will liberate the social and economic forces which are currently locked in the vicious circle of the illegal opium economy.

Most importantly, licensed opium could provide a good reliable income to small farmers in an agricultural activity where they have the expertise and experience. A licensing framework to produce opium for medicines will deliver significant economic secondary advantages such as micro-credit systems to farmers who will engage in licensed opium cultivation as part of their livelihood strategies. Economic advantages will also help address the concerns over rural depopulation - large numbers of people moving to urban centres without the prospect of serious employment.

Likely resistance from the opium creditors and other informal actors higher up in the illegal value chain can be offset with the provision of amnesty and their integration in the licensed opium production economy and political system.

Tax revenues generated from licensed opium production could also prove vital in addressing the control and monitoring funding needs, further creating the conditions necessary for re-establishing the rule of law and building security. Re-allocation of eradication funds would also help support the development of an effective control and monitoring system for licensed opium.

Revenues could be used to:

- ***strengthen control and monitoring systems to reduce diversion;***
- ***develop effective licensed opium governance capacity;***
- ***to develop vital infrastructures such as transport and communication;***
- ***and eventually to develop vital community services especially those related to drug use, such as drug treatment.***

In turn, these would help improve local perceptions of Central government and achieve a reasonable degree of consensus on its authority.

An Opium licensing system must integrate the existing local control systems

The contribution of both the international and NGO community to technical implementation issues and their local expertise in rural livelihoods would be important to the viability of the licensing framework. Finally, central to the selection process of farmers and producers for the licensing system is the mapping of traditional governance systems and local conditions in order to identify the different possibilities of linking these to a more formal process. ***Indeed, adapting the general rules of control and safe production to the local socio-economic context is key to the success and viability of the licensing framework in Afghanistan.***



Broad Analysis of the Social Implications of an Opium Licensing System in Afghanistan

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Introduction: National and local considerations

Examination of the social implementation issues of licensed opium production in Afghanistan must be cast in both a local and national setting. This will enable full analysis of the subsequent impact on the country's development and stability.

Initial consideration is given to local level implications. This incorporates the potential for farmer response based on an overview of traditional opium cultivation practices, religious deliberations and economic and legal considerations. This is followed by a discussion of optional criteria for the selection of farmers and producers to participate in a opium licensing scheme. The need for public information campaigns and appropriate communication policies is also considered in the context of garnering support for and understanding of a system of licensed opium production, and in particular an understanding that the new system in now way should detract from the prohibition against cultivation of poppies for the heroin trade. Finally, the contribution of the NGO community to broader implementation concerns is examined.

The impact of a licensing system for the production of medicine is considered in the context of the following issues:

- 1 Traditional domestic consumption – This includes an overview of how a licensing for opium cultivation would likely influence domestic opium consumption.
- 2 Availability of national levels of opium-based medicines – The inadequate availability of and accessibility to opium-based medicines globally is widely reported. However, demand and supply data for opium-based medicines in Afghanistan remains unquantified. This research gap should be further investigated and analysed.
- 3 Security and stability in Afghanistan – Both the Afghan Government and the international community draw attention to the fact that the heroin trade poses a direct challenge to Afghanistan’s stability and security. The various parameters related to the creation of an environment of security and stability, as well as the effect of opium licensing on achieving this objective should be looked at.
- 4 Promotion of the rule of law – The re-establishment of the rule of law must be widespread through effective and transparent law enforcement. An assessment of how the controlled and economically sound cultivation of licensed opium poppy would reinforce the rule of law throughout Afghanistan is to be provided.
- 5 Opiate addiction in Afghanistan – It is important to examine how an incremental growth of the licensed opium industry might contribute to the establishment of treatment and rehabilitation centres, and facilitate the re-integration of drug addicts into society.

1 Farmers' responses: breaking with customs and traditions

Long before the establishment of the 1961 Single Convention on Narcotic Drugs, opium poppy had been grown in Afghanistan. It has been used by rural communities for its ability to relieve hunger as well as pain, as well as a traditional recreational drug for chewing or smoking. Opium is also frequently used as an informal currency in rural economic exchanges. The wide-ranging customs associated to poppy cultivation indicate this is a crop that has become embedded in traditional rural activities.

The ban on poppy cultivation is a recent development first codified in the Afghan Narcotics Control Law of November 2003 and later enshrined in the 2004 Constitution. In 2004, President Karzai called for a 'holy war' against illegal poppies¹. During a two-day conference on counter-narcotics, the President told Afghan and international officials that "opium cultivation [and] heroin production [are] more dangerous than the invasion and the attack of the Soviets on our country". The religious council of Afghanistan (Ulema) has also issued a Fatwa banning opium cultivation. 180,000 copies of this Fatwa have been distributed to all mosques, religious authorities and other locations in Afghanistan². This ban was preceded by another religious ban enforced in 2000/2001 by the Taliban regime. However, prior to these recent bans, the illegality or legality of opium cultivation was less evident. For example the Afghan Penal Code of October 1976 condemned the use of narcotics but not specifically opium cultivation.

The main drivers for farmers to engage in opium cultivation are a complex mix of economic factors largely removed from considerations of legality³. It is also considered highly problematic to suddenly characterise a traditional practice as illegal. Opium-denominated indebtedness, which is estimated at between \$192m to \$350m, is a direct

¹ Washington Post, 'Karzai Urges war on Opium Trade', 9 December 2004

² Cabinet Committee on Counter Narcotics, 'The 1384(2005) Progress Against Counter Narcotics Implementation Plan', 9 August 2005

³ Byrd, William and Ward, Christopher (2004). Afghanistan's Opium Drugs Economy. Working Paper Series. World Bank

cause of farmers' decisions to cultivate poppy⁴. Indeed, it is reported that despite general awareness⁵ within rural communities of the Central Government ban on opium cultivation, economic considerations take precedent⁶.

In its 2005 Afghan Opium Survey to be released in early autumn, the UNODC is expected to confirm a decrease in the number of hectares covered by opium cultivation from 131,000 hectares in 2004 to 104,000 hectares in 2005⁷. However, average productivity of opium fields in 2005 demonstrates a different pattern. Favourable weather conditions in Winter-Spring 2005 combined with the absence of large-scale poppy diseases resulted in *higher yield (kg per ha) than in 2004, representing a productivity gain of about 22% over 2004*. Consequently, the total potential opium production in the country in 2005 is estimated at around 4,100 tons representing a decrease of only 2% compared to the 4,200 tons harvest in 2004. *Despite all the deliberations regarding the progress made in curtailing cultivation in 2005, Afghanistan's share of opium production is, in fact, expected to remain unchanged from 2004 at 87% of the world total⁸. This provides clear evidence of the limited ability of the opium eradication and government education programme and of legal and religious considerations to influence opium cultivation and production to any measurable degree.*

It can therefore be anticipated that in a shift towards licensed opium cultivation for medical purposes, little resistance would come from farmers. Provided that the licensed opium crop will deliver significant economic advantages, Afghan farmers are likely to be willing to engage in licensed opium cultivation as part of their livelihood strategies.

⁴ Mansfield, D. The role of opium as a source of informal credit in rural Afghanistan. Workshop paper# 4 for discussion. Rural Finance in Afghanistan. The Challenge of the Opium Economy. World Bank

⁵ UNODC Strategic Study 9: *Opium Poppy Cultivation in a Changing Policy Environment: Farmer's Intentions for the 2002/3 Growing Season*. UNODC, Kabul

⁶ Farmers in southern Afghanistan threaten to return to poppy cultivation, BBC Monitoring South Asia, 27 August 2005

⁷ It is worth noting that crop decline has been uneven as some provinces in fact increased their cultivation in 2005. The most striking increases were recorded in the provinces of Nimroz, 1370%, Badghis, 383% and Farah, 348%. Also, the province of Kandahar increased its cultivation in 2005 by 162%.

⁸ Facts and figures collected from 'The Opium Situation in Afghanistan as of 29 August 2005', UNODC, 29 August 2005

To reinforce these economic advantages, close consideration should be given to making micro-credit schemes available to licensed opium farmers. This would also address the concerns held by Governors in such provinces as Kunduz, over rural depopulation - large numbers of people moving to urban centres without the prospect of serious employment.

The main likely area of resistance in the early implementation phase of an opium licensing system would be from the opium creditors who hold large economic interests in rural opium activities. Indeed, the creditors, who are often better-off farmers, and who may dictate indebted farmers' crop strategy, could see the development of a licensed opium system as a direct threat to their dominant position. As a result, a carefully designed amnesty system to switch from illegal to licensed opium cultivation will be developed to offer economic and legal alternatives to all stakeholders of the rural opium economy, including creditors.

This can also look closely at the group of 'protectors' or local warlords who risk losing influence over local farmers. Their source of influence on local farmers and local structures, and the political legitimacy they have generated over the years, are considered important factors to be taken into consideration and attentively addressed when designing an amnesty and economic transition system.

The overall aim of the amnesty system would be to create an appropriate transition phase and conditions for farmers to continue their activities within the framework of the opium licensing system. It would also be to re-integrate participants in illegal opium cultivation and production into legal economic activities. Importantly, this would contribute to rebuilding the economy and enhancing the rule of law in Afghanistan.

However, offering amnesty to stakeholders of the illegal opium economy, such as opium creditors, local warlords and traffickers would be a politically sensitive undertaking. Since the 1980s, regional warlords and traffickers have been gaining local political

legitimacy by investing money from illegal drug activities in local development,⁹ thus undermining the efforts to establish meaningful democracy and security in the country. The amnesty would be successful if it addresses these current realities and integrates the drugs stakeholders into the legal economy.

Yet there are concerns that by pardoning certain criminals, they would enter into the central political system with grave consequences. There is, indeed, an element of risk in providing amnesty to warlords and major traffickers. However, these groups are also important stakeholders of rural communities and play a vital part in development efforts. Therefore, there should be attempts to properly integrate them in the legal economy and political system.

This approach is necessary to reduce any competition from the illegal market as well as making sure that the licensing system is fully adopted in local power structures. Interestingly, key Afghan officials have been discussing the possibility of offering conditional amnesty to major traffickers as this is believed to weaken the group and allow Afghan security forces to focus on recalcitrant suppliers.¹⁰

2 Criteria for Selecting Farmers and Producers to be Licensed

There are a number of criteria which might be considered when selecting the farmers who are to receive licenses for opium cultivation:

- 1 The expertise of the farmers in poppy cultivation, or their access to experienced labour.
- 2 The history of the farmers: to what extent has a farmer been engaged in activities related to illegal opium, and with what implications? Amnesty

⁹ Vanda Felbab-Brown, 'Afghanistan: When Counternarcotics Undermines Counterterrorism', *The Washington Quarterly*, Autumn 2005

¹⁰ Stephen Graham, 'Afghan government weighing amnesty for wealthy drug traffickers, officials say', Associated Press, 10 January 2005

should aim to re-integrate illegal opium cultivators into the formal economy.

- 3 The access of farmers to an irrigation system or the possibility of developing adequate irrigation systems.
- 4 The level of access of monitoring teams to the selected areas.
- 5 The level of commitment of the farmers to operate in a tightly controlled licensing system. This relates to the extent to which the farmer is ready to follow by the stipulated rules and constraints. Particular attention can also be given to the economic background of the farmers, to evaluate the extent to which the farmers are in position to take the economic risks involved in licensed opium licensing. If not, special measures could be taken to strengthen farmers' economic situation in order to engage in opium licensing activities.
- 6 Women's independence. In an otherwise highly traditional Islamic society opium cultivation offers women some degree of independence,¹¹ through access to cash and status through their labours. Although only a corollary of the current system, sanctioned continuity of this activity in future could offer the prospect of an improvement in their situation.

These criteria would inform a selection process which will need to take into account the local conditions and customs in which a licensing system will operate. A useful analogy may be drawn here with the selection mechanisms employed in Turkey. Each year, year the Turkish control body, the TMO¹², decides on the number of hectares to be cultivated, based on the INCB estimates of the annual global needs for narcotics. Each year different farmers are licensed and different zones of cultivation are selected. Farmers wishing to cultivate poppy apply to the local organisations of TMO. These applications

¹¹ UNODC (2003) *The Opium Economy in Afghanistan: An International Problem*

¹² Turkish Grain Board (TMO) Opium Poppy and Alkaloid Chamber

are reviewed by TMO and only farmers without a criminal record are given a permission certificate¹³. Before sowing, the selected poppy fields are surveyed thoroughly to determine the surface area and estimate the yield. The authorities physically check the details received. More detailed examination of how the Turkish system might be of application in Afghanistan should be further investigated and analysed.

For instance, there are provinces in which poppy has only recently begun to be grown, whereas in other areas poppy has been grown traditionally. This geographical divergence creates different conditions and necessitates different responses. Senior international and Afghan officials have argued in a recent meeting that stronger action should be taken in those provinces where cultivation is a recent introduction, while in areas with significant poppy cultivation cultures there should be measures for progressive reduction over time rather than total eradication, thus allowing alternative livelihoods to take root and minimising the risk of depopulation.¹⁴

Accordingly, the licensing selection process should involve local representatives as well as opium licensing coordinators to adapt the programme to local conditions. It is key to the success of a licensing system throughout Afghanistan that the general rules of control and safe production are adapted to the local socio-economic context.

It is equally important that this system integrates the traditional social control system already in place in rural communities. A first step will, therefore, consist of mapping this traditional governance system to identify the different possibilities to link it to a more formal system. Once again, consideration of how this operates in Turkey will be useful to the present context. Failure to take this into consideration will compromise efforts to include local communities with the development of the rule of law in Afghanistan. It will thus militate against efforts aimed at combating diversion from licensed production for opium to illegal trafficking for heroin.

¹³ Questionnaire answered by TMO, August 2005

¹⁴ Report based on Wilton Park Conference WPS05/28, 'Afghanistan: Beyond Bonn', 12-14 May 2005

3 Need for Public Information Campaigns and Education

Under the proposed opium licensing scheme, central government, local officials and religious leaders will play an important role in sending a clear signal to rural communities on the legality of opium cultivation for medicinal purposes. They will play an equally important role in clearly stating that the cultivation of poppy as part of the heroin trade, or sale of opium for the heroin trade is illegal and constitutes an illegal activity. Religious leaders will be needed to explain and differentiate between opium production for heroin and for medicines and explain the basis in Islamic law for the modification of the fatwa.

This powerful signal will create a clear, basic choice for farmers. Appropriate communications policies and are crucial to accomplish this critical goal. The current counter-narcotics strategy has led to major public information campaigns but has enjoyed limited success. This is mainly due to the fact that the message conflicts with economic necessity and local governance structures.

The communication strategy must take into consideration the socio-economic particularities of all target groups so that the licensing system is clear and comprehensible, and that participation in the illegal trade will not be tolerated. In order for the opium licensing scheme to gain popular support, representative bodies should be involved at the local and district levels.

In light of Afghan society's Islamic roots and the role of Shari's law in the Afghan national legal framework, religious leaders will play a significant role in clarifying the legal status of opium cultivation when it is intended for medical purposes. They will also play a vital role in reiterating the illegal status of cultivation as part of the heroin trade. In those provinces where local authorities do not have significant support from the local population,¹⁵ religious leaders may enjoy a moral credibility which can help to effectively disseminate information on opium licensing and against illegal cultivation.

¹⁵ Mansfield, D. (2004). What is Driving Opium Poppy Cultivation? Decision Making Amongst Opium Poppy Cultivators in Afghanistan in the 2003/4 Growing Season. Paper for the UNODC/ONDPC Second Technical Conference on Drug Control Research, 19-21 July 2004

4 The Contribution of Local and International NGOs to the Implementation Process

Afghan and international NGOs involved in reconstruction, humanitarian and development work in Afghanistan have an in-depth understanding of the social, political and economic structures in the country.. Their breadth and depth of experience would prove crucial in implementing the benefits of an opium licensing system to rural communities, and the central government in Kabul, and assisting in a thorough analysis of the implications and consequences of such a system on the local population.

In particular, local NGOs could be directly involved in sending a comprehensive message to the rural population and local stakeholders on the benefits to be gained from an opium licensing system, whilst continuing to reiterate the message that cultivation for heroin is not supportable. NGOs could also engage in a constructive dialogue with local actors and record their concerns, fears and thoughts about the current situation in Afghanistan and the new initiative. Entering into discussion with farmers will be particularly useful in classifying the different relations amongst drug stakeholders and identifying policy options to be considered in the implementation process. This would also prove important to the re-integration of local stakeholders, such as local creditors and warlords, in the legal economy.

Development efforts, as in the case of opium licensing, would only be successful if they were to ensure the provision of an interesting economic alternatives for the population. Within the context of a opium licensing system, Afghan and international NGOs could play a vital role in developing this initiative in the context of rural micro-finance and, particularly, in:

- 1 Introducing local micro-credit systems in conjunction with the licensing scheme
- 2 Building infrastructure necessary to the licensing scheme

- 3 Developing irrigation facilities to support the licensed opium cultivation as well as weather surveyor systems to assist in farming techniques
- 4 Distributing new technologies needed for rural development, including fertilisers and better seeds.
- 5 Providing marketing advice and assistance.¹⁶

Local and international NGOs are also important players in conflict resolution. They can help bring to light hidden political and ethnic divisions and facilitate reconciliation amongst ethnic and social groups.

NGOs could also be involved in the information campaign relating to the amnesty proposal within an opium licensing system and its impact on local structures and governance. In this context, local and international NGOs could provide information on the policy options regarding the reintegration of those previously involved in illegal opium cultivation.

Finally, local NGOs could be key participants in the implementation and monitoring of pilot projects. The recognition of their reconstruction work and expertise in agricultural development by rural communities would help gain the public support and approval necessary for the pilot projects. Because of their direct contact with rural populations, including farmers, local governors and religious leaders, they could be also entrusted with the task of implementation and monitoring of the projects.

Each of the above opportunities should be further investigated and analysed.

¹⁶ See also Vanda Felbab-Brown, 'Afghanistan: When Counternarcotics Undermines Counterterrorism', *The Washington Quarterly*, Autumn 2005

5 Impact on Traditional Domestic Consumption

In order to assess the possible impact of Afghan opium licensing on traditional domestic consumption, one can look at other countries involved in licensed opium poppy production such as Turkey. It is important to consider the particular features of each country, the socio-economical conditions, as well as the traditional use of drugs in rural communities.

As mentioned previously, opium has been used in Afghanistan for centuries by rural communities for its medicinal properties – both to relieve hunger and pain, as well as for recreation. Domestic consumption is currently increasing largely due to indebtedness to drugs stakeholders, a lack of education and lack of access to health services.

Similarly, Turkey has cultivated opium poppy for medical and food supplies for thousands of years. In particular, infusions of poppy petals were used to soothe coughs, and small amounts of opium were used as medicine for children's diseases. However, under strict government control, the traditional uses of opium poppy have been abandoned and in 1974 Turkey acquired its license to produce opium poppy for pharmaceutical purposes alone.

From this one can conclude that in a country in which domestic consumption is based on tradition and where opium is frequently used as a currency, the impact of opium licensing in domestic consumption is closely intertwined with an awareness of drug usage and the country's economic structures.

Opium licensing in Afghanistan requires the development of an appropriate control system and sound economic structures. The Government of Afghanistan, with the support of international stakeholders, is looking at opportunities to invest, in both the medium- and long-term, in developing control mechanisms and educating the rural communities concerning the consequences of drug abuse, as well as in facilitating access to health services. It is expected that this development of the appropriate

enforcement and control mechanisms would be conducive to the reduction of domestic consumption.¹⁷

Finally, in view of the need for medical supplies in Afghanistan to enhance alternative forms of treatment, some pertinent development schemes have been initiated. These schemes concentrate on the production of generic medicines, the majority of which are included in the WHO Essential Medicines List. Of particular interest is the involvement of local and international NGOs in disseminating information and gaining public support for these initiatives.¹⁸

6 Impact on opiate addiction in Afghanistan

The factors commonly cited as causes for illegal drug demand include insecurity, poverty, lack of education, lack of access to health services, violent conflict, indebtedness to opium dealers and few government resources available to deal with or provide treatment¹⁹. Addiction may, above all, be considered a “culture-bound syndrome,” the reasons for which are idiosyncratic and specific to particular cultures.²⁰

Afghanistan is experiencing an increasing influx of Afghan heroin addicts, repatriated from Iran and Pakistan, where they were first introduced to the drug²¹. Although injecting drug use is still marginal inside Afghanistan, it is widely predicted by health

¹⁷ Of particular interest here, is the Project for Alternative Livelihoods in Eastern Afghanistan (PAL) Paper, Pariah or Poverty? The opium ban in the province of Nangarhar in the 2004/05 growing season and its impact on rural livelihood strategies, by David Mansfield for GTZ.

¹⁸ Particularly, a Swiss-based non-profit association has initiated the development of an Afghan-owned generic medicines production company in Kabul. It is anticipated that by December 2005 the factory will be producing 16 types of medicines, mainly antibiotics. Business Humanitarian Forum, Press release, 14 June 2005

¹⁹ Report based on Wilton Park Conference WP778, ‘Drug Abuse: How can it be reduced?’, 21-23 March 2005

²⁰ “Dependence and Society,” *British Journal of Addiction* (1985) 80: 133-39, Robin Room

²¹ Dating back to 2001, thousands of Afghan refugees living in Iran and Pakistan, as well as those displaced within Afghanistan, became addicted to heroin, opium and other drugs. According to the UNDCP, nearly 40 percent of drug users at that time began their habit in neighbouring countries like Pakistan and Iran, either as economic migrants or refugees fleeing war and conflict. UN Office for the Coordination of Humanitarian Affairs, IRIN.news.org, Focus on drug addiction, 28 May 2001

experts that this could become a serious problem as in neighbouring Iran. Afghanistan is in no position to cope with such an eventuality: its population is served by no more than five addiction treatment facilities.

The Government of Afghanistan must reinforce its efforts to establish detoxification, treatment and rehabilitation centres nationwide. Vital to the enhancement of drug treatment capabilities will be the shift in law enforcement attitudes towards opiate addiction such that addicts are seen as victims rather than criminals²². *The core issue here is to make clear the distinction between the dangers of illegal opiate use, and the benefits of licensed opium use for medicinal purposes.* In this context it is worth considering, for example, that if public income was generated by an opium licensing scheme, for example, through taxation on farmers' profits, or export sales, such income could be earmarked for funding treatment and rehabilitation centres as well as promote drug education and outreach. Revenues might also be invested in the development of control mechanisms and local law-enforcement units aiming at demand reduction.

7 Impact on availability of national levels of opium-based medicines such as morphine and codeine.

As documented elsewhere in this study, the University of Toronto Centre for Addiction and Mental Health has quantified the massive degree to which unrelieved pain remains a major global healthcare problem. According to the INCB, six countries account for about 80% of the global consumption of morphine whilst developing countries, which represent about 80% of the world's population, account for only about 6% of the global consumption of morphine.

There is currently a lack of data on availability levels of opium-based medicines in Afghanistan. This should be further investigated and analysed

²² Report based on Wilton Park Conference WP778, 'Drug Abuse: How can it be reduced?', 21-23 March 2005

One should also examine how opium licensing could promote availability and accessibility of opium-based medicines in the country, for example, through designated distribution outlets or other platforms.

8 Impact on security and stability in Afghanistan

Narcotics pose a direct challenge to Afghanistan's stability and security²³. In the words of President Karzai, 'poppy cultivation is more dangerous than terrorism for Afghanistan'²⁴. Undoubtedly, security and opium in Afghanistan is the critical nexus – if not improved, the current situation will continue to undermine future development and stability in the country.

The presence of warlords and forces opposed to the national government, derive much of their funding from the illegal drug industry, and undermine state building and reconstruction efforts. The rapid spread of illegal opium cultivation and heroin production combined with the existence of a weak and politically fragmented state perpetuates an environment in which the illegal drug industry continues to thrive and fuel insecurity. In addition, law and order in Afghanistan are still at a developmental stage and the judiciary is not yet capable of dealing with pervasive security violations²⁵. Corruption, a reflection of informal practices and interactions in a state of lawlessness, in conjunction with limited law enforcement capacity of the national government also remain prevalent in Afghanistan. In March 2005, US Ambassador Maureen Quinn, Afghanistan coordinator at the Department of State, testified before the US House of Representatives Committee on International Relations that narcotics cultivation and trafficking add to widespread corruption and that efforts to address the problem are further hampered by a nascent legal system and an underdeveloped, overcrowded penal system²⁶.

Issues concerning expectations of security, stability and justice are highly pertinent for ordinary Afghans. Yet the creation of an effective and accountable state requires those democratic institutions on which a state based on the rule of law rests. These include: a

²³ Statement on Afghanistan, G8 Foreign Ministers Meeting, 23 June 2005

²⁴ Speech by President Hamed Karzai at the National Security and Administrative Conference, 9 July 2005

²⁵ See also Byrd, William and Ward, Christopher (2004). *Drugs and Development in Afghanistan*, Social Development Papers No.18. World Bank

²⁶ Article by Michael O'Toole 'Opium Production Threatens Afghanistan's Future, Officials Say', 22 March 2005

functioning legal and judicial system; transparent law enforcement; well-trained and accountable police force; administrative capacity at national, provincial and local levels.

The Afghan government's ability to deliver the services it needs to meet public expectations of security, stability and justice, will depend heavily on its ability to raise the necessary funding and resources²⁷. To date, the international community has provided substantial financial and political support to Afghanistan, including training of police forces, special drug units and judges.

There is a central police-training centre in Kabul as well as regional training centres in Kandahar, Kunduz, Mazar-i-Sharif, Gardez and Jalalabad. In 2003, there were over 25,000 trained police officers. The Afghan Government, in conjunction with the principal donor states working in this sector, has set an objective of creating a uniformed police force of 50,000 supported by 12,000 border police by December 2005²⁸.

In addition, as a response to the politically fragmented and insecure environment inside Afghanistan, by May 2005 a total of 20 Provincial Reconstruction Teams (PRT) had been established across Afghanistan. The PRT concept is central to NATO efforts to extend ISAF beyond Kabul. It is comprised of a combination of international military and civilian personnel based in provincial areas of Afghanistan and aims to extend the authority of the Afghan central government and help facilitate development and reconstruction by contributing to an improved security environment²⁹.

Nevertheless, Afghanistan needs a much more significant injection of both short- and long-term funding to help economic development take root³⁰. Any revenues generated by the licensed opium industry could prove important in addressing the policy funding needs and creating the conditions necessary for building security and prosperity in

²⁷ Byrd, William and Ward, Christopher (2004). *Drugs and Development in Afghanistan*, Social Development Papers No.18. World Bank

²⁸ A Government of Afghanistan/International Agency Report, prepared for International Conference, 31 March 1 April 2004. 'Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward', 17 March 2004

²⁹ Afghanistan Group, UK Foreign and Commonwealth Office, 2005

³⁰ Speech by UK Foreign and Commonwealth Office Minister Dr Kim Howells at the Wilton Park Conference WPS05/28, 'Afghanistan: Beyond Bonn', 12 May 2005

Afghanistan. Specifically, the diversion of revenues away from drug stakeholders and towards the generation of government income would help achieve the first and foremost reconstruction objective; that of ensuring the strong and credible presence of the state throughout Afghanistan.

The implementation of a opium licensing system will re-define relations between law enforcement institutions and rural communities in a positive manner. Police forces including the Afghan National Police, the Counter Narcotics Police and the Border Police may be tasked with monitoring and ensuring against diversion. International donors, who have been closely associated with building the capacity of national law enforcement services, could contribute to training police forces for the effective monitoring of opium licensing.

With opium licensing expected to reduce the scale of the illegal opium market, it will be possible to re-allocate a share of enforcement capacity to monitoring and control tasks. Revenues generated from the licensed opium industry could, for example, address new policy funding needs. Subsequently, the shift in police resources and tasks will represent an important contribution to the general Law and Order development efforts in Afghanistan.

It is submitted that concerns over the level of capacity building needed for the effective monitoring of opium licensing may be misplaced. In fact, it is likely that the requisite capacity would be easier to build than that required for eradication and interdiction. This is considered in greater detail elsewhere in this study (see the paper on Law Enforcement Implication Issues) Moreover, an opium licensing system is likely to engender improved perceptions of what lies behind law enforcement, paving the way for improved collaboration between law enforcement agents and local communities.

In so doing, the leverage effect may be improved local perceptions of Central Government. This shift will be a further step in the propagation of rule of law in Afghanistan. Moreover, it will signal a retreat from the tensions between police and rural communities that have characterised recent forced eradication efforts. Since the

licensing initiative would be seen to come from the central government, this would generate populist support and help unite Afghanistan.

Revenues generated from licensed opium production can also be used to develop effective administrative capacity at provincial and district level. This could include, for example, the re-training of civil servants as well as proper remuneration. The latter would also contribute to the fight against widespread corruption and excessive bureaucracy which currently undermine state institutions and the rule of law. Furthermore, revenues can trigger the development of vital physical infrastructures, such as roads, schools and hospitals, and could be used to distribute new rural development technologies.

9 Potential spread of rule of law throughout Afghanistan and informal local control systems

Establishing the rule of law and building an effective state in control of all its provinces and rural regions are essential prerequisites for Afghanistan's security and development. Currently the control of large areas by regional powerbrokers and the continued presence of warlords have led to political fragmentation seriously undermining the establishment of the rule of law.

In recent months, President Karzai has drawn attention to the importance of remote regions and the need to incorporate them in development policies. Specifically he has emphasised that such areas have been deprived of adequate attention by central government and by the international community³¹. The propagation of the rule of law must be a national ambition, reaching all areas -however inaccessible.

³¹ Speech by President Hamed Karzai at the National Security and Administrative Conference, 9 July 2005

The establishment of the rule of law rests on two key principles:

- (1) A reasonable degree of consensus on the authority of the central government
- (2) Adequate enforcement capacity with a workable judiciary and police force³².

Currently, the North/South/regional political fragmentation, the lack of strong governmental presence at the provincial level and the limited capacity within the Afghan administration particularly at the provincial and local level, undermine the spread of the rule of law.

The following actions are considered vital to engendering the rule of law in Afghanistan:

- (1) coordination of local and central government policy and actions
- (2) coordination amongst major stakeholders in the police reform process³³
- (3) transparency in the use of resources and flow of funds to all parts of the country
- (4) intensification of administrative reforms involving improvements in provincial and district administrations
- (5) comprehensive planning in the justice sector particularly at provincial and district level
- (6) regular and frequent communication and cooperation between Afghan law enforcement institutions and agencies nationwide
- (7) law enforcement projects to provide operational and training assistance to the Afghan Government
- (8) cooperation between law enforcement government agencies and equivalent agencies in other countries including neighbouring and donor countries, especially with regard to border control and the reduction of the illegal drug flows out of Afghanistan.

³² Byrd, William and Ward, Christopher (2004). Drugs and Development in Afghanistan. Social Development Papers No.18. World Bank

³³ Byrd, William and Ward, Christopher (2004). Drugs and Development in Afghanistan. Social Development Papers No.18. World Bank

Since the rule of law must reach all Afghan provinces and areas, particular attention should be given to building and strengthening local law enforcement capabilities in order to ensure internal stability and to put an end to cultivation, production and trade of illegal opiates, as well as to provide an additional incentive and infrastructure for farmers to cultivate licensed opium and other legal crops.

The support offered by law enforcement agencies to licensed opium production must be done without distracting from those functions of the police or the administrative and judicial authorities in the Afghan regions and province which concern firmly continuing to tackle illegal opium cultivation; minimising diversion; and disrupting illegal drug trafficking and heroin refining.

Conclusion

It is clear that there are risks involved in adopting the licensing approach, such as the illegal diversion of opium for heroin production. The social risks of this approach are far lower than those inherent in current eradication and interdiction policies. The licensing system would address high-level concerns over the prospect of rural depopulation; the absence of eradication would mean that farmers could continue their current activities without adverse upheaval.

Opium licensing in Afghanistan requires the development of an appropriate social control system and sound economic structures. Establishing the rule of law, reinforcing social bonds and building an effective state in control of all its provinces and rural regions are essential prerequisites for Afghanistan's security and development. Security, stability and justice are highly pertinent for ordinary Afghans; their enhancement will create more favourable conditions for effective decision making – enabling agricultural diversification rather than dependence on a single crop. They will also assist in the regulation of licensed opium production. Furthermore, development of the appropriate enforcement and control mechanisms would be conducive to the reduction of domestic consumption and accompanying social harm.

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Economic Analysis of the Implementation of an Opium Licensing System in Afghanistan

Executive Summary

Bringing the full benefits of the licensed opium economy

Afghanistan's leading economic activity

Opium production for illegal heroin represents a highly lucrative and deeply entrenched business amounting to \$2.7 billion annually. Revenues generated from illegal production are being managed by and allocated within an informal and unlawful system. Due to the magnitude and deep-rooted nature of the illegal drug industry, its effects also extend to the overall functioning of the country's formal economy.

The vicious circle of the illegal opium economy

A variety of actors are currently involved in the illegal opium production chain, from rich and poor farmers, wage labourers, small traders to wholesalers and petty protectors to warlords. The distribution of profit is spread widely, though unequally, amongst these actors. Illegal opium production is particularly profitable for the actors higher up in the production chain such as warlords, whilst the majority of poor farmers are caught up in a vicious circle of indebtedness. Furthermore, the trade suffers from price volatility which is mainly attributed to eradication activities and to the fact that opium cultivation is subject to climatic conditions.

The dependence of the Afghan economy on illegal heroin production hinders economic development and threatens to turn Afghanistan into a "narco-economy".

This situation undermines reconstruction efforts and poses a direct threat to Afghanistan's security and the re-establishment of the rule of law.

Opium licensing: a decisive force for economic development

At the same time, opium represents a substantial economic potential. If successfully managed within a legal and controlled framework, opium - like any other conflict commodity- can become a decisive force for economic development. **‘Almost all successful cases of development in the last 50 years have been based on creative – and often heterodox- policy innovations’¹**. Likewise, a licensing system in Afghanistan could turn the opium dilemma into winning situation –licensed opium production in Afghanistan can become the medium for sustainable economic growth, stability and security.

Opium licensing system: achieving sustainable growth and security

It is considered that the introduction of licensed opium production would play a decisive role in improving rural incomes and strengthening livelihood strategies. A licensing framework has the potential of substantially reducing price uncertainty and, thus, legitimate actors will be able to secure a steady income. For those higher up the illegal value chain whose income will be diminished, non-monetary incentives can be provided to counter-balance the loss of revenues.

Revenues generated from licensed production can be invested into other alternative livelihood projects and in industries thus facilitating the diversification of the economy, creating more jobs and fuelling growth. In the medium to long term, the Afghan government will also benefit from revenues gained through licensed opium taxation. Building the foundations for sustainable growth in Afghanistan can also result in a positive impact on foreign investment. Given the relative productivity and investment prospective, Afghanistan could potentially become a major supplier of medical opiates in the global market, particularly to countries with important unmet needs.

¹ N. Birdsall, D. Rodrik, A. Subramanian, ‘How to help poor countries’, Foreign Affairs, July/August 2005

Formalising opium production – Next steps to be taken

The costs for the control and monitoring will be considered in light of the overall benefits, in particular of achieving social and legal stability. This could be facilitated by the provision of compensation and subsidies. The implementation of pilot projects could prove beneficial in identifying the mechanisms and resources needed to achieve this. Importantly, the international community should determine its priority funding to trigger the opium licensing process.



Economic Analysis of the Implementation of an Opium Licensing System in Afghanistan

Shruti Patel

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Introduction: The Scale and Reach of Afghanistan's Opium Economy

It is widely acknowledged that both the scale and deep-rooted nature of the opium economy in Afghanistan makes the drug policy issues of a far greater magnitude in Afghanistan than in any other country that has had to combat illegal drug production. The figures below briefly illustrate the magnitude and reach of the opium economy in Afghanistan. They are figures for the year 2004, taken from the 2005 UNODC Annual Report.¹

- Afghanistan produced 87% of the world's illegal opium in 2004;
- Total income from the production, processing, and trafficking of opium in 2004 is estimated at \$2.8 billion; representing about 60% of the country's recorded GDP;
- 356000 households or about 2.3 million persons are involved in opium cultivation - about 10% of the total population or 12% to 14% of the rural population²; and
- Opium poppy cultivation took up 2.9% of agricultural land, but this was spread over all 32 provinces.

These figures illustrate not only the wide geographical spread of production, but also the magnitude and scale of production. Furthermore, given Afghanistan's tumultuous

¹ Findings of the report are based primarily on the '2004 Afghanistan Opium Survey' conducted by UNODC staff.

² The number of itinerant workers who work on poppy cultivation is not included; it was estimated at about 480,000 persons in the late 1990s but is now likely to be higher). UNODC, World Drug Report, 2005.

history and suffering, the opium trade has generally become accepted as a coping mechanism for poor households and a lucrative business for warlords and elites. As a result, the trade has become deeply entrenched in the overall functioning of the economy; drawing in different groups of the population, including the following groups identified by Byrd and Ward:

Resource-Rich Farmers

Those with land holdings and capital. They cultivate poppy on their own land, as well as other cash and food crops. Many let part of their land to sharecroppers and receive a share of the poppy crop in return.

Poor farmers and Wage Labourers

Most households involved in poppy cultivation fall into this group. They cultivate opium poppy on small amounts of their own land or as sharecroppers, but have not really benefited from high opium prices in recent years. This is largely due to unfavorable sharecropping arrangements and high debt burdens. However, large numbers of itinerant laborers have benefited from the recent rise in wage rates.

Small Opium Traders

Estimated at 15,000, traders buy and sell opium at the farm gate and at opium bazaars; typically handling small volumes.

Wholesalers and Refiners

These are much smaller in number. They trade in large quantities, organize processing, and move the product across the border.

Petty Protectors, Local Notables, Warlords and Commanders

This group receives “protection payments” and in turn employs substantial numbers of militia fighters, and may “sponsor” processing facilities;

Government Officials

At various levels, officials receive bribes from the drug industry in return for favors in law enforcement or other aspects.

The trade thus involves a number of different groups; all of which will be affected by the introduction of licensed opium production for medicinal use.

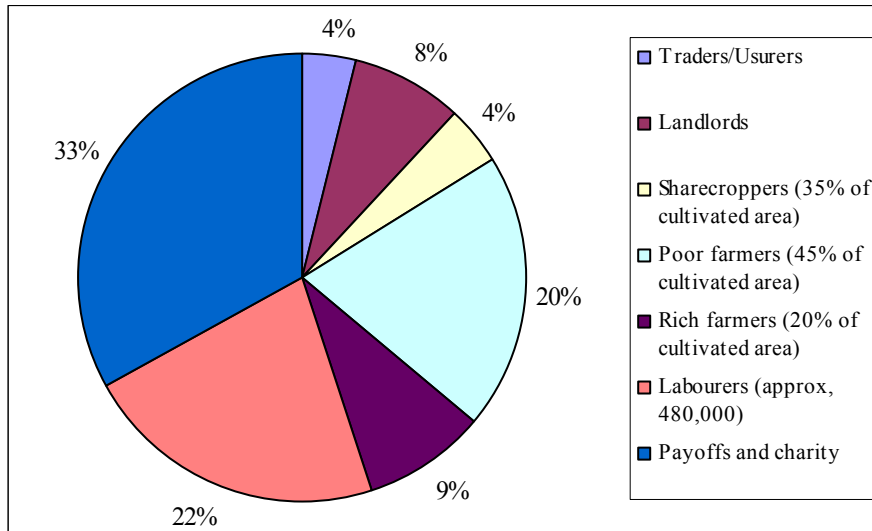
1 The Economic Impact of Illegal Production

This section begins by describing the illegal value chain, identifying the main beneficiaries, and relating this to the overall impact on the economy.

1.1 Who Are the Main Beneficiaries?

Currently, the distribution of benefits from illegal production is spread widely, but unequally across these groups. This inequality is evident mainly between producers on the one hand, and processors and traffickers on the other. However, there are also fairly large differences in benefits accruing to different groups of producers. Figure 1 below illustrates the distribution of revenue from value added at the farm-gate level in 2002. Clearly, the large number of sharecroppers, farmers, and labourers responsible for cultivating 80% of land opium is grown on receive proportionately very little benefit (46% of revenue).

Figure 1: Who Benefits from Production? - Distribution of Farm-gate Revenues (2002)³



The largest share of revenue accrues to those who receive pay-offs for allowing production, but do not add value as such⁴. In absolute terms however, the recent high farm-gate prices have had a positive impact on the income for about 50% of poppy farmers. For the other 50%, excessive debt accumulated through the *salaam* system has diminished the benefit of high prices. Under this arrangement of future trading, farmers receive credit (typically to sustain themselves through the winter months) by selling their crop in advance; usually at a fixed 50% of the prevailing market price.

The 2003 UNODC Farmers' Intentions survey found that half of all poppy farmers interviewed had taken out loans in the previous year. 64% of these loans were taken from shopkeepers and opium traders; the bulk of which were under the *salaam* arrangement. Actual farm gate prices for these farmers would therefore be less than half the official farm gate price.

³ Ward and Byrd, Afghanistan's Opium Economy, 2004.

⁴ This group includes local officials and notables, petty protection, police, and the mosque.

Further down the chain, revenues tend to increase significantly. In 2002, the total value of opium at the border is estimated at \$2222 million; approximately twice that of total value added at the farm-gate (\$1101 million).⁵ *The group that received half of the total revenue from opium comprised warlords, processors, smugglers, and petty protection groups.* Once processed opium has crossed the border, prices rise exorbitantly; pushing down even further the share received by farm producers. For example, UNODC estimates that farmers engaged in Pakistan's illegal market receive only 6% of the export value of heroin.⁶

The level of farmer indebtedness and the nature of revenue-sharing under illegal production has important implications for the role licensed production can play in improving rural incomes and strengthening livelihood strategies. These implications are discussed under sections 2.1 and 2.2.

1.2 The Aggregate Impact

On the whole, large-scale production and high prices in recent years have had a major impact not only on groups directly involved in the opium industry, but also on the wider economy. A number of factors have fuelled the massive rise in poppy cultivation in recent years. These include, the hike in opium price since 2001, the breakdown of law and enforcement, and the heavy debt of the farmers after the start of the U.S.-led war in Afghanistan, which coincided with the poppy planting season. The influx of U.S. dollars to finance the war increased the value of the Afghan currency by 60% percent in five months, making moneylenders flush with cash for new loans.⁷ They immediately extended new *salaam* contracts to desperately indebted peasants, for whom opium cultivation provided the only hope of discharging even a part of their debts (other than “giving” their daughters as “wives” to traffickers or otherwise trafficking their children).

5 Indicative figures based on IMF, UNODC (2003b), and World Bank estimates quoted in Ward Byrd, ‘Afghanistan’s Opium Economy’, Dec. 2004 (Draft Working Paper).

6 UNODC World Drug Report 2005.

7 The exchange rate of the afghani with the U.S. dollar went from 71,000 afs per dollar in September 2001 to 29,000 afs per dollar in January 2002. See International Monetary Fund, “Islamic State of Afghanistan: Rebuilding a Macroeconomic Framework for Reconstruction and Growth,” IMF 2003, p. 114.

As a result of these factors, Afghan farmers received about \$ 500 million from opium production in 2002, with another \$240 million going to wage laborers.⁸ As Ward and Byrd (2004) note, this represents a major source of aggregate demand – for services, durable goods, construction, etc. The following provides a summary of the key impacts identified by them.

Consumption

Ward and Byrd estimate that an average of 75% of opium revenue is spent on domestic consumption⁹. Sharecroppers and farmers are assumed to have the highest propensity to consume, and warlords the lowest. This has no doubt provided a positive stimulus to the domestic economy; as evidenced by the sharp rise in demand for vehicles, TVs, electronics, etc.

Investment

Surplus receipts may be channeled into investment, depending on local needs, need for protection, and need to maintain power positions; plausibly in construction. The rapid pace of building in Kabul strongly suggests that proceeds of the drug trade are involved in the financing of such construction. In addition, the drug business itself absorbs a substantial amount of working capital and fixed investment in processing and transport facilities.

Balance of Payments

The estimated gross foreign exchange inflow from the drug business in 2004 was \$2.8 billion. It is estimated that on average, 32% of this inflow is spent on imports.¹⁰ Given this, it is clear that there is a relatively large **net** inflow of resources from abroad, which could be as much as \$1.5 billion per year. The positive external balance associated with the opium economy undoubtedly strengthens Afghanistan's balance of payments and helps stabilize the foreign exchange rate for Afghanistan's currency.⁶

⁸ Ward and Byrd Afghanistan's Opium Drug Economy, 2004.

⁹ Based on estimates of the propensity to consume by each type of group involved in the opium industry.

¹⁰ The average is based on different participants in the opium industry spend varying proportions of their drug proceeds on imports. For example, warlords are thought to spend about 70% of drug proceeds on imports, while sharecroppers spend only about 10%.

Fiscal Linkages

Opium revenues in the first instance largely escape the official tax net. Some locally collected revenues at the district, municipal, and perhaps provincial level may accrue from opium production and trade and finance expenditures at those levels, but the magnitude is likely to be relatively small. Thus there is no significant direct fiscal linkage on the revenue side. An indirect fiscal linkage is that customs duties are levied on many imported goods paid for with drug receipts, and the associated revenue could be quite substantial.

Asset Prices

The real estate market in Kabul and other large cities is booming, and there is some evidence that rural land prices also are on the rise (at least near large cities). The real estate boom may reflect to some extent an influx of drug money, although this is not yet proven. In addition to investment of opium profits in land, the high returns to opium cultivation are no doubt pushing up land prices in opium production areas.

Wage rates

There is also evidence that the drug economy is driving up rural wage rates especially at harvest time.

Employment and Wage Rates. Opium harvesting uses about 350 man-days of labour as opposed to, wheat for example which requires about 47 days. Consequently, the recent opium boom has created significant amount of employment. A recent study in the province of Nangarhar found that in one season, the employment generated by opium cultivation was equivalent to 9.8 million labour days, of which 3.4 million represented daily wage labour opportunities. The work also found that 83% of the incidents of hired labour reported in the agricultural sector was for opium cultivation.¹¹

11 Project for Alternative Livelihoods (PAL) Internal Document No.11 "Pariah or Poverty? The Opium Ban in the Province of Nangarhar in 2004/05 growing season and its impact on rural livelihood strategies." Written by David Mansfield, June 2005.

In terms of wage rates, Ward and Byrd estimate that wage rates have gone up from year round rates of \$2 or so per Labour Day to peaks of \$11-12 per day in 2003 for a skilled worker during the harvest period. Wage rates in 2004 high season were reportedly in the range \$7-8 per day. Rural unskilled wages in the winter of 2003/4 were in the range \$2.50-3.00 per day, compared to \$1.50-1.75 in the previous winter. Moreover, there are signs of insufficient labor coming forward for government public works programs at the offered wage of \$2 per day. Thus there appears to have been a structural increase in wage rates.

Finance and Credit

The opium economy provides a considerable amount of financing to the rural economy, enhancing its short-run attractiveness to farmers who often have no other sources of credit. However, interest rates appear to be very high, and since advances tend to be denominated in opium they exacerbate the long-term dependency of farmers on opium.

1.3 Negative Impacts

Countering these positive impacts however, are a range of negative macroeconomic impacts; some short-term and others long-term. It is a source of macroeconomic volatility, but not just because opium is an agricultural product and its production is subject to the vagaries of climate and – especially in the Afghan context – water availability. Recent experience in Afghanistan has seen enormous price volatility. Eradication, threats of eradication, and other law enforcement measures can clearly have a major impact on capital flight and opium prices especially at the farm-gate level. The sharp price decline in 2004 reduced farm incomes by \$400 million, and effective eradication could result in a \$1 billion plus shock to the rural economy.

Another potential adverse macroeconomic effect of the opium economy is the “Dutch Disease” problem. This occurs when the net foreign exchange inflow associated with drugs stimulates real exchange rate appreciation, thus making the rest of the economy less competitive and discouraging the production of non-opium tradable goods.

Afghanistan's real exchange rate appreciated by an estimated 24% in 2001/02, 0% in 2002/03, and 13% in 2003/04. However, aid and remittances are substantial and may also contribute to the possible "Dutch disease" effect.⁷

Apart from this, the drug economy's nexus with insecurity, warlords, and weak institutions undermines the state and security, providing an environment conducive to a continuing and expanding drug industry. Furthermore, the entrenchment of the opium economy and long-term dependence on it will discourage the sustainable development of other economic activities. For example, with rents and sharecropping arrangements increasingly based on opium in many parts of the country, it becomes increasingly difficult for other agricultural activities to take hold.

2 Economic Implications of Licensed Production: Costs and Benefits

This section explores the economic implications of introducing the licensed production of opium for medicinal purposes. It begins by briefly describing the potential value chain, and identifying the main beneficiaries and likely opponents.

2.1 The Value Chain for the Medicine Morphine: A Brief Illustration

The potential farm-gate price for opium produced within the licensed framework will be in part dictated by the economic realities of the global opium and morphine market. But the latter is strongly influenced if not manipulated by the requirement of the INCB, of the behaviour of the major pharmaceutical group, notwithstanding and the existence of special international trade agreement such as the 80/20 rule which provide that at least eighty percent of the narcotic raw material imported into the United States shall have as its original source Turkey and India. It is therefore believed that there is room for manoeuvre to reorganize the profit margins in the sector to benefit the Afghan farmers and Afghanistan.

Due to the commercially sensitive nature of information on the retail and wholesale prices of morphine, building a value chain for the end product has proved difficult and would require further detailed research. However, limited information on the morphine industry in India and Turkey - two large producers of the drug - illustrates the potential benefits of licensed production, particularly to farmers.

Australia is the world's largest supplier of concentrate of poppy straw (CPS), made from the straw of the opium poppy. In 2002/03, its production value of poppy straw was \$65 million. After processing, distribution, and wholesale, this figure rose to approximately \$200 million.¹² The number of licensed producers is very small (only 1,150), but productivity is high. The figures imply that Australian producers receive approximately 30% of the final value of morphine. This success has been a factor of high productivity, global competitiveness, effective monitoring and regulation of the market, and the successful removal of illegal production.

The opium production system in India also provides insight for identifying the potential economic benefits of licensed opium production in Afghanistan. For the 2004/2005 growing season, India exported 368 metric tons of opium, worth US\$39 million. In addition, taking into consideration indicative price differences between the farm-gate, the export value and the eventual retail value of morphine in India, there appears to be a significant operating margin within which the pharmaceutical industry operates. Further analytical research will be conducted to establish the extent of the room for manoeuvre available which would allow farmers to be the main beneficiaries of an opium licensing scheme in Afghanistan.

Although Afghanistan still has a long way to go in instilling these features in its opium industry, it is clear that the introduction of licensed production does have the potential to make an important contribution to Afghanistan's economy. Regional price differences for illegal opium, decreased security costs and possible donor aid to fund the costs associated with the administration and control of licensed production would likely result

¹² Tasmania DPIWE, Industry Profile: Poppies.

in a significant degree of flexibility in the farm-gate price for opium produced under a licensed scheme. More extensive research and analysis of the global opium and morphine market would help provide the information required for the proper consideration of the economic implications on farmers' incomes and the Afghan economy as a whole that a licensing system would provide.

Perhaps, more importantly, the introduction of a licensing framework can serve as an effective development tool and transition mechanism for a country whose reliance on the illegal industry drug can only be removed gradually, and over an extended period of time.

2.2 Impact on Producer Incentives

The most fundamental factor determining the success of a licensed production programme is perhaps the effect on producer incentives. At the same time, though, rural households use complex livelihood strategies to maximise income, minimise risk, and reduce vulnerability. Their incentives are driven by multiple factors and circumstances; which in turn makes the impact of licensed production complex to ascertain or predict. Nevertheless, current information on farmer behaviour and economic theory can serve as a useful guide.

The price for opium received under a licensed programme will be an important factor driving producer incentives. The 2003 UNODC Farmers' Intentions Survey found that over 60% of farmers quoted poverty reduction and the high price of opium as being the main reason for cultivation. Other reasons for cultivation were also directly or indirectly related to price. Clearly, the issue of how much farmers would be paid under a licensed programme is a critical one and, as aforementioned, requires further advanced research.

However, it is important to note that although price is important, there are also other ways in which farmers may be encouraged to cultivate opium within the licensed framework envisaged, including:

Stability

This relates to the benefit of receiving a steady stream of income. One of the drawbacks of illegal production is high price volatility. This combined with the significant involvement of petty protection increases uncertainty for farmers. Licensed production has the potential to reduce price uncertainty substantially. Evidence suggests that income stability is an important consideration for farmers;

Non-monetary Benefits

Costs for opium poppy cultivation are thought to be relatively high, including labour, fertiliser, seed, fuel, depreciation of agricultural equipment, as well as taxes to local commanders and various bribes. As a means of subsidisation, the government may provide benefits such as free extension advice, machinery, irrigation support etc. It is possible that farmers will value these benefits more than the revenue they would receive from selling opium on the illegal market

Debt Re-Financing Mechanisms.

Farmers, particularly poppy farmers, have high levels of indebtedness. Many are caught in a trap of illegal production because they sell next year's crop in order to obtain credit in the current year. This dependency makes it difficult for farmers to move out of illegal production, even if they wish to. A system of licensed production would take this into account by introducing new financing and subsidization methods designed to increase the attractiveness of licensed production, and reduce dependency on illegal production.

Moral Reasons.

According to the UNODC Farmers' Intentions Survey, one of the main reasons for not producing opium was that 'poppy growing is against Islam'. However, research shows that for some farmers, knowing that their crop would be used for medicinal purposes may encourage them to move away from the illegal market and into licensed production.

Ultimately, different groups of farmers will react differently to the idea of licensed production; depending on regional differences in geography, law enforcement,

indebtedness, and the viability of alternative activities, amongst others. *However, price and non-price incentives will play a key role in influencing farmer behaviour.*

These incentives combined with a genuine effort to combat illegal production will minimise diversion from the legal to the illegal market. The key is implementation of a multi-pronged approach, which combines licensed production with other counter-narcotics measures such as alternative development programmes, interdiction, and moral suasion.

2.3 Who Stands to Gain from Licensed Production? Key Beneficiaries and Opponents

As explained above, the current illegal industry is sustained by the involvement of a number of different groups throughout the production chain. The introduction of licensed production is bound to diminish the role of those higher up the chain and reduce the income they receive from opium production. Conversely, judging from the analysis of the main beneficiaries of illegal production, presented in 1.1, we can say that a licensed industry can potentially increase farmer incomes. In addition, a licensed industry could be fully vertically integrated within Afghanistan, creating new job opportunities.

On the other hand, considering that about 33% of farm-gate value is paid to local notables, police, petty protection etc., this group stands to lose from the introduction of licensed production. The extent of this loss is difficult to estimate because illegal production will no doubt continue to occur, and benefit those involved in protection. A combination of strong measures to curb illegal cultivation, suitable and widespread alternative development strategies, and comprehensive state-building will however serve to reduce the size of the illegal sector; particularly in the long-run as these measures begin to bear fruit. The ones who will potentially lose out must see themselves having a role in new system.

In the short run, regardless of the magnitude of losses that may be incurred by some groups as a result of licensed production, gaining support for the initiative and building the conditions for success will require certain groups to be compensated or somehow included in the process of licensed production.

Like most successful commercial ventures, the licensed production of opium can have beneficial knock-on effects on the economy. With the right economic incentives in place, profits generated from production can be invested into other industries, creating more jobs and fuelling growth. *In addition, on an aggregate scale and in the long run, the government could benefit from revenues gained through taxation of the industry (at the processing and distribution levels).*

Although initially there is likely to be a reduction in revenue from import duties as those groups (such as Traders, Refiners, Wholesalers, Commanders) gaining from the illegal production with the highest tendency to import goods (cars, building equipment) experience a fall in income and consequently import less. This can have a positive impact on the balance of payments; which in turn will partly counteract the reduction in foreign exchange inflows if exports of illegal opium decline.

Also, controlled poppy cultivation comes with a control system which will provide an income to a number of people. The pharmaceutical industry has a high added value involving skilled labour and a sophisticated distribution system, and this could be an interesting addition to Afghanistan's future economic mix.

A successful licensed production programme would enhance foreign perceptions of the economy, and this in turn is likely to have a positive impact on foreign investment. Similarly to what happened in Turkey in the 1970s, where the US and the UN financed the production plan to convert opium to medicine, such foreign investment could help setting up a processing industry which in turn will create new jobs.

2.4 Other Benefits and Costs to be Considered

Besides the economic impact, a number of other benefits can be expected. This includes the possibility of improving the social system of land use. Informal land use and ownership systems does not protect property rights and reduces the possibility to formalize and enforce contracts, weakening incentives to invest and opportunities for division of labor and trade. Licensed opium production will necessitate the resolution of property disputes and property rights. This can build a strong foundation for supporting the development of rural society as a whole.

As described by the economist Hernando De Soto, property law is what makes a market economy work; property law provides the means to enforce rules and contracts along with the procedures that allow citizens to transform their assets into leverageable capital.¹³ Licensed production will also require changes in governance structures and altering of perceptions of control over production. This in turn will stem from the establishment of a dialogue between farmers and warlords and the reduction in economic dependence and indebtedness to warlords and drug barons. Gradually, this can serve to reduce instability and violence, and thus improve the Afghanistan's development prospects.

Another important benefit stems from price stability and the provision of extension advice and training. By enabling farmers to effectively forecast and manage their incomes, price stability combined with extension advice and specific agricultural training can encourage diversification of the rural economy. Before 1978, Afghanistan was self-sufficient in food production. Agricultural produce accounted for 30% of exports, contributing more than 40% of the country's foreign exchange earnings.¹⁴ The Soviet counter-insurgency strategy and the war of resistance shattered this fragile capacity through the land-mining of farmland and pastures, bombing of irrigation channels, killing of livestock, destruction of roads and pastoral migration routes, and reduction of farm labor. As a result, cereal production per capita fell 45 percent from

¹³ Soto, De, Hernando, *The Other Path*(1986) and *The Mystery of Capital*(2000)

¹⁴ UNEP Afghanistan: Post-Conflict Environment Assessment, 2003. See also, William Byrd and Bjorn Gildestad, *The Socio-economic Impact of Mine Action in Afghanistan*, The World Bank and Nordic Consulting Group, 2001.

1978 to 2000.¹⁵ Only imports could make up the food shortage, but they required foreign exchange. Opium production supplied this foreign exchange and also served as collateral for loans necessary for food and life cycle obligations.

While these will all be challenging tasks, the potential benefits will go a long way in fostering the development of the rural economy. Empowering farmers through the reduction of debt burdens and dependency on opium, improving governance structures at local levels, and facilitating an integrated approach to opium production can enhance agricultural growth, with positive effects for the rest of the economy.

Nevertheless, there will be costs associated with licensed production; which indeed may be substantial. The benefits noted above need to be weighed against these costs. In particular, the cost of regulating and enforcing a system of licensed production needs to be assessed. The costs associated with this will be strongly influenced by the details of the implementation. If appropriate incentives are in place for licensed production, and the risk of illegal production is considered relatively low, regulation costs may be minimal.

A country that has been successful in regulating licensed production is Turkey which established its system with the aid of the United States and UNODC. It has successfully prevented opium leaks into illegal channels by controlling processing and monitoring growing areas. In addition, the U.S. Government has proposed a project to enhance the opiate content of the poppy straw, which will enable the Turkish Government to further raise prices to the farmer, and diminish the area under cultivation. The U.S. government should be encouraged to take the same approach with Afghanistan, a country where they have a significant interest in peace and security.

¹⁵ Sloan, Food Security Strategy for Afghanistan, UNDP and the World Bank, 2001, p.4.

Reduction of the area under cultivation could lower monitoring expenses.¹⁶ Another important factor in effective regulation has been the peer pressure imposed on individual growers to eschew growing illegal opium, in order to preserve the legal market upon which the community relies.¹⁷ These are lessons from which may also be applicable to Afghanistan. The cost of subsidisation and re-financing debt would also need to be considered, but without knowing the details of programme implementation, this cannot yet be quantified but should be studied in the next phase of the programme.

3 Market Development Considerations

If the licensed production of opium is to make a sustainable contribution to rural development, the viability of an opium processing industry in Afghanistan needs to be assessed. As illustrated above, there is enormous potential to add value to opium by processing it into morphine. Although prices increase significantly when exported, the domestic price can also be expected to be reasonably high. In the long run therefore, there exists the possibility of Afghanistan becoming a major producer supplier of medicinal substances derived from opium. However, the potential success of this depends on a number of factors, including:

Domestic and Global Demand for Opiates (for medicinal purposes)

On a global scale, many developing countries continue to experience shortages in morphine for medical purposes, and there is a shortage in rich countries. In fact, the report of the International Narcotics Control Board for 1995 entitled “Availability of Opiates for Medical Needs”, found that 54 percent of governments had experienced some form of narcotic drug shortage. High prices and inappropriate regulation, and market manipulation are the key reasons for this shortage.

Relative Productivity of Afghan Production

As mentioned, Australia is the dominant producer/ exporter of opium for medicinal purposes. It has a modern production process which is based on large mechanised farms,

¹⁶ Department of State. 1996 International Narcotics Control Strategy Report: Turkey

¹⁷ Coffin, and Bigwood. Coca Eradication, 2001..

improved varieties of poppy with high alkaloid content, and the ‘poppy straw method’ of extraction. Productivity is high compared to the labour intensive method of the production of opium, like it is done in India. International comparisons of productivity are only necessary if Afghanistan intends to export licensed opiates (or opium for further processing). For a purely domestic production it is necessary to weigh the costs of importing¹⁸ opiates (for medicinal use) against the cost of domestic production.

Potential for Investment and Vertical Integration

The production of medicinal opiates will involve increasing the number of stages in the production process. The setting up of labs, processing plants, and transportation networks will in turn require investment. Obtaining access to a pool of potential investors, either private companies, the government, or the international community, will thus be an important factor in developing the industry. This question, and the above mentioned factors, would need to be further examination in the next phase of the study.

Conclusion

Clearly, the impact of licensed production on farmers and the economy as a whole is difficult to quantify at this stage. Nevertheless, we are able to draw some conclusions regarding the impact on farmer livelihoods and the development of the rural economy as a whole.

Given that much of the population relies either directly or indirectly, on the illegal opium industry, the introduction of licensed production can serve two main purposes. First, avoiding the economic effects of a “poppy chock” will require a gradual reduction in illegal opium production. **Licensed production combined with alternative livelihoods programmes, moral suasion, and other counter-narcotics can thus be used as an effective means of transitioning the move towards elimination of illegal**

¹⁸ This will include the actual cost plus any applicable tariffs, and also depend on the distribution channel used. For example, a monopoly distributor may apply high charges, compared to say government distribution.

opium production. *Second, licensed production can serve to consolidate the development of the rural economy.*

Most importantly issues related to opium-debt, land use, and property rights can be addressed by incorporating various solutions into the design of a licensing programme. In addition, benefits such a price stability and a legal financing system will have positive knock-on effects on the local economy. The potential contribution that a licensed industry could make to both rural livelihoods, and the economy as a whole are significant.

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International Political Support for an Opium Licensing System in Afghanistan

Executive Summary

International support and the drug policy challenge in Afghanistan

International aid and its relationship to the counter narcotics problem

International aid to Afghanistan is expected to reach approximately \$3 billion in 2005/06, accounting for almost 10 times the Afghan government's tax revenue. Multilateral financial institutions including the World Bank and the Asian Development Bank are also involved in reconstruction efforts through funding and operational support. *Faced with the magnitude and entrenchment of the opium economy in Afghanistan, drug strategies need to be placed at the top of the reconstruction agenda. With an average \$500 million a year, aid for counter-narcotics accounts for slightly more than 15% of total foreign aid in Afghanistan.* Support for counter-narcotics initiatives, which comes largely from the UK, the US and the EU focuses on a combination of eradication and alternative livelihood projects.

Current responses ineffective and dangerous

Forced crop eradication campaigns have so far fallen short of preventing the spread of poppy cultivation to all 34 of Afghanistan's provinces or of significantly reducing the overall levels of cultivation and production. Eradication also has significant negative implications to the very core of the reconstruction efforts in Afghanistan, particularly with regards to peace and security. Also, drug policy responses based on traditional alternative livelihood alone have proved insufficient to resolve the drug crisis. This is evident from the fact that, despite slight fluctuations in cultivation, Afghanistan's share of opium production is expected to remain unchanged in 2005 and remain stable at 87%

of the world total. Illegal opium production and trafficking continue to represent a major impediment to the international reconstruction efforts because they reinforce a state of lawlessness and the informal economy. *Against this backdrop, the current drug policy framework in Afghanistan currently lacks a device that will link law enforcement operations with rural economic development strategies.* Any complementary device must significantly reduce the scale of illegal opium activities, whilst securing a sustainable livelihood for Afghan farmers. *The fragile post-conflict situation in the country and the threat that the illegal opium trade poses to the country's future stability urgently requires that the opium problem to be brought to a more manageable level.*

Opium licensing: a comprehensive response to the Afghan drugs crisis

The system of opium licensing represents a broadening of existing alternative livelihood paradigms being pursued in Afghanistan. *It provides the missing link between law enforcement instruments and economic development mechanisms which is so crucial to an effective drugs policy in Afghanistan. This policy innovation would create an 'enabling environment' both to support the development of a stable rural economy as well as the development of law enforcement capacities: it would serve to break the vicious circle of the existing illegal opium trade.* Medical Opium licensing thus represents a unique opportunity to address the opium challenge in Afghanistan and its global impact in a positive and pragmatic way. A medical opium licensing system would provide a transitional tool towards a stable and diverse agricultural system and economy.

Moreover, a licensing system represents a far more controllable and acceptable level of risk to Afghanistan's structural development than the present situation under which 100 percent of the opium market operates outside the legal system.

Shifting the opium problem to more positive grounds

Medical opium production also triggers a positive rural dynamic for Afghanistan, with farmers, rather than being reliant on a narco-economy, will be involved in a more

humanitarian economic and licensed response. Eradication puts the punishment on farmers, whilst the real problem of consumer countries is left unaddressed. Through opium licensing, Western countries take their responsibility of the illegal drugs supply / demand equation, and provide a positive solution to farmers, away from destructive punishment.

The International community must take responsibility in various ways to support innovative solutions for Afghanistan drug issue.

The international community, particularly western drug consuming societies, have a special responsibility to respond to the illegal drug industry in Afghanistan. The financial, political and human resources of the international community can support the incremental development of medical opium licensing in different areas, by pursuing:

- the establishment of governance systems for the good management of licensed medical opium revenues on the model of the Extractive Industries Transparency Initiative;
- urging UNODC/INCB and the UK to embrace all available solutions in a pragmatic way; become part of positive solutions to the current crisis
- re-allocating international funds currently used for eradication towards support a licensing system , thus enabling these funds to be used in a more effective and cost effective way;
- re-allocating part of the law enforcement capacity to support of the licensing system;
- creating links between the Afghan licensed medical opium industry and the world market;
- and facilitating the full disclosure of data on licensed opium market operations in the world to learn from other practices in order to develop a balanced value chain adapted to the needs of Afghanistan and ensure that Afghan farmers receive an adequate farm gate price.
- Giving consideration to the inclusion of Afghanistan in the preferential medical opium trade agreement ‘80/20’rule to permit Afghanistan opium to quickly enter the global market



International Political Support for an Opium Licensing System in Afghanistan

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Introduction: The Impact of licensing options on other drug control strategies being pursued in Afghanistan, and vice versa

The key impact of opium licensing on the drug control framework in Afghanistan will be to help create the conditions for the successful implementation of other alternative livelihood strategies currently pursued or proposed.

In addition, it will facilitate a transition by farmers away from the production of opium for heroin, which has a direct impact on the drug policy efforts in Afghanistan. It represents an alternative approach to eradication policies.

Two central aspects of licensing will be: first, the impact of recasting both perceptions and roles of law enforcement; and second, the provision of a much needed systemic economic response to the problem of the illegal opium economy.

1 Opium licensing and the Afghan drug policy framework

Both the 1961 Single Convention on narcotic drugs (to which Afghanistan is a signatory), and the 2003 Afghan Counter-Narcotics law¹ identify a range of legal provisions for opium licensing. Early this year, the Afghan Government launched its Counter-Narcotics Implementation Plan², which lays down eight pillars for counter narcotics action:

- building institutions;
- information campaigns;
- alternative livelihoods;
- interdiction and law enforcement;
- criminal justice;
- eradication;
- demand reduction and treatment of addicts; and
- regional cooperation.

In the new draft law³ - which is currently in its final phase of preparation - express provision is made for licensed opium cultivation in the context of ensuring adequate supply of opium-based pain killing medication.

It is submitted that a system of opium licensing for the production of morphine and other medicines defined by the WHO as ‘essential’ could work as a complementary policy instrument to deflate the illegal opium industry and provide an economically viable and sustainable livelihood to farmers. Current proposals for alternative livelihoods are failing because of crop prices and lack of expertise or access to markets. The examples of wheat or saffron crop substitution projects are illustrative of this.

¹ Afghan Narcotics Control Law, 4 November 2003, mainly articles 7, 18 and 69.

² The 1384 (2005) Counter Narcotics Implementation Plan. Government of Afghanistan. 2005

³ Draft of the Law on the Classification of Drugs and Precursors, Regulation of Licit Activities and Drug-Related Offences (draft available at the time of writing)

Indeed, this is the rationale underpinning the development of the Indian and Turkish licensing models supported by the UN and the US (see paper on Main Countries Involved in Poppy Production). In each case, licensing represented the long-term economic and control response to the problem of illegal opium cultivation. Although the phasing out from illegal heroin to licensed opium followed different avenues, the cases of Turkey and India provide clear evidence of opium licensing as an effective complementary response to illegal heroin trafficking. Pursuing opium licensing does not encourage heroin production. On the contrary, by re-directing the cultivation of opium to medicinal purposes, licensing tackles the heroin production problem in an economically sound way.

Licensing comes with its own risks, first and foremost of which is diversion of licensed opium into the illegal heroin market. However, as shown by the example of India where opium leakages occur without undermining the entire control system, the risks from opium licensing are more manageable than those generated by a stricter, repressive approach.

2 Broadening the current drug policy response framework

On the one hand, the economic and security implications of the illegal heroin industry have a deeply disruptive effect on Afghanistan's reconstruction agenda. On the other, current drug strategies have a limited impact on the scale of the heroin economy.

Ill-conceived sequencing in narcotic strategies – i.e. a dislocation of eradication interventions and alternative livelihood programmes - can severely affect rural communities and lead to further political instability. A recent report by the World Bank has underlined that *'there is a moral, political and economic case for having alternative livelihoods in place before commencing eradication.'*⁴ These facts point to a situation where the actual drug policy mix reinforces the level of political risk rather than

⁴ World Bank, *Afghanistan: State Building, Sustaining Growth, and Reducing Poverty. A Country Economic Report*, Poverty Reduction and Economic Management Sector Unit South Asia Region, World Bank Report No 29551 – AF, 2004

bringing it to more reasonable level. In addition, a recent analysis on counter narcotics strategies in Afghanistan pointed at their counter-productive effects by noting ‘the inability of peasants to repay their creditors as a result of eradication only drives them deeper into debt, pushing them to grow even more poppy in the subsequent year’.⁵

Variations in opium production owe more to economic factors such as the law of supply and demand or the complex livelihood strategies followed by farmers rather than a result of counter narcotic actions. Despite record levels of opium production, only seven percent of total irrigated land is employed for poppy cultivation; this makes it a mobile industry which can quickly relocate to new areas and provinces.

Forced eradication campaigns have fallen short of preventing the spread of poppy cultivation from 24 provinces in 2002 to all 32 provinces in 2004.⁶ And in 2005 when, according to initial predictions released by the UNODC, cultivation areas would have decreased by 21%, production level remains high at 4,100 tons.⁷ The Afghan counter narcotic framework urgently requires a complementary policy instrument that will significantly reduce the scale of illegal heroin activities, whilst securing a sustainable livelihood for Afghan farmers.

Moreover, poppy cultivation for the production of medicines fits into the broad definition of alternative livelihood. However, as distinct from crop substitution solutions, poppy cultivation for the production of medicines is based on the idea of re-organising an existing crop. This broadening of the alternative livelihood concept presents the advantage of closely associating the law enforcement and interdiction pillars of the national framework with an opium licensing system. Indeed, a recent World Bank report pointed squarely at the need to broaden the scope of alternative livelihood programmes in order to develop much needed comprehensive rural development economic strategies. Opium licensing is a response to the World Bank’s

⁵ Vanda Felbab-Brown, ‘Afghanistan: When Counternarcotics Undermines Counterterrorism’, *The Washington Quarterly*, The Centre for Strategic and International Studies and the Massachusetts Institute of Technology, Autumn 2005, pp. 55-72

⁶ UNODC, Afghanistan Opium Survey, 2004

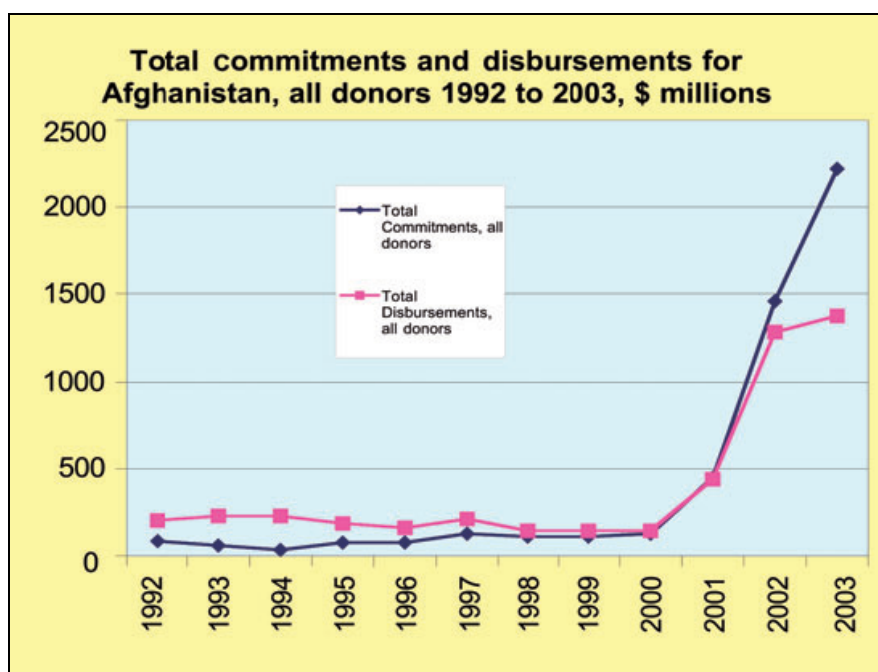
⁷ UNODC, The Opium Situation in Afghanistan, 29 August 2005

rallying call, **providing the opportunity to broaden the scope of counter narcotics strategies and bridging the link with rural economic development.**

3 Overview of international aid to Afghanistan

3.1 General foreign aid in Afghanistan

The commitment of international donors is critical to the enormous reconstruction efforts needed in Afghanistan. Since the fall of the Taliban regime, global aid has risen from \$150m in 2000 to more than \$2bn in 2003. With foreign aid income expected to near \$3bn in 2005/06, donors' contributions account for nearly 10 times the Afghan Government's tax revenue.



Source: *Afghan Aid Flow Information Project, funded by UK Department for International Development (DFID)*⁸

⁸ Afghanistan Update. Aid to Afghanistan – Building on the Momentum? Development Initiatives. April 2005, London

The largest donors are the US (\$1.6bn in 2005), the World Bank, the Asian Development Bank, the European Community (EC), Japan and the UK.⁹ Since 2001, the UK has committed \$1.8bn to Afghanistan, including a large share allocated to counter narcotic efforts.¹⁰

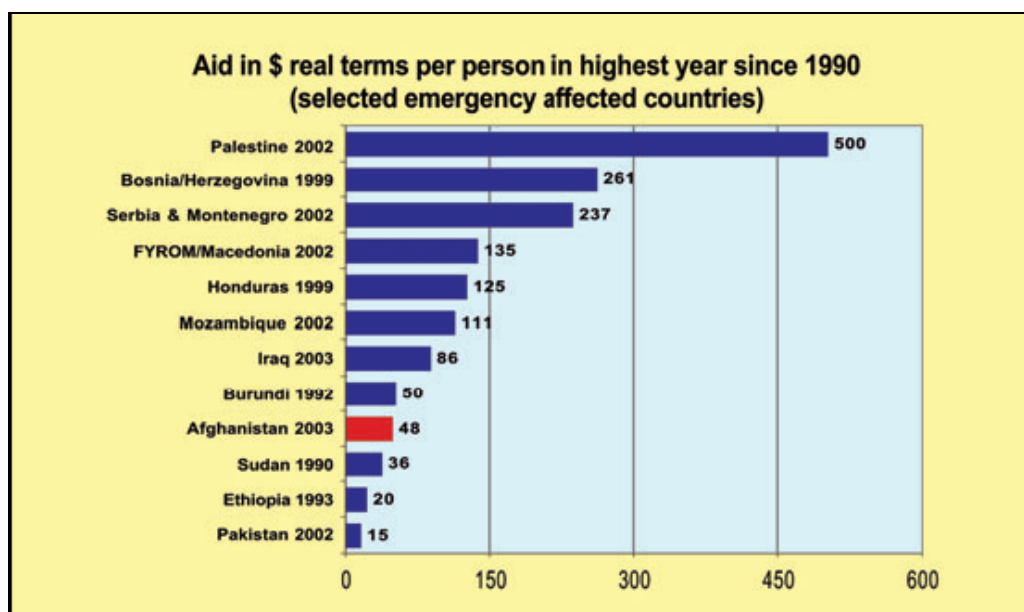
Top Ten Donors of gross ODA (2002-03 average) (USD m)		
1	United States	427
2	EC	176
3	United Kingdom	115
4	Germany	105
5	Japan	83
6	Netherlands	83
7	AsDF	78
8	Norway	65
9	Canada	54
10	Sweden	35

*Source: Organisation for Economic Cooperation and Development (OECD),
World Bank
ODA: Official Development Assistance*

⁹ DFID, Interim Strategy for Afghanistan 2005/06, London

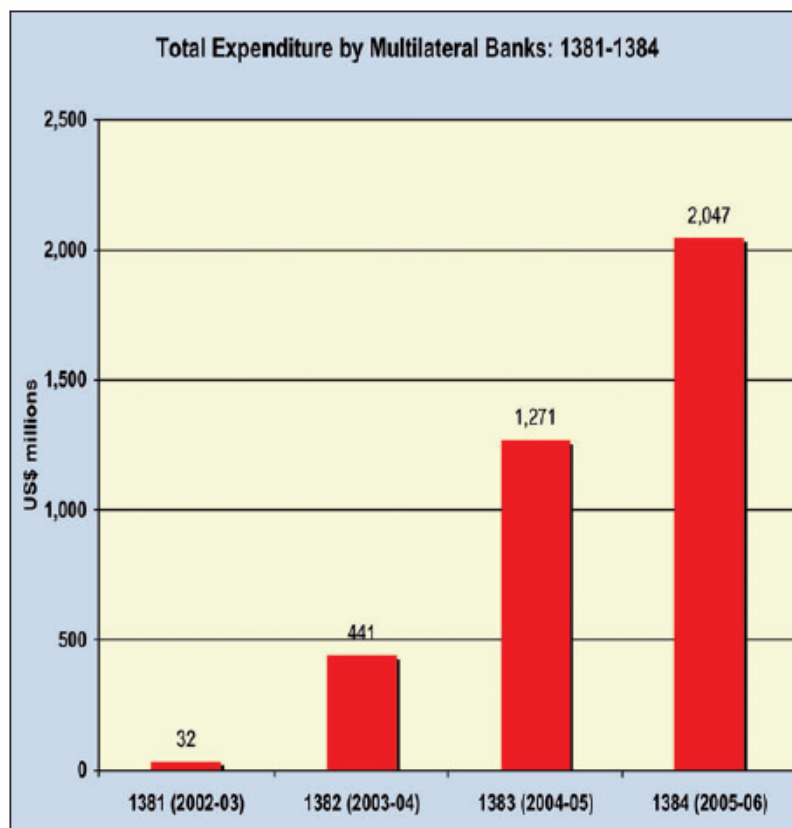
¹⁰ UK Foreign and Commonwealth Office and DFID, *The UK and Afghanistan* – fact sheet, July 2005, London

However, aid per capita remains very low when compared to other post-conflict countries. Aid in Palestine in 2002 accounted for \$500 per capita; in Mozambique for \$111, whilst in Afghanistan aid per capita was estimated at around \$50 in 2003.



Source: *Afghan Aid Flow Information Project, funded by UK DFID above*⁸

Multilateral financial institutions such as the World Bank, the Asian Development Bank and the Islamic Development Bank are also playing a critical role in the reconstruction efforts both through funding and operational support. Their financial commitments have significantly increased from \$440m in 2003 to \$2bn in 2005/06.



Source: *Afghan Aid Flow Information Project, funded by UK DFID*⁸

Despite a troubled history, Afghanistan shares direct economic and strategic interests with its Central Asian neighbours. Because of this recent efforts have been made to increase regional cooperation in strategic areas including trade, security and the fight against illegal trafficking and smuggling.

The importance of major donors' commitments lies not only in their financing but also in their capacity to promote market access and facilitate linkages with the global economy. This is a crucial element in Afghanistan's economic recovery and in resolving the huge challenges concerning the dismantling of its illegal economy.

Since the 2002 Tokyo Conference and its initial pledge of 1bn Euros over five years, the European Union has engaged in a large-scale development programme for Afghanistan. The European Commission's External Relations Directorate General channelled a total

400m Euros for the period 2003-04 focusing on four key areas: capacity building; rural development; economic infrastructure; and health. Additionally, the EU has provided significant humanitarian support for the most vulnerable through the European Commission Humanitarian Office (ECHO), which delivered 216 million Euros since 2001.

However, by fuelling lawlessness, insecurity and by strengthening the vicious circle of the informal economy, the heroin production and trafficking problem represents a major impediment to the international aid efforts. As an illustration, the European Council's External Affairs body concluded during a recent meeting that *'The growing influence of the narcotics economy has been undermining efforts made by the international community to promote good governance and the fight against corruption, which are key priorities'*.¹¹

As such, financial and political responses to the drug policy challenge must be put at the centre of the international reconstruction efforts for Afghanistan. Opium is the factor that will determine the success or the failure of the collective efforts for a stable and democratic Afghanistan. **This situation of urgency requires major donors to envisage a wide range of innovative policy options to implement more sustainable interventions, which will have a serious impact on the heroin trafficking economy. Drug policy responses based on repression and traditional alternative livelihood alone are insufficient in the face of the bare economics of the illegal heroin trade – equivalent to 60% of total GDP in 2004.**

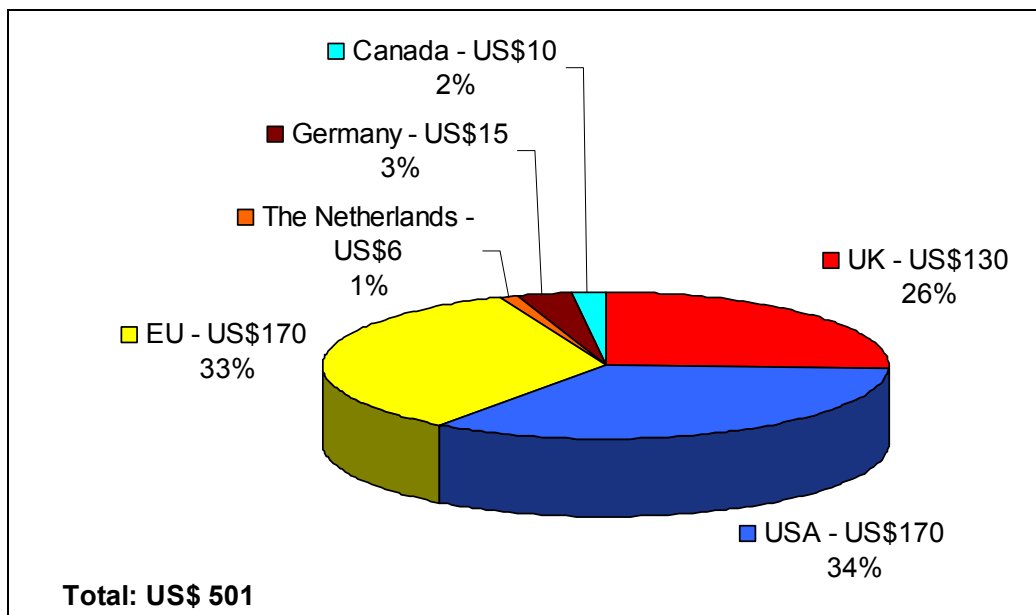
¹¹ General Affairs and External Relations Council (GRAEC), Afghanistan – Council Conclusion. 13 December 2004

3.2 Foreign aid and contributions in the area of counter narcotics

It is difficult to gain a clear overview of the level of international funding in counter narcotics; it often falls under more general aid programme categories or is presented under different timelines.

In the chart below, the contributions of major donors have been collated as the ‘average representative aid per year per donor’ (different years have been used depending on data availability). This chart aims to give an illustration of the level of commitment to the opium campaign in Afghanistan. These figures are then broken down further in the subsequent table.

Average Yearly Aid for Counter Narcotics Activities (in USD million)



<u>Major donors</u>	<u>USD million</u>
USA	170 – yearly average for the period 2002-2005 (excluding 758million supplemental appropriation for 2005) <i>Source: Congressional Research Service Report for Congress ‘Afghanistan: Narcotics and U.S. Policy’, May 2005</i>
UK	130 - including 70million for alternative livelihoods <i>Source: FCO and DFID data for the period 2004-2005</i>
EC	160 – mainly involved in the field of alternative development and law enforcement <i>Source: Based on the EC support in the area of rural development amounting to 140million in 2003-2004. A further 95million in 2002-2004 was provided to fund the new Afghan National police and border controls as part of Afghanistan’s fight against drugs</i> <i>http://europa.eu.int/comm/external_relations/afghanistan/intro/</i>
The Netherlands	6 – contribution to Counter Narcotics Trust Fund and development assistance <i>Source: Estimate based on the country’s contributions to the Afghanistan Reconstruction Trust Fund for the period 2003-2006 and for development aid</i>
Germany	15 – focusing on border police, training and equipping the anti-drugs force <i>Source: Contributions of around 60million for the 2004-2007 period</i> <i>http://www.globalhumanitarianassistance.org/afbull05final.pdf</i>
Canada	10 – involved in counter narcotics capacity building <i>Source: Estimate based on Canada’s 2004 commitment for the Counter-Narcotics Capacity Building initiative, its funds for development assistance for the period 2005-2009</i> <i>http://www.acdi-cida.gc.ca/cida_ind.nsf/0/9C6956D4FD9436C185256F6400571E2B?OpenDocument</i>
Total	501

With an average \$500m a year, total aid for counter narcotics accounts for slightly more than 15% of total foreign aid in Afghanistan. For added accuracy, one must add to this figure other programmes, particularly those targeted at rural development, which contribute directly or indirectly to the opium problem. Yet, overall, the counter narcotic aid figure represents a fraction of the many billions of dollars generated annually by the illegal heroin trade.

A new drug policy mix based on tightly controlled opium for the production of medicine, targeted law enforcement and broad alternative livelihood strategies raises the question of the level of aid required to implement the new framework. Similar to the economic report on ‘Securing Afghanistan’s future’,¹² it is proposed that a review process be conducted by international stakeholders and the Afghan Government to quantify international aid requirements to formulate and implement effective counter narcotic efforts. Although initial investments will be important, a maturing system of poppy cultivation for the production of medicines will permit the incremental reduction of aid over time.

As for operational areas, support for counter narcotics initiatives comes mainly from the US and the UK. Currently, twelve drug control projects are in the portfolio of UNODC Country Office for Afghanistan,¹³ funded by different countries.¹⁴ These projects are diverse, covering areas including demand reduction, interdiction, eradication and the strengthening of law enforcement. For example, they are engaged in building justice institution capacity, through projects such as the creation and training by British troops of the Afghan Special Narcotics Force (ASNF) or the provision of advisory support in the establishment of a special narcotics court.

The Counter-Narcotics Trust Fund (CNTF) was established in May 2005, and will be administered by the UNDP.¹⁵ The CNTF covers programmes and initiatives identified by the Government of Afghanistan and recommended by the Cabinet Sub-Committee on

¹² A Government / International Agency Report. Securing Afghanistan’s Future: Accomplishments and the Strategic Path Forward. March 17, 2004

¹³ <http://www.unodc.org/afg/en/projects.html>

¹⁴ Australia, Canada, Finland, France, Germany, Ireland, Italy, Japan (Human Security Trust Fund), Norway, UK, and USA.

¹⁵ UNDP Afghanistan Staff Newsletter, June 2005. http://www.undp.org.af/media_room/news_letter/docs/news_letter_20050601.pdf

Counter Narcotics. It is envisaged that as much donor funding for counter narcotics activities as possible should be channelled through the CNTF, particularly funding for alternative livelihood programs.

According to Habibullah Qaderi, Minister of Counter Narcotics “*There is a need to accelerate activities for the government priorities related to agricultural development, irrigation systems, provision of certified seeds, and the transfer of new technology to increase the agricultural productivity. The aim of the establishment of the Counter Narcotics Trust Fund is also to coordinate assistance.*”¹⁶

During a recent high-level policy meeting on Afghanistan, international and Afghan drug policy officials called for putting counter narcotic measures at the centre of international efforts: ‘*Counter narcotics measures should be a prominent component in the future framework for international assistance to Afghanistan. To do so would communicate a powerful message to the Afghan people about the importance of effective action. It could also help ensure future successful action by the inclusion of timetabling and benchmarks.*’¹⁷

This statement identifies precisely what an opium licensing system proposes to achieve: the complementing of drug policy efforts in order to make a more positive and significant contribution to the reconstruction efforts in the country.

¹⁶ <http://www.reliefweb.int/rw/RWB.NSF/db900SID/KH11-6AW3M2?OpenDocument>

¹⁷ Isobelle Jacques. ‘Afghanistan: Beyond Bonn’. Wilton Park Paper, May 2005. Report based in Wilton Park Conference WPS05/28: 12-14 May 2005, 19

4 Areas for support from international donors

4.1 Support from regional groups and multilateral financial institutions

4.1.1 Multilateral financial institutions

International financial institutions such as the World Bank and the Asian Development Bank are important drivers of building a stable and prosperous Afghan economy¹⁸. The Asian Development Bank stands as the largest multilateral donor, with a total pledge for Afghanistan of \$500m made in January 2002 in Tokyo.

The Asian Development Bank (AsDB)

Since 2001, the AsDB has been substantially engaged in assisting Afghanistan. In 2003-4 the AsDB is reported to have disbursed approximately \$125m. Its contributions mainly concern infrastructure development as well as capacity-building technical assistance. The commitment of the bank has also taken the form of large loans allocated to those areas.

The World Bank

Between April 2002 and September 2003, the World Bank committed \$186.8 million in grants and an additional \$128.4 million in no-interest loans (“credits”) for development projects that included improving roads; increasing the power supply in Kabul; cleaning up municipal waste; repairing schools; and improving health services. These funds are also being used to strengthen public administration, and develop the national highway and civil aviation. For the year 2003-4, the World Bank directly spent around \$50m.

The International Monetary Fund (IMF)

Commencing in January 2002, at the request of the Afghan authorities, the IMF began to provide extensive policy advice and technical assistance in its areas of expertise.¹⁹ This assistance included helping the authorities to rehabilitate key economic institutions, in

¹⁸ For example: A Government / International Agency Report. Securing Afghanistan’s Future: Accomplishments and the Strategic Path Forward. March 17, 2004

¹⁹ In August 2002, the IMF opened a resident representative office in Kabul, and in February 2003, Afghanistan cleared its arrears to the IMF.

particular the Ministry of Finance (MoF) and the central bank, Da Afghanistan Bank (DAB).

As part of their economic development and governance agenda, the work of international finance institutions has also examined issues concerning the illegal heroin economy. Important reports published by The World Bank have reviewed the scale of the informal heroin economy, estimated at \$2.3bn a year (nearly six times the government's annual revenue), and documented its prevalence in Afghan society.²⁰ Any long-term economic solution for Afghanistan must take into account the poppy question. Reviewing the problem of the illegal opium economy, one World Bank report argues that '*What is really needed is generalised economic growth and rural development – alternative livelihoods for Afghanistan as a whole*' [...].²¹ This is precisely the rationale behind the opium licensing system for Afghanistan: to provide a comprehensive rural economic development framework for poppy farmers and rural communities as a whole.

Each of the institutions identified above can contribute to the development process of opium licensing in different ways. First, a review on how opium licensing can form the basis to a comprehensive rural economic development strategy can be conducted with all stakeholders. A second point for action is for The World Bank and other financial institutions to look at the economic incentives which will help shift towards the development of a licensed opium industry.

For example, funds could be more particularly directed at the start up phase and to support the incremental transition from traditional poppy cultivation to poppy straw process. The UN initiative to build a processing plant for poppy straw in Turkey serves as a good example of the sort of financial aid required for the development of a national licensed poppy industry.²¹ Finally, the IMF could work with the Afghan Government to

²⁰ Byrd, William and Ward, Christopher (2004). Afghanistan's Opium Drugs Economy. Working Paper Series. World Bank

²¹ Bulletin on Narcotics 1983, Issue 4, Elimination of Opium Production [online] Available at: <http://www.unodc.org/unodc/en/bulletin/bulletin_1983-01-01_4_page002.html> and: Bulletin on Narcotics (1975), Issue 3, Poppy cultivation under properly controlled conditions so as to meet the world's

put in place an effective governance system for the good management of opium revenues and ensure that, through the Afghan government, they benefit key segments of the opium chain, particularly farmers and law enforcement agencies. In this process, lessons can be drawn from the Extractive Industries Transparency Initiative developed by DFID.²² **The key contribution needed from development banks is to help the Afghan Government create the conditions for a smooth phasing out of the *informal equilibrium* based on the illegal opium economy and which starves the development of healthy economic development in Afghanistan** Error! Bookmark not defined.

4.1.2 Regional groups

The historical interference of neighbouring States in Afghanistan has left deep resentment and distrust between these countries. However, since the fall of the Taliban regime, and in spite of continuing political problems, regional cooperation between the Afghan Government and neighbouring countries has been increasing.²³ Different trade and security cooperation agreements have been established, mainly with Central Asian republics, Iran and Pakistan.

To date, the most significant step towards building a regional cooperation framework for security was the signing in 2002 of the Kabul Declaration on Good-Neighbourly Relations with regional powers including Pakistan, Uzbekistan, Turkmenistan, Tajikistan, China and Iran. This first step for regional cooperation was later renewed by the same group of countries in the context of counter narcotics via the Good Neighbourly Relations Declaration on Counter Narcotics, made in April 2004 in Berlin. The framework, which is partly funded and facilitated by the UK, lays down a range of cooperation areas such as intelligence and border control.

requirements of opium for medical and scientific purposes [online] Issue 3 Available at: <http://www.unodc.org/unodc/en/bulletin/bulletin_1975-01-01_3_page004.html#s120

²² <http://www2.dfid.gov.uk/news/files/extractiveindustries.asp>

²³ **Indian, Afghan Leaders Urge Regional Effort On Terrorism, DowJones Newswires, 28 August 2005**

The Government of Afghanistan has also reached bilateral agreements with individual countries on counter narcotics. Its agreement with Tajikistan, for example, aims to respond to cross border opium or heroin trafficking stemming from north-eastern Afghanistan. According to official statistics, more than 800kg of Afghan heroin has been recovered in Tajikistan since the start of the year.

Bordering countries have a direct stake in the effective development of an opium licensing system in Afghanistan. The key question is for Afghanistan to build support with regional countries to enable the integration of opium licensing in a regional cooperation framework. As part of this effort, particular attention can be given to the benefits of opium licensing: a reduction in illegal trafficking activities; a weakening of the drug – terrorism nexus; and a creation of new economic opportunities in the area of opium-based industry in the region. The risk of diversion for heroin trafficking will persist but at more controllable levels as opium licensing will phase out a significant share of illegal activities.

Dialogue should start between countries in the region and the Afghan Government on how to strengthen the mission of border police as part of heroin trafficking control efforts and how to consolidate an opium licensing system in Afghanistan through, for example, special agreements to boost regional market access as well as the sharing of industry know-how.

4.1.3 The G8

The group of the eight world's leading industrialised countries, the G8, re-asserted its long-term commitment to Afghanistan during a meeting of its Foreign Ministers in London in June 2005, under the presidency of the UK.²⁴ In its statement on narcotics, the Ministers stated that the G8 '*recognises the need for increased finance and capacity-building, and encourage the international community to remain closely engaged*'.

²⁴ G8 Foreign Ministers Meeting, Statement on Afghanistan, London, 23 June 2005

The G8, which includes the three largest aid donors to Afghanistan - US, Japan and UK - could use its unique economic leadership to propose and support initiatives to link Afghanistan with the world market for pain relief medication.

For example, the G8 could look at the possibility of establishing special trade agreements or tariff preferences to support the long-term development of the Afghan opium industry and guarantee its contributions to the world pain relief medication market. The US preferential trade arrangement with Turkey and India (the 80:20 rule), discussed below, is a clear and useful precedent. The G8 could also bring its support to an 'Opium Industry Transparency Initiative' as it has already done for extractive industries in Central Asia. With the assistance of international donors, a transparency initiative would bring different stakeholders of the licensed opium industry together - Government, local representatives and companies included - to scrutinise opium revenues and payments, in order that they overall contribute to economic growth and social development.²⁵

2.1.4 The European Union

With 90% of its heroin originating from Afghanistan, the The EU has shown a strong commitment to initiatives aimed at tackling the Afghan heroin trafficking problem.²⁶ *In its Action Plan on Drugs*, the EU calls for support to 'Afghan and international partners in their efforts against cultivation, production and trafficking of narcotics'.²⁷ The EU has mainly focused on the early delivery of alternative livelihood initiatives through its large rural development portfolio; building capacity for law and order and strengthening counter narcotics governance; and directly financing the tackling of opium production (10m Euros for 2003-04). In particular, the European Commission's policy is based on the need for an integrated, comprehensive approach to the opium problem:

²⁵ See: <http://www.eitransparency.org/> or <http://www2.dfid.gov.uk/news/files/extractiveindustries.asp>

²⁶ The EU Action Plan on Drugs (2005-2008); 2004 Presidency Conclusions of the European Council, 16-17 December 2004

²⁷ General Affairs and Extern Relations Council (GRAEC), Afghanistan – Council Conclusion. 13 December 2004

‘Eradication alone is unlikely to curb poppy cultivation. A much more holistic approach is required, addressing alternative livelihoods, access to credit, institution building and demand reduction. Experience elsewhere in South East Asia also suggests that a sustainable solution cannot be achieved overnight – it will require long term commitment of politicians, of law and order and of funding.’²⁸

As a collective decision-making institution, the EU can foster high-level discussions between Member States on a support plan to develop an opium licensing system in the coming years in Afghanistan. For example, the EU could look at the possibility to integrate opium licensing in the broader EU-Afghanistan cooperation framework, which is currently under preparation.²⁹ The main question being to what extent an opium licensing system can help the EU to meet benchmarks of progress for Afghanistan. With current plans to increase EU assistance on counter narcotics³⁰, a real window of opportunity exists to adopt opium licensing as an EU development strategy for Afghanistan. Opium licensing represents a practical and complementary mechanism that will make a significant contribution to the twin focus of the European Commission on rural development and law and order capacity-building.

As the largest trade block in the world, the European Union could look at the possibility of establishing a preferential trade agreement for Afghanistan’s licensed opium, similar to the US ‘80:20’ rule. This agreement could link the Afghan opium-to-morphine production with European countries with particular demand for pain relief medicines.

²⁸ The European Commission, External Relations Directorate General. Country Strategy Paper – Afghanistan 2003-2006. 11 February 2003

²⁹ General Affairs and External Relations, Conclusions on Afghanistan, 18 July 2005

³⁰ The Horizontal Drugs Group will discuss plans for increased EU assistance with the Afghan Ministry of Counter Narcotics during a UK Presidency meeting in Newcastle, September 2005

4.2 Areas for support from UK, US and international agencies

4.2.1 The United Kingdom

The UK is the lead country for counter narcotic efforts in Afghanistan. It has committed £73m for 2005, of which £47m - channelled through the Department for International Development - is allocated to alternative livelihood programmes.

During a recent meeting in London with the Afghan Counter Narcotics Minister Habibullah Qaderi, the UK government has announced an increase in counter narcotics funding of £115 million over the next three years.³¹ Half of the spending will go to law enforcement and interdiction efforts.

The British Government has also assisted its Afghan counterpart in drawing up a counter narcotics strategy (2003) and the implementation plan (2005), and in building up specialised law enforcement institutions, such as the Counter-Narcotics Police.

The UK's financial and policy support covers multiple areas; a recent Joint Statement between the two governments expressed the aim of the British government as being to *'support well-targeted interdiction of traffickers and their organisations by the Afghan Authorities; the strengthening of the criminal justice system; efforts to reduce poppy cultivation; and sustainable alternative livelihoods for those dependent on poppy'*.³²

Early in its opium campaign, in 2002-2003, the UK tried innovative approaches to eradication including *compensated eradication* by offering financial compensation to farmers for the loss caused by the destruction of their illegal crops. It rapidly became evident that this strategy failed to break the illegal heroin production circle by fuelling local corruption³³ and pushing prices up. Indeed, the problem of the illegality of opium revenues was left unaddressed. In an effort to re-direct counter narcotics strategies, the

³¹ M2 PressWire, UK Announces increased funding for Afghanistan counter narcotics work, 5 September 2005

³² Joint Declaration of an Enduring Relationship between the UK and Afghanistan, 19 July 2005, London

³³ New York Times, John F. Burns 'Afghan warlords Squeeze Profits from the War on Drugs, Critics Say'. 5 May 2005

UK has recently scaled up its support for interdiction and enforcement efforts, which are predominantly targeted at the high-end of the opium economy, that is, trafficking and processing. By focusing on the serious criminal segment of the opium economy, interdiction aims to break the drug security nexus. Recent reports on the possible commitment of British troops to interdiction efforts confirmed this new orientation.³⁴ It represents an attempt to move the political risk associated with strict repression away from farmers and poor rural communities. Yet interdiction does not address the deep macro-economic and micro economic issues raised by the illegal heroin economy in Afghan rural communities.

By providing a comprehensive answer to the problem of farmers' livelihood, opium licensing works as a complementary tool to targeted interdiction strategies. Opium licensing helps develop a comprehensive drug policy response to Afghanistan. It will contribute to the freeing of law enforcement and military resources from large-scale ground eradication operations, allowing them to focus on the key criminal actors that will still operate outside of a licensed opium framework. This represents an important but more realistic task than currently under which counter narcotics strategies must tackle the entirety of the opium trade.

Moreover, the development of an opium control system is in line with the efforts of the UK to build with the Afghan Government a Law and Order capacity.

The UK therefore has a central role to play in the formulation, integration and implementation of an opium licensing system. The UK's two-pronged strategy to combat opium through law enforcement and alternative livelihood programmes has seldom reduced the enormous scale of the illegal heroin economy. Opium licensing represents the opportunity to provide the critical economic leverage needed to effectively tackle illegal activities without causing profound structural and collateral damage. As such, the UK could use its lead on counter narcotics to look at avenues to integrate opium licensing in the Afghan drug policy framework and build consensus with international stakeholders.

³⁴ House of Commons, Official Report, Dr John Reid, Secretary of State for Defence, 7 July 2005

4.2.2 The United States

The US Congress has been asked to provide nearly \$780 million in anti-drug aid to Afghanistan over the next three years: \$173 million for interdiction, \$180 million for law enforcement and judicial reform, \$5 million for a public information campaign, including broadcasting anti-drug messages from supportive mullahs, \$120 million for programmes to develop alternative livelihoods for farmers, and nearly \$300 million for eradication programmes. Alternative livelihood projects are mainly channelled by USAID, whilst forced eradication operations and training have been partly outsourced to US security firm Dyncorp. For example, the private security firm received \$50m in 2004 from the US Administration to train Afghan eradication team.³⁵ This fund could be re-allocated to provide a crucial financial support to the transition process towards an opium licensing system.

With poppy cultivation reaching a record 131,000 hectares in 2004, more than twice the figure for 2002;³⁶ the US put the UK led and Afghan counter narcotic strategies under extensive scrutiny³⁷. In the summer 2004, with alarming data on opium production levels, intense discussions between the Pentagon, the Department of Justice and the Department of State started on ways to intensify counter narcotics efforts. The possibility of waging a ‘Plan Colombia’ style strategy, including aerial spraying of poppy fields, against the Afghan heroin trade came under serious consideration. However, President Karzai and its administration showed a firm opposition to aerial spraying, which would create further unrest in rural communities³⁸.

In March 2005, the mission of the US military forces was broadened to include support of counter narcotics interventions, including intelligence and planning assistance as well

³⁵ *The Economist*, 18 November 2004

³⁶ UNODC. Afghanistan Opium Survey 2004. November 2004

³⁷ Afghanistan: Are the British Counter-narcotics Efforts Going Wobbly?, Robert B Charles, Assistant Secretary for International Narcotics and Law Enforcement Affairs, Testimony Before the House Committee on Government Reform Subcommittee on Criminal Justice, Drug Policy, and Human Resources, Washington, DC, April 1, 2004

³⁸ *The New York Times*, Carlotta Gall, ‘Afghan Poppy Farmers Say Mystery Spraying Killed Crops’, 5 December 2004

as emergency support for the DEA and Afghan forces under attack³⁹. Weeks ahead of the official visit of President Karzai to Washington in May 2005, a memo prepared by the US Embassy in Kabul to the US Secretary of State was leaked in the New York Times. The memo, which contributed to putting pressure on President Karzai, pointed at the lack of results and ‘leadership’ in eradication campaigns⁴⁰. According to the same memo, fewer than 102 hectares had been eradicated against an initial target of 15,000 ha. These concerns translated in a campaign to re-direct drug policy efforts towards tougher and more force-based responses. In a recent TV documentary on the Afghan opium situation, aired on flagship BBC documentary programme ‘Panorama’, the senior representative of the Drug Enforcement Agency in Afghanistan explained that ‘more stick than carrots’ were now required in Afghanistan.⁴¹ These developments point to the fact that the US counter narcotics approach to Afghanistan has gradually intensified in a more military-based strategy, putting the emphasis on eradication.

The US approach gives precedence to eradication over peace and stability. Drug policy is a legitimate social concern but there are clear indications that it is taking precedence to peace and security issues in Afghanistan, with little discussion about whether the current drug policy mix is appropriate. ‘The United States cannot be blind to the political realities in Afghanistan: in the absence of large-scale rural development, eradication is politically explosive. Strong measures to suppress resistance from rural communities will further fuel unrest. Such actions will undermine Karzai’s government as well as Afghanistan’s process of stabilisation and democratisation’, noted a recent article on the issue.⁴²

Moreover, much of the blame is being laid on Afghan farmers and the Afghan Government, whilst little effective response has been developed to curb heroin demand. The traditional mix of prevention and repression to heroin demand reduction has had little effect in deflating the world demand for heroin. The Afghan government has faced

³⁹ *The New York Times*, Thom Shanker, ‘Pentagon Sees Antidrug Effort in Afghanistan’ 25 March 2005, p.1

⁴⁰ Catherine Philip, ‘Britain blamed as opium farms harvest bumper crop’, *The Times*, 23 May 2005

⁴¹ BBC Panorama. Britain’s heroin fix. Sunday 24 July 2005

⁴² Vanda Felbab-Brown, *Afghanistan: When Counternarcotics Undermines Counterterrorism*, *The Washington Quarterly*, The Centre for Strategic and International Studies and the Massachusetts Institute of Technology, Autumn 2005, pp. 55-72

many accusations of inefficiency, but Western countries and their ineffective response to the heroin consumption problem at home also call for closer scrutiny.

In addition, elsewhere the US has adopted alternative approaches to tackling heroin trafficking. This is particularly evident in the case of Turkey and the development of its licensed opium control system. Here, the US Drug Enforcement Administration provided financial and technical support to the Turkish counter narcotic forces to consolidate the national control system for licensed opium.⁴³ Further, by providing preferential market access to Turkish and Indian opium production, the '80/20' congressional rule has also contributed to strengthening the market viability of the Turkish licensed opium. Similar routes could be followed with Afghanistan. The need is even more evident in the case of Afghanistan as an adequately funded opium licensing system would make a crucial contribution to capacity-building efforts in areas as central to the US as economic governance and law and order. US funding for rural development reaches \$82 million in Afghanistan. This fund should be increased, for example by tapping in US counter narcotics funds earmarked for 'transitional initiatives' in 'fragile states', and directed at consolidating rural activities related to legal opium cultivation.

As part of the review process of the '80/20' rule by the US Congress in 2006, the country could give Afghanistan preferential trade conditions, especially as regards their strategic interests in building stable democracy and economy in Afghanistan.

4.2.3 The UN Office on Drugs and Crime

The UNODC is engaged in multiple counter narcotic operational areas in Afghanistan including institution building (particularly judicial reform), alternative livelihood strategies, drug control and measures against terrorism and corruption. Currently, there are twelve drug control projects and three criminal justice projects in the portfolio of UNODC Country Office for Afghanistan.

⁴³ 2005 International Narcotics Control Strategy Report (INCSR) – US Policy initiatives in Turkey. March 2005, US Department of State

During a Security Council session in June 2003, The UNODC's director, Antonio Maria Costa, stressed that *"the task to rid Afghanistan of the drug economy requires much greater political, security and financial capital than presently available, to assist the rural areas affected by opium production and, above all, to improve the central Government's ability to implement the opium production ban"*.⁴⁴

The UNODC has called for an integrated approach to the opium cultivation problem in which eradication efforts must be balanced with alternative livelihood actions. During his last visit to Afghanistan Costa stated that *'[f]armers are the weakest links in the chain. Poverty renders them vulnerable and therefore, their plea for a better life has to be addressed'*.⁴⁵

Using its institution-building expertise, the UNODC can support the development of effective opium institutions and control systems. Funds could be allocated by donors during the yearly Commission on Narcotic Drugs to assist the Afghan government on the process of development of transition to poppy cultivation for medicine an opium control framework. The UN experience in building a poppy straw processing plant in Turkey could also be relevant to Afghanistan, particularly in the context of a possible transition at a later stage to the poppy straw technique. The surveying capacity of the UNODC and its Afghan partners would be integral to the process of monitoring and reviewing the licensed opium chain; it would then be in a position to make recommendations on system improvements and responses to possible leakage.

4.2.4 The International Narcotic Control Board

The INCB has traditionally been concerned about new entrants in the licensed opium market. The Board views new opium producers as increasing the risk of diversion. The 1961 Single Convention requires the limitation of the use of opioids to legitimate medical and scientific purposes. The strict reading by the Board of this obligation has

⁴⁴ Security Council/7795, 18 June 2003

⁴⁵ 'Afghanistan: UN counter narcotics chief sees signs of hope in poppy eradication'. IRIN. 2 June 2005, Kabul

created a system of over-regulation where the market operates under tight rules. This situation results in inadequate access to pain relief medication.

This situation is even more paradoxical when one takes into account the fact that the 1961 Single Convention also requires parties to adequately provide the product for the relief of pain. This dual aim, far from being mutually exclusive, is in fact complementary and requires the INCB to create a fine balance between control efforts and adequate availability. Unfortunately, the emphasis has traditionally been more on the former at the expense of the latter. This imbalance creates a situation whereby pain relief needs are unmet, as highlighted by the WHO and the INCB itself - although not to the extent estimated in this Study (see the analysis on Global Supply of Opium-based Medicines).

The same paradox applies to the Afghan opium situation. In its 2004 annual report, the Board expressed its deep concern over the Afghan narcotics problem and called on the Afghan Government to tackle opium production.⁴⁶ In its foreword, Professor Hamid Ghodse, the President of the Board, underlines that *'it is the responsibility of the Government of Afghanistan to live up to its commitments under the international drug control treaties and to ensure that its people are protected from the scourge of drugs'*. The Board reiterated its call during a substantive session of the Economic and Social Council (ECOSOC) in July 2005 and added that *'Article 14 [of the 1961 Convention] will remain invoked until there is a marked improvement'* in the Afghan opium situation.⁴⁷ Article 14 applies where *'the aims of the Convention are being seriously endangered by the reason of any failure of any Party'*.⁴⁸ Its application can lead to the imposition of official sanctions against the country concerned.

During the same session, the Board urged ECOSOC for a resolution on increasing access to opium-based pain medication. The request went as far as announcing the

⁴⁶ INCB, Annual Report. 2004, Vienna

⁴⁷ INCB, Release on INCB Substantive session of ECOSOC. 21 July 2005

⁴⁸ The Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol

review with the WHO of the *'feasibility of a possible assistance mechanism that would reduce the gap between the haves and have-nots in that area'*.⁴⁹

This is indicative of the deep paradox that runs in international drug control policy and that in this case directly affects Afghanistan. The Board has unambiguously identified important needs in worldwide pain relief medications. However it has fallen short of developing an adequate response to those global needs, especially in poor countries, choosing instead to support closed market production system instead.

But the urgent situation of Afghanistan and its international partners caused by the illegal opium trade requires exceptional measures. In this case, the choice essentially lies between the current situation, over which law enforcement and alternative livelihood fail to gain control, or the development of a licensed opium system which will phase out a substantial share of the illegal heroin market and make the containment of the remaining illegal activities possible.

Despite the traditional emphasis of the INCB on limitation measures, the Board must pay a closer attention to Afghanistan's drug problem. An official visit to the country would be a prerequisite, enabling it to gather fresh data and insights, and build a more up-to-date overview of the situation. The Board could subsequently provide significant scientific and regulatory support to the development of an opium licensing scheme in Afghanistan. In this solution, the Board would address its two core concerns: the threatening scale of the illegal heroin production in Afghanistan and the problems of worldwide access to pain relief medication. For example, in its 2003 report, referring to the case of the Indian's opium licensing system, the Board acknowledged that other considerations than economics or control imperatives should be taken into account in the development of national opium licensing system. It said

"The extent of opium production in India has been dependent not only on considerations of an economic nature, such as the demand for opium, but also

⁴⁹ ECOSOC, Press Release, 'ECOSOC tackles drug control, social development, advancement of women, human rights, as it continues general segment'. ECOSOC/6172. 21 July 2005

*on considerations of a social nature, since the production of opium provides subsistence for a significant number of families of farmers. The quantities of opium produced that were not used in India or exported have been added to stocks*⁵⁰

Taking local circumstances into account could be the first crucial step for the INCB to review its strict position towards Afghanistan and move towards supporting a new set of control solutions.

Finally, extensive research attempts undertaken as part of this Study have highlighted the difficulties in accessing data on the economics of opium markets nationally and internationally. The lack of clarity and openness in the global opium-to-morphine industry contradicts basic rules of transparency and good governance, as championed by the World Trade Organisation. The relative sensitivity of the traded product hardly justifies this lack of transparency. On the contrary, open rules and operations are crucial elements for the good control and monitoring of a market.

As part of its core task of overseeing the world opioid market, the INCB has a special responsibility to call for the full and immediate disclosure of licensed opium market operations. This disclosure will provide key sets of data that will contribute to the formulation of an Afghan opium licensing system.

Overall, the Board must build a more up-to-date, local understanding of the drug question in Afghanistan. As with the other members of the international community, Afghanistan presents a test to the INCB's capacity to respond effectively to contemporary drug problems. Should the Board fail in its mission to grasp the true scale of the Afghan problem, serious consideration should be given to a reform process.

⁵⁰ INCB, Annual Report. 2003. Vienna

4.2.5 World Health Organisation (WHO)

The WHO has been working with its partners, including the Afghan Ministry of Public Health and international health organisations, to provide essential medicines and supplies to Afghanistan. WHO has released a profile for each communicable disease found in the region as well as information on treatment protocols.⁵¹

Following a preliminary assessment of the pharmaceutical sector in Afghanistan, the Afghanistan Essential Medicines Action Programme (AEMAP) was launched in January 2002. With others, it initiated the process of updating the national list of essential medicines and evaluating the overall needs of Afghanistan in the pharmaceutical sector, and is involved in building national capacity of the pharmaceutical sector through the organisation of training courses and conferences.⁵²

Also, in response to the increase in cholera cases in spring-summer 2005, the WHO is assisting the Ministry of Health to administer its control measures and has provided the latter with cholera kits for case management.⁵³ Likewise, following the diphtheria outbreak in 2003, the WHO, together with other international organisations, assisted the Ministry of Public Health in the implementation of control activities, in the provision of drugs, antitoxin and vaccine supplies and in the provision of technical and logistic support.⁵⁴

An opium licensing scheme for essential medicines is highly relevant to the WHO's strong commitment to responding to worldwide demand for pain relief medication. The expertise of the WHO in the classification and access to opium-based products is of direct relevance to an opium licensing scheme in Afghanistan. The WHO could work with the Afghan government to facilitate the adequate access of public health institutions in Afghanistan to opium-based products. In a second phase, the WHO could

⁵¹ WHO Special Report, Central Asia Crisis Unit, 29 October 2001

⁵² Essential Drugs in Brief, No.7, July 2002

⁵³ Cholera in Afghanistan, Communicable Disease Surveillance & Response, WHO, 21 June 2005

http://www.who.int/csr/don/2005_06_21/en/index.html

⁵⁴ Diphtheria in Afghanistan, Communicable Disease Surveillance & Response, WHO, 29 August 2003

http://www.who.int/csr/don/2003_08_29/en/index.html

play a similar role, but for adequate access in countries with particularly acute needs in pain relief medication.

Conclusions and recommendations

A new drug policy mix must be placed at the centre of the reconstruction agenda for Afghanistan. To fight the heroin trade effectively without undermining the fragile rural equilibrium is the challenge the Afghan Government and its international partners now face with increasing urgency. There can be little doubt that opium is the determining factor for Afghanistan's road to recovery.

To be effective, the drug policy mix in Afghanistan must broaden its scope to integrate innovative economic development measures. Afghanistan needs both law enforcement and economic development measures to tackle its illegal heroin problem; one without the other will result in an ineffective and dangerous response. The opium licensing system provides both a macro and micro economic answer to the heroin trafficking problem, whilst being complementary with law enforcement and alternative livelihood efforts.

This study has indicated two guiding principles for the effective development of an opium control system in Afghanistan: adjustment to local circumstances and communities and full disclosure of the operations of the worldwide opium market.

Such a process can only be pursued with the support of international stakeholders. Financial and operational supports, together with political will, are all necessary to build a consensus on the process of implementation of opium licensing. All stakeholders, ranging from regional groups, major donor countries and multilateral institutions, must share in the view that Afghanistan is in an exceptional situation which requires fresh thinking and innovative solutions.

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Contribution of Law Enforcement to the Implementation of an Opium Licensing System in Afghanistan

Executive Summary

Licensed Opium Control and the Rule of Law in Afghanistan

Control and enforcement measures at the core of an opium licensing scheme

Strict control, monitoring and law-enforcement mechanisms form the core of a licensing scheme for the production of opium for medicine. These mechanisms are aimed at preventing and minimising the diversion of opium grown under license into the heroin market. *As a result, in addition to providing stability and security to a licensed opium production system, these law-enforcement and control systems will contribute to containing and ultimately reducing the scale of the illegal heroin market.*

The challenge of Law and Order in post-conflict Afghanistan

The international community has provided substantial financial and political support to Afghanistan in recent years. This support has largely contributed to the building of the democratic institutions on which a state based on the rule of law rests. Nevertheless, governance is still in the early stages of development. Central government still lacks a strong presence at the provincial and local levels. The judiciary system has a limited capacity and the North/South political fragmentation remains strong. These different trends reveal that the establishment of the rule of law in Afghanistan is severely undermined. The continued presence of warlords and the control of large areas by regional powerbrokers combined with the rapid growth of illegal opium production pose a direct threat to the country's security and development. *The establishment of effective and respected rule of law and building a strong, respected and effective state with adequate enforcement capacity and control in all of its provinces are prerequisites for Afghanistan's future.*

Building a targeted, control and monitoring system to secure opium licensing activities and reduce the scale of the illegal heroin trade

An opium licensing framework requires the development of a targeted law-enforcement and control system. As such, it sets a more feasible task to police and judicial forces than the task of general law enforcement in the country. The mission of police forces, particularly the Counter-Narcotic Police of Afghanistan, could be broadened to include monitoring and control for the production of opium for medicines. *Opium licensing will help phase out part of the illegal heroin market, thus making possible the re-allocation of a portion of eradication funds to opium licensing control and monitoring.* A special seasonal control force would complement already existing capacity in time of harvest, to mitigate higher risk of diversion.

Creating collaborating relationships between police and farmers

The need to adapt current law enforcement capacity to perform the task of monitoring licensed opium production has favourable consequences on different levels. First, by giving a new, more positive targeted mission for police forces, opium licensing will contribute to the incremental development of Law and Order in Afghanistan. *A second vital aspect is that by creating more collaborative relationships between police and farmers, opium licensing will contribute to favourably shifting perceptions of the Central Government in rural communities: ultimately, the bonds of trust between the central government and rural communities could be reinforced.* Conditions will thus be created for access and control of the central authorities in regions of the country that are yet to come under the control of the government. This will also allow for a more cooperative stance from the local, traditional power holders in the task of strengthening the rule of law.

Finally, a successful enforcement system for opium licensing must be based on a mix of formal and traditional forms of governance and social control.

As a rural development strategy, opium licensing must be fully accepted by rural communities. The international community, particularly the NATO-led Provisional Reconstruction Teams, could support the early consolidation efforts of the licensing scheme.

Contributing to the establishment of the rule of law in Afghanistan

Different actions will be part of the formulation and implementation of effective control and monitoring mechanisms for licensed opium production in Afghanistan:

- Review the re-allocation of eradication funds for the development of a targeted control force for licensed opium;
- Appoint one or more police bodies to oversee the system of licensed production – this could be supplemented with ad hoc seasonal forces to strengthen control during harvesting periods;
- Consider the role of international security and reconstruction actors, notably ISAF, in providing strategic support during the early developmental phases of the licensing framework



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1 General overview

1.1 The opium situation and current responses

Afghanistan produces by far the majority of the world's illegal opium; a situation Afghan president Hamid Karzai labelled a “disgrace to his nation,” and promised a “holy war” against the opium trade¹. The chosen approach in fighting this holy war relies on a mix of eradication and traditional alternative livelihoods programmes, supported by leading members of the international community, including the United States. Regrettably, this policy has not produced significant results, and the repressive policies bring with them undesirable social consequences.

*Some independent observers note that “the counter narcotics efforts to date of the Government and the international community can only be seen as a failure.”*² Since 2002, the international community has attempted to develop a range of different

¹ “Just as our people fought a holy war against the Soviets, *so we will wage jihad against poppies*”. See Washington Post, *Karzai Urges War on Opium Trade*, 9 December 2004.

² Afghanistan Research and Evaluation Unit – Michael Bhatia, Kevin Lanigan and Philip Wilkinson, *Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan*, p. 18.

responses to heroin economy problem. Serious considerations were even given by the US Administration on a US-backed 'Plan Colombia-style' war on drugs.

Despite their possible local, long term benefits, alternative livelihood projects have not had a significant impact on the opium problem. Development experts agree that what Afghanistan needs is a systemic rural economic development plan to tackle the scale of the illegal opium economy. Significantly the Counter-Narcotics Implementation Plan adopted in 2005 by the Afghan Government does not establish any link between opium licensing and any of its eight pillars.³

1.2 A new solution to the opium crisis: the need for an effective enforcement and control system

The main concern related to an opium licensing is with the risk of diversion into the heroin market. The primary source of diversion could originate from the licensed farmers who could withhold some of the opium production in a good agricultural year or in the case where they have, for any other reason, a very productive crop. Leakage could also come from field workers (who have historically been paid with a share of the opium production by the farmer) or simply illegally withdraw some of the opium's crop during the harvest. Finally, although not exclusively, the diversion could result from organized terrorist or criminal activities, such as the hijacking of the opium's means of transport, theft of opium, the simple cultivation of opium in fields other than those licensed or even the harvesting of opium before the intervention of a specialized control and monitoring team. Individual or organized acts to discredit or boycott the opium licensing system could also be possible, namely when made by influential persons such as warlords or drug smugglers of any kind.

³ The eight pillars of the 1384 (2005) Counter Narcotics Implementation Plan are: building institutions; information campaigns; alternative livelihoods; interdiction and law enforcement; criminal justice; eradication; demand reduction and treatment of addicts; and regional cooperation.

The possibility of opium diversion can, in fact, only be totally known if a permanent assessment and study is made in the whole licensed area and proper surveillance of the other cultivated areas is established.

The opium licensing system has to rely on an effective law enforcement scheme in order to prevent opium production diversion and for the correct functioning of a licensing initiative. Therefore the law enforcement system will be the first layer of “protection” for a licensed opium industry.

This section will address Afghanistan’s basic legal framework, the general status of law enforcement in Afghanistan, and the role of the different authorities and agencies in the country. The chapter will also look at the possibility that licensed opium could be diverted, and will address the main foreseeable problems in reinforcing the rule of law. The proposed solutions and recommendations are based on factual findings and on reliable, independent literature.

It is noted that the task of *enforcing* a legal system is a very challenging, because in Afghanistan the legal system “does not even exist on paper.”⁴ The existing constitutional and statutory laws seem to have only ever played a minor role in the administration of justice. The formal legal system established by the Constitution does not represent the *de facto* norms generally applied in Afghanistan, and as such, written law has limited impact. This situation means that a licensing scheme must integrate the informal social control practices at play in rural communities as a pre-condition to develop an effective enforcement system.

⁴ International Commission of Jurists – Martin Lau, *Afghanistan’s Legal System and its compatibility with International Human Rights Standards*, p. 5.

1.3 The legal background to opium licensing

Given its widespread rule and influence, Islamic Law is the first source to be evaluated with regard to opium cultivation and the controls necessary to make a licensing system effective. Additionally, attention shall be given to the Afghan Constitution and national laws.

1.4 *Shari'a* law

Islam is clearly more than a religion or a belief. It is a civilisation and also a legal system known as the *Shari'a* or *Fiqh Law*. It is generally acknowledged in the Islamic Republic of Afghanistan that this is a “law from God”, and as such it overrides any other law, codified or not.⁵

Both point 1 of the preamble and Article 1 of the Afghan Constitution expressly state that “Afghanistan is an Islamic Republic,” and Article 2 states that “The religion of the state ... is the sacred religion of Islam.” As such, Islam is the starting point of all legal order in Afghanistan, and it is expressly stated in Article 3 that: “no law can be contrary to the beliefs and provisions of the sacred religion of Islam”. Religion plays a supra-legal role and is the basis of an Islam-based State in the 21st century.⁶

⁵ See Inocência Galvão Telles, *Introdução ao Estudo do Direito – vol. II.*, p. 237; José de Oliveira Ascensão, *O Direito – Introdução e Teoria Geral*, p. 150; Carlos Ferreira de Almeida, *Direitos Islâmicos e “Direitos Cristãos”*, p. 717, 743; Ian Edge (ed.), *Islamic Law and Legal Theory*, p. xvii; Majid Khadduri, *Nature and Sources of Islamic Law* p. 90 and Jamila Hussain, *Islamic Law and Society – An Introduction*, p. 8, 26

⁶ Other manifestations of the Islamic influence on the constitutional text can be found in Article 19 paragraph 4, Article 23, Article 35 paragraph 2, Article 45, Article 54 paragraph 2, Article 62 paragraph 1, Article 63, Article 74, Article 116 paragraphs 1 and 3, Article 118, Article 119 and Article 149.

Further, the *Hanafi* school of the *Shari'a* or *Sunni* “folk Islam,” together with the local customary laws, reflect the cultural, social and economic realities of everyday life for the overwhelming majority of the people of Afghanistan⁷.

Considered by many to have a supra-constitutional role, *Shari'a* means the “path to follow” or the “way to a watering place”.⁸ In legal terms, the *Shari'a* is codified in the holy book of *Quran*,⁹ and the *Hadith* or *Sunnah* which interprets the words, statements, actions and deeds of the divinely guided Prophet Mohammad.¹⁰ The interpretation of these sources results in secondary sources – *Qiyas*, or analogical reasoning, and *Ijma*, which are the unanimous agreements of Islamic jurists on various rulings.¹¹ Other minor sources, relating to custom, equity and legal logic, can also be considered¹² when interpreting Islamic law.

On one side, the interdiction of opium for heroin is grounded in the same principles that guide Islam: those who do harm to oneself and to the society shall be condemned.¹³ However the cultivation of opium can be covered by the *Quran's* statement that ‘whatever grows on earth, and is cultivated and watered on earth, is necessary.’ This *Quran* statement would preclude the punishment of farmers, although it is clear that the trafficking and use of opium cannot be tolerated by Islam. Though this will depend on

⁷ Ali Wardak, *Building a post-war justice system in Afghanistan* p. 324; Chris Johnson, William Maley, Alexander Thier and Ali Wardak, *Afghanistan's political and constitutional development*, p. 31.

⁸ See Carlos Ferreira de Almeida, *Direitos Islâmicos e “Direitos Cristãos”*, p. 717; Ian Edge (ed.), *Islamic Law and Legal Theory*, p. xvi; Majid Khadduri, *Nature and Sources of Islamic Law* p. 91; Jamila Hussain, *Islamic Law and Society – An Introduction*, p. 26 and Ali Wardak, *Building a post-war justice system in Afghanistan* p. 323.

⁹ See John Burton, *The Collection of the Qur'an*, p. 111 in *Quran's generic comprehension*.

¹⁰ The relevance of these sources can be followed in A. J. Wensick, *The Importance of Tradition for the Study of Islam*, p. 133 and Joseph Schacht, *A Revaluation of Islamic Traditions*, p. 141.

¹¹ See Lawrence Rosen, *The Justice of Islam – Comparative Perspectives on Islamic Law and Society*, p. 32, 52; Georges F. Hourani, *The Basis of Authority of Consensus in Sunnite Islam*, p. 155 and Wael B. Hallaq, *Non-Analogical Arguments in Sunni Juridical Qiyas*, p. 202-205.

¹² See Carlos Ferreira de Almeida, *Direitos Islâmicos e “Direitos Cristãos”*, p. 719; Noel James Coulson, *Muslim Custom and Case-Law*, p. 259 and John Makdisi, *Legal Logic and Equity in Islamic Law*, p. 229.

¹³ Although an analogy with alcohol consumption, which is considered a “*hudut* crime” – with a specific meaning and punishment in the *Quran* as a limit that God himself imposed on human personal behaviour – can not be considered. See Jamila Hussain, *Islamic Law and Society – An Introduction*, p. 134, 136 in considering that the “prohibition applies with equal force to drugs and other intoxicants of whatever kind”.

the purpose for which it is used. Additionally, it is stated that opium cultivation cannot be forbidden if it is proven that the opium is used only for medicinal purposes, namely the production of morphine, codeine and other substances which are used to relieve pain.

Under this final interpretation, the *Fatwa* forbidding the production of opium, issued by the Afghan *Jami'at -al- Ulama* (National Council of Ulema) and widely publicised at the mosques,¹⁴ could be interpreted as not forbidding opium production for the general (medical) benefit of humans.

1.5 Constitutional provisions

In the Constitution adopted by the Grand Council on 4 January 2004, there are many relevant provisions regarding the rule of law, and some which specifically address the drug control issue. One of the most significant provisions is in Article 7, paragraph 2 which states that “The state prevents all types of terrorist activities, *production and consumption of intoxicants (muskirat), production and smuggling of narcotics*”. This provision reflects the international community’s twin concerns on the threat of terrorism and drug abuse. The establishment of a distinction between muskirat and narcotics is necessary here. This distinction appears to rely on the effects of these substances, namely the uninhibited behaviour caused by intoxicants, such as alcohol, in comparison with the calm state produced by narcotics, such as opium or cannabis. It is relevant to note that, normatively, the Afghan Constitution treats alcohol and opium in an identical manner, except concerning consumption. In fact, the Constitution discourages the consumption of intoxicants but not narcotics. This may be an indicator of a stricter treatment of alcohol than drugs, in agreement with Islamic values that in general totally forbid the consumption of alcohol. In addition, the Constitution should be read together with Shari’a law tenets and the current domestic law regime.

¹⁴ This is mainly a society of Islamic scholars or jurists (See Ali Wardak, *Building a post-war justice system in Afghanistan* p. 333).

For the purposes of this section, this overriding importance of Islamic law shall be interpreted together with the State's responsibility, under Article 14 paragraph 1, to “design and implement within its financial resources effective programmes for the development of agriculture.” This last provision lays the ground for the implementation of a rural development strategy which could promote the development of opium licensing.

The principle of the rule of law is expressly stated in point 8 of the Constitutional Preamble, and is the subject of Article 56. According to paragraph 1 of this Article, “observing the provisions of the Constitution, obeying the laws, adhering to public law and order are the duties of all people of Afghanistan”, while paragraph 2 elaborates that “ignorance about the provisions of the law is not considered an excuse”¹⁵.

The rule of law is once again mentioned in paragraph 1 of Article 130, which obliges courts to “apply the provisions of the Constitution and other laws”, while paragraph 2 allows for *Hanafi* jurisprudence, where the former is inapplicable¹⁶. According to Article 131, *Shi'a* Law is not only applicable to personal matters involving *Shia* Muslims but also as *Hanafi* jurisprudence when no clarification exists by the constitution or by other laws¹⁷.

¹⁵ The same principles are applicable to foreigners as states Article 57 paragraph 2.

¹⁶ *Hanafi* jurisprudence is strictly related with the Sunni Muslims, which according to the CIA World Fact Book represent 80% of the Afghan population, while *Shi'a* Muslims amount to 19% (see www.cia.gov/cia/publications/factbook/geos/af.html).

¹⁷ Although it would seem that the extension of *Shi'a* Law is superior to the *Hanafi* jurisprudence in reality they have similar extension. On the other hand, the pyramidal normative hierarchy structure based on the country Constitution proves to be false in Afghanistan, as *Shari'a* Law occupies the main place among all accepted legal sources (regarding in general the coexistence and duality between *Shari'a* and written law in Islamic legal systems see Carlos Ferreira de Almeida, *Direitos Islâmicos e “Direitos Cristãos”*, p. 734).

1.6 National law

The relevance of *national law* in Afghanistan can not be compared with the fundamental role it assumes in western societies. However, despite widespread non-adherence and ignorance of its provisions, national law is an element that can not be disregarded, especially in constructing Afghanistan's future. As a result the provisions on Afghanistan's Penal Code and Narcotics Control Law need to be considered.

Afghanistan's 7 October 1976 *Penal Code* clearly defines the parameters concerning the use of narcotic substances. Article 1 is the *Ta'zeeri* crime covered by the *Hodot*, *Qassass* and *Diat* incorporated in *Hanafi* jurisprudence. Article 349 penalizes the use of narcotic substances, as well as alcohol, with "imprisonment of three to six months or cash fine of three to six thousand Afghanis or both punishments". Articles 350 and 351 refer namely to the forcing of another person to use narcotics in spite of his unwillingness to do so and the designation of a place for the use of that substances. However, no direct grounds for the punishment of opium cultivation itself can be found.

A modern *Afghan Narcotics Control Law* was enacted in the 4 November 2003 – Official Gazette n.º 813 – signed by President Hamid Karzai. Among the main objectives of this law, established in Article 2, are the "prevention of poppy and cannabis cultivation", the "prevention of production, processing, trade, import, export, provision, storing, transporting and abuse of drugs", to "encourage farmers to seek alternatives for poppy and cannabis plant cultivation"¹⁸, and the "raise of benefices from other crops" and farmers' "technical and financial support".

The law's first approach, namely in Article 17, addresses the illegal planting of poppy under interdiction. Article 23 states that "those who illegally plant opium should be punished with short or medium imprisonment and the plantations should be immediately destroyed". Articles 24 to 44 address trafficking punishment which can vary according

¹⁸ Afghanistan's President *Hamid Karzai* approved the Alternative Livelihoods Implementation Plan, prepared by the Ministry of Counter Narcotics, on 6 July 2005.

to the amount of illegal opium that is found (50 grams, 1 Kilogram and 10 Kilograms being the critical legal points).

Nevertheless, as stated in Article 11, opium can be used for scientific or medical purposes under strict special conditions of storing issued by the Anti-narcotics Department. Articles 12 and 45 allow for the scientific, medical and educational uses under licences granted by the Ministry of Health.

Articles 7 and 69 are of fundamental importance for the opium licensing project in Afghanistan, stating that “natural and legal persons can plant, produce, process, trade, import, export, store, transport, possess and use opium with *licensing issued by the Minister of Health*”. Licensing for the production of heroin is not permitted.

Regarding law enforcement, paragraph 3 of Article 13 obliges the police and national security forces to help the Ministry of Health to supervise such opium licensing. Article 18 establishes a commission composed of representatives from the Ministries of the Interior, Defence, and Agricultural and Rural Development, as well as representatives from the General Prosecution Office and the Anti-narcotics Special Force. This commission has the task of controlling the plantation in the capital and in the provinces, where there will be under supervision by governors.

1.7 Social aspects of law enforcement efforts

In fact, it is a necessary to examine the true configuration of the Afghan State and, in particular, the existence of *a traditional and historical informal judicial and administrative system* that is at the core of Afghan society.

This is manifested chiefly in rural areas, often partially isolated and lacking in judicial courts, where councils of prominent tribal male elders (*Jirgas* and *Shuras*)¹⁹ resolve conflicts within the community despite the exclusive judicial competence of the Afghan Constitution, as stated in Articles 120 and 122.

This lack of governmental dominance and the maintenance of informal judicial and administrative systems make the establishment of the rule of law a complex task. **Law and order efforts cannot overlook those traditional practices.** The challenge faced by the Central Government is to develop a modern rule of law system whilst integrating more traditional governance.

The “*warlord phenomenon*” represents another challenge in building or re-establishing the rule of law. Some of the warlords and local chiefs are using revenues derived from narcotics to finance their activities, generally by taxing opium crops; this results in increased power and influence²⁰. This local despotic rule²¹ indeed has such power that it overrides the already weak authority of the central government. In this way, in some areas farmers are incited by the local commanders to grow illegal opium poppies. In addition, a paradox resides in the fact that many high ranking officials are warlords and leaders of previous parties,²² undermining the efforts to build an efficient national law enforcement system²³.

¹⁹ Ali Wardak, *Building a post-war justice system in Afghanistan* p. 326; Chris Johnson, William Maley, Alexander Thier and Ali Wardak, *Afghanistan’s political and constitutional development*, p. 33 and International Crisis Group, *Afghanistan: judicial reform and transitional justice*, p. 9.

²⁰ It is argued that “the power and influence of warlords and factional commanders is much greater today than at the beginning of the Bonn process, as the production of opium poppy is exponentially higher and the security situation has deteriorated significantly” (See Afghanistan Research and Evaluation Unit – Michael Bhatia, Kevin Lanigan and Philip Wilkinson, *Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan*, p. 2).

²¹ On the subject of warlords and the economy of war see Chris Johnson, William Maley, Alexander Thier and Ali Wardak, *Afghanistan’s political and constitutional development*, p. 17 stating that “Although President Karzai has reiterated the Taliban’s ban on poppy growing, there is no Afghan security force capable of enforcing this edict, and the *success of the ban therefore relies on the willingness of local warlords to destroy crops and punish growers*”.

²² See Afghanistan Research and Evaluation Unit – Anne Evans, Nick Manning, Yasin Osmani, Anne Tully and Andrew Wilder, *Guide to Government in Afghanistan*, p. 37.

²³ As stated “The greatest obstacle to establishing any kind of accountability for past war crimes and human rights violations is the fact that *many perpetrators continue to wield power either within the Transitional Administration or outside it*” (see International Crisis Group, *Afghanistan: judicial reform and transitional justice*, p. 22).

These factors contribute to the *prominence of a de facto rule*, the “*rule of the gun*” (or, in a more unconventional Afghan term, “*rule of the Kalashnikov*,”) *enforced by high level citizens exercising force by way of threats and intimidation and other forms of pressure, allowing them to systematically remain above the law.*

1.8 Possible social tensions at the early development stage

Social tensions will have to be taken into account at the early development stage of a licensing system. Income generated by licensed opium production will affect medium-level traffickers who remain in possession of considerable economic, armed and political power. Unless there is a serious effort made in addressing this fragment of the Afghan society, where the main opium-to-heroin profits are located, a licensed production system will either not be functional or conflict with the prior illegal heroin production. By re-integrating medium-level operators in a formal opium industry, an amnesty will help mitigate the tensions between organised crime and legitimate actors (see contribution paper on Amnesty scheme).

The remaining, largely opium-financed warlords and local militias will also have a peculiar and problematic role once law enforcement and opium licensing are a reality. If the final goal coincides with their eventual suppression, ignoring them on a short term basis may prove fatal. The effective support, social and functional conversion of these personalities is fundamental (see appendix paper on end to alcohol prohibition).

The Afghan social structure is a defining factor in the implementation of a rule of law. In this sense, *if the achievement of that task will certainly change Afghanistan’s social configuration, Afghanistan’s law enforcement is also dependent on the evolution of Afghanistan’s social basis.* **An effective control and monitoring systems for licensed opium must therefore integrate the complex social forces currently at play in Afghanistan.**

2 Enforcement requirements in the context of opium licensing

The post conflict situation of Afghanistan creates a considerable Law and order task. With the help of international donors - mainly Italy, the US, the UK, the European Commission - the Afghan Government has engaged in nation wide projects to build the capacity of law enforcement and justice institutions. Experts and officials agree that a lot remains to be done²⁴.

Opium licensing requires the development of a control and enforcement system targeted at very specific areas. As such the task is more feasible than the development of a general law enforcement capacity. **Yet it is evident that the creation of an opium control system will also contribute to strengthening the Law and order efforts in Afghanistan.**

The first matter that must be addressed relates to *the efforts to develop an effective governmental dominance and control beyond the capital city of Kabul*. These efforts in fact coexist with more traditional systems of governance, particularly in rural areas. The picture is therefore one of a complex governance system where the modern rule of law is juxtaposed with more traditional practices. The plan to develop enforcement and control capacity for opium licensing must therefore take this multi-level system of governance into account.

On another, structural level, *the task of construction or reconstruction of a fair, operative and functional judicial system has still to be accomplished*²⁵. With Italy leading the international judicial reconstruction efforts, Afghanistan is engaged in the daunting task of building a single, country wide judicial system²⁶. As with enforcement capacity building, the current justice system is still in an early development stage and faces the challenge of integrating traditional, informal justice practices.

²⁴ See for example, A Government / International Agency Report. Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward. March 17, 2004

²⁵ The Formal Afghan justice system has been observed as "*elitist, corrupt and involving long delays*" (see Ali Wardak, *Building a post-war justice system in Afghanistan* p. 320).

²⁶ See for example United States Institute for Peace, *Establishing the rule of law in Afghanistan* p. 5 and Ali Wardak, *Building a post-war justice system in Afghanistan* p. 328.

2.1 The role of the different authorities and organizations

With the *fragmentation of governmental and non governmental organisations* that are currently operating in Afghanistan, whose scope of activities may overlap with the diverse issues that law enforcement raises, it is vital to take into account the above points into any plan of action for opium licensing.

The first element that will be considered is Afghanistan's main law enforcement agency, the Police Force, and the guidelines on which their work is based, drafted by the Ministry of the Interior and the Counter Narcotics Ministry²⁷. It will then be necessary to address Afghanistan's judicial branch and Attorney's Office, the Afghanistan Lawyers' Association, Islamic religious leaders, the ISAF (International Security Assistance Force) and the other neighbour sovereign States.

2.2 Police force possible areas of contributions

Although not all of them are fully operational, the five main *police forces* that could play a role in diversion control will be considered: the Afghanistan National Police, the Afghanistan Border Police, the Afghanistan Customs Police, the Counter Narcotics Police of Afghanistan and the Afghan Narcotics Special Force (the so-called *Force 333*).

According to estimates, in 2003 there were a total of 69,427 policemen, of which 21,935 were based in Kabul and 47,492 in the provinces²⁸.

²⁷ A new Cabinet Sub-Committee on Counter Narcotics was recently created with the participation of key line Ministries including the Ministers for Counter Narcotics, Finance, Rural Development, Agriculture, Public Works and the Deputy Interior Minister for Counter Narcotics.

²⁸ The figures quoted in the text were collected by Afghanistan Research and Evaluation Unit – Anne Evans, Nick Manning, Yasin Osmani, Anne Tully and Andrew Wilder, *Guide to Government in Afghanistan*, p. 39. In other part of their work (p. 65) the same authors inform that the total number of police might be around 75 000.

Afghanistan's police are regarded by observers not only as still being at a developing stage, but also as operating on different terms from western police forces. For example, evidence that many members of the force take part in other employment activities²⁹ speaks to a model of police entrenched in traditional social systems and practices.

Consequently, the proposal that this same police force will be responsible for monitoring opium poppy fields to prevent diversion must take into account the complexity of social custom in Afghanistan. This reasoning also applies to the Afghanistan National Police, the Afghanistan Border Police and the Afghanistan Customs Police.

The **Counter Narcotics Police of Afghanistan (CNPA)** is a newly created force³⁰ of about 500 officers planned to expand to 750 officers, which is not only dedicated to the eradication of opium plantations, (a general task concerning all police forces,) but is also responsible for investigating drug trafficking in Afghanistan. The CNPA includes a National Interdiction Unit. Linked to CNPA there is a Counter Narcotics Fusion Cell which has been operational since early 2005. This institutional structure raises the question of the possible *resource reallocation of this Police to the task of control, monitoring and avoidance of leakage in licensed opium fields*. This could quite simply be financed by the funds currently allocated to eradication efforts.

This reallocation of policing efforts is certainly not impossible, and depends mainly on political will. In any case, the Counter Narcotics Police should not be used exclusively in the prevention of the diversion into illegal market.

The **Afghan Narcotics Special Force** ('Force 333'), established in early 2004 with British special forces' backing, has the specialized task of investigating and tackling major drug trafficking in Afghanistan. The question of resource reallocating could also

²⁹ United States Institute for Peace, *Establishing the rule of law in Afghanistan* p. 11 states that "police ... are generally regarded with a mixture of fear and disdain".

³⁰ There are reports of expansion to 750 officers by the end of 2005 (See Afghanistan's Cabinet Committee on Counter Narcotics, *The 1384 Progress against Counter Narcotics Implementation Plan*, p. 12).

be raised. The Force's main focus on interdiction efforts will indirectly contribute to reinforcing a licensed opium system. Furthermore, the size and structure of this force may not match the increasing control and monitoring necessitated by the deployment of an opium licensing system.

Without proper training in the area of drug enforcement, the army should not have any responsibility in monitoring the licensed production of opium.

A temporary solution for having law enforcement in an Afghan licensed opium production scheme while the major law enforcement agencies are not ready for assuming the role of monitoring and controlling the running of that project can be the creation of a necessarily well paid, skilled and equipped seasonal special task force assigned only in the opium harvest time. The status of this agency would have to be clearly defined in law and within the community. The costs should not be neglected but could be partly supported by tax revenues generated by downstream processing and distribution of licensed opium activities.

2.3 The Judicial branch

The judicial branch is important, although it does not yet perform a decisive and immediate role in the prevention of diversion of opium into the illegal economy. This branch, which is on the last level of intervention to counter narcotics, would have little influence on the ground diversion that, at least at the start of the opium licensing programme, could occur.

The *Afghanistan Judicial Branch* has in the Supreme Court (*Stera Mahkama*), an independent organ of the State of the Islamic Republic, its highest organ, which commands all the judicial administrative structure³¹.

³¹ See Article 116 paragraphs 1 to 3 of the Afghan Constitution.

The “*Saranwali*” public prosecutor’s office has the duty to conduct investigations and prosecutions, being part of the Executive branch but independent in his affairs, according to Article 134 of the Afghan Constitution.

With this order of ideas, a programme of legally licensing opium production, insofar as that it contributes to the creation of an environment of legality and law enforcement, may indirectly influence the consolidation of the judicial branch. In addition, the effectiveness of court procedures and punitive measures will generally contribute to the achievement of general and special prevention, two of the main purposes of criminal justice. It will be a very important manifestation of Afghanistan’s transition to a stable situation.

2.4 Benefits of reallocation of enforcement and judicial capacity

The need to adapt current law enforcement capacity to perform the task of monitoring licensed opium production has favourable consequences on different levels. First, by giving a new, targeted mission for police forces, opium licensing will contribute to the incremental development of law and order in Afghanistan. A second important result is that by creating more collaborative relationships between police and farmers, opium licensing will contribute to shift perceptions in rural communities of the Central Government. Ultimately, the bonds of trust between the central government and rural communities could be reinforced. In this way conditions will be created for access and control on behalf of the central power in regions of the country that are yet to come under the control of the government. This dynamic will also allow for a more cooperative stance from the local powers in the task of strengthening the rule of law.

Finally, a successful enforcement system for opium licensing must be based on both formal and traditional forms of governance and social control. As a rural development strategy, opium licensing must build solid acceptance within rural communities. More particularly, the support of local religious leaders as a conduit for

the licensed opium system is crucial building the building of this social acceptance (see the analysis on Social Implementation Issues).

2.5 International security assistance

Created by authorisation of the United Nations Security Council and deployed in January 2002, ISAF (the International Security Assistance Force), which numbers 8,000 troops, is not directly involved in counter narcotics activities. The fight against illegal opium production was not considered a priority in the early days of the international coalition's intervention. From 2004 this perspective seems to have changed, seeing more evident efforts on the British side in charge of coordinating the fight against narcotics, and from other states, especially the USA and international organizations. There is also demand for the coalition military forces to perform limited law enforcement functions until the Afghan police and law enforcement capacities come into play³².

In this context, ISAF could optimise its assistance and support role to counter-narcotic efforts by playing the role of tutor in the early implementation of a licensed opium control system. More particularly, Provisional Reconstruction Teams (PRTs) could share with local actors their extensive expertise in local reconstruction to help develop effective local control and monitoring systems. Moreover, the trust PRTs are progressively building with rural communities could benefit the acceptance of control and monitoring measures among local populations.

This broadening of NATO's mission is crucial. In fact, the strong financial and logistical commitment on the part of the international community as a whole, especially ISAF, could be helpful to the development, in its early stage, of a solid opium licensing enterprise.

³² See United States Institute for Peace, *Establishing the rule of law in Afghanistan*, p. 17.

2.6 Conclusion

The task of controlling, monitoring and avoiding opium diversion from the licensed poppy fields could, as a first option, be assigned to Counter Narcotics Police or eventually the Afghan Special Narcotics Force (Force 333), provided its independence from warlords, militia leaders, political and economic influence is granted, together with fair wages, functional control equipment and a sufficient number of officials.

If the accomplishment of these requirements proves not to be unfeasible in the near future due to difficulties in resource reallocation of the Counter Narcotics Police or the Afghan Narcotics Special Force, more ad hoc, complementary solutions should be discussed, such as using a seasonal control and monitoring force during times of harvest.

Approval of local governors, commanders and religious leaders would play an essential role in the system's effectiveness, together with the general Afghan citizen's comprehension and acknowledgement of the new opium production system.

There must be a permanent evaluation of the system, the results of which will play a decisive role in its own implementation.

2.7 Mitigating the risk of diversion

The possibility of opium diversion using the licensing system must be addressed with the knowledge that this diversion can undermine the basis of the whole system and stand as the main argument against it.

The complex issue of diversion prevention demands a proper law enforcement framework based either on the police forces or the seasonal special task force mentioned above and on the judicial branch but also on the involvement of local governors, commanders and religious leaders.

However, *other measures* should be enforced together with the basic framework of what would be a comprehensive legal enforcement system. First, the annual crop estimative must be as accurate as possible regarding weather, irrigation and other agricultural conditions. The farmers should also receive a previous payment guarantee in order to prevent them from committing or engaging in any criminal activity. The field workers should also be searched by the control specialized teams entering and leaving the poppy field or poppy area. They should receive their wages always at the end of the engaged activities and without any lapse of time whatsoever.

With the gradual improvement of Afghanistan's global infrastructure, the other leakage activities will be residual or even a marginal phenomenon.

Of course, diversion from an opium-based agricultural system will be very difficult to fully eliminate. But from the point of view of the rule of law and law enforcement it is clearly preferable to have a system based on licensed opium production, with some flaws and some deflections for the illegal market, than having a system entirely out of control that only produces for the heroin market and threatens the very foundations of the State, the international community's efforts, leaves the local communities in the hands of warlords, commanders, dealers and terrorists and supplies markets with heroin. It is better to have a legally licensed opium production that constitutes a solid and sustainable economic base for the State and farmers, than to have a completely parallel economy, which benefits essentially drug traffickers and dealers.

2.8 The implications of reinforcing the rule of law and law enforcement

The effective reinforcement of the rule of law and law enforcement induced by a programme of opium production licensing and by the correlated eradication of illegal cultivation will have a wide range of consequences. Some of them can not be totally anticipated at the present moment. Law enforcement is certainly the key factor for bringing an end to the vicious circle that exists between warlords, opium production,

and the absence of security³³. Eliminating or weakening the first, controlling and licensing the second, strengthen security and creating a modern State in Afghanistan are closely interconnected goals.

The reinforcement of the rule of law in a licensing system will also reduce the population's lack of trust in the police and other governmental forces. Within that system, central government and police forces will be seen as partners in a common project not as enemies. This will lay the ground for a new approach to local community relations and bonds with the State authorities.

At another level, opium licensing will facilitate the establishment of an innovative economic partnership between farmers and governmental authorities as they are given sustainable alternative livelihoods and the State will be perceived as less remote from people's economic preoccupations³⁴.

In the end, law enforcement in a licensing scheme can contribute, although necessarily aggregated with other structural measures³⁵, to generalized economic growth and rural development which can initiate a 'prosperous circle' to meet the country's needs for recovery.

Finally, as public awareness of fundamental linkages between drug money and terrorist networks becomes evident³⁶, law enforcement in Afghanistan would close one of its main doors and restore confidence on the country's capacity to face security challenges.

³³ World Bank – William Bird and Christopher Ward, *Drugs and development in Afghanistan*, p. 17.

³⁴ Not surprisingly, although in another context, Jos Silvis and Katherine S. Williams, *Managing the Drug Problem: Tolerance or Prohibition*, p. 170 refer that the creation of real jobs is more relevant than "either treatment or law enforcement".

³⁵ World Bank – William Bird and Christopher Ward, *Drugs and development in Afghanistan*, p. 21.

³⁶ See James Overton, *Interpol's Perspective on International Terrorism and Drug Trafficking*, p. 5; Peter A. Lupsha, *The role of Drugs and Drug Trafficking in the Invisible Wars*, p. 16 and Douglas J. Davids, *Narco-Terrorism – A unified strategy to fight a growing terrorist menace*, p. xiii, 32.

Concluding remarks and recommendations

In contrast with the present illegal opium production, the opium licensing project aims not only to provide a solution that can be acceptable under reasonable moral and legal standards but also to eliminate all kind of disruptive heroin profits and create alternative livelihoods for the rural communities.

An opium licensing programme would encourage the creation of an economic alternative to the current illegal production. The farmers would have access to alternative livelihoods that they would not enjoy if pure and simple eradication were carried out. The programme could generate new partnerships between the farmers and the government. It would create better conditions for law enforcement to develop its capacity.

Licensing opium production supposes the fulfilment of certain operational and institutional conditions, particularly at the law enforcement level. Therefore the project should have a strong component of capacity building at the level of law enforcement structures as well as the support for the creation of better coordination conditions, the clarification of missions, articulation among the different components and clarification of command lines.

Ideally, conditions should be created so that the existing law enforcement structures, namely the police forces specifically qualified for the fight against drug trafficking, can carry out the functions of monitoring, surveillance, prevention and suppression of the diversion for the illegal economy. If the decision is taken to launch the opium licensing project immediately and it proves impossible to launch the aforementioned short term structures for these new missions, a transitional control scheme could be created. In both cases, the ISAF can provide an important support role to accompany the early development of control mechanisms.

Though it may prove impossible to fully eliminate the diversion of licensed opium, it is indisputably preferable to have a legal system with small amount of diversion than a

system from which all opium produced is directly introduced into the illegal drugs market.

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Proposal on an Amnesty Scheme in Relation to Implementation of an Opium Licensing System in Afghanistan

Executive Summary

The need for an amnesty scheme to support the shift from illegal to licensed opium

A pragmatic measure through which licensed opium production can be realised

An amnesty scheme which would provide for the re-integration of actors previously engaged in illegal opium production is a vital measure through which licensed opium production can be successfully realised. Any such proposal will have to be compatible with Afghanistan's pre-existing obligations, both in international and domestic law. As an implementing measure, the legality of the scheme is dependent upon the legitimacy of the opium licensing proposals overall; once these obtain the appropriate levels of international and national approval, the legitimacy of the amnesty will be easily recognized. Large-scale pragmatic measures of this sort need to be considered favourably in a fledgling state such as Afghanistan, which needs to bring about drastic shifts in patterns of activity whilst strengthening its law enforcement institutions.

Responding to the Threats Presented by Current Illegal Heroin Production

Overwhelmingly, given the entrenched nature of illegal heroin production and distribution in Afghanistan, the licensing programme and its inbuilt amnesty is a pragmatic solution to the current drug policy crisis. Opium cultivation for heroin is so widespread in Afghanistan, involving actors at all level of society, that comprehensive prosecution or eradication programmes could destabilize the economy and security. This would in turn undermine moves towards good governance, raised expectations of justice and propagation of the rule of law.

Therefore it is necessary to create roles in the new legal framework for the individuals and communities involved in different stages of the activity.

How to Adapt the Amnesty to Conditions in Afghanistan?

The amnesty seeks to accommodate as many illegal actors as possible, defusing the tensions that might otherwise result from the licensing system and the loss of political and financial resources extracted from an illegal opium system. It is clear that a single, strictly controlled amnesty permissible is in accordance with Legal standards – such as the Afghan Constitution, *Shari'a* law, and the international agreements to which Afghanistan is a party – enabling the transition from illegal to licensed opium production. Moreover, it would ultimately result in more success in complying with Afghanistan's wider international law commitments, given the current, relatively unchecked conditions of illegal opium production. In addition, the amnesty process has much in common with traditional Afghan justice mechanisms insofar as it adopts an approach that is restorative rather than retributive. Restorative justice emphasizes the restoration of dignity, peace, and relationships between offenders and victims; providing restitution to victims; and promoting the reintegration of offenders into the community.

An amnesty will intensify efforts to develop the rule of law in Afghanistan

The amnesty scheme presents an opportunity to replace the current *de facto* impunity with a system which permits *de jure* exemptions from prosecution in those instances where it would serve a positive outcome. This would then be followed by the prospect of enhanced enforcement of legislation against illegal heroin, for those not participating in the amnesty process. Rather than detracting from legal institution building, the amnesty will recognise existing Afghan law enforcement structures and help strengthen the rule of law. Legal security will be granted to farmers and other opium producing actors, enabling them to re-engage with the state under a more formal system of governance.

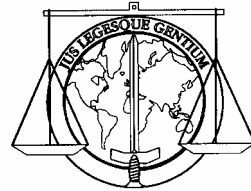
The need to adjust the conditions for the implementation of the amnesty scheme with local circumstances and practices

In the implementation of the amnesty scheme, elements of successful amnesties elsewhere may be applied to the Afghan situation. Different basic elements might be included in amnesty measures, including:

- conditions that might be attached to the amnesty scheme;
- the effect of the amnesty on pending criminal proceedings;
- the institutional and communications implications of implementation;
- circumstances under which the amnesty should not be applied;
- the timings for the amnesty scheme;
- ‘rehabilitation’ of those currently involved in illegal opium production; and subsequent monitoring arrangements.

A final consideration is that the illegal nature of unlicensed, illegal opium production and distribution is a notion that will have to be carefully reinforced as part of the amnesty process. The amnesty scheme should be closely allied to capacity building of current counter narcotics institutions as well as traditional methods of social control.

THE SENLIS COUNCIL
Drug Policy Advisory Forum



**Proposal on an Amnesty Scheme for Shifting to Licensed
Activities relating to Opium Production and Distribution**

Hugo Warner

The British Institute of International and Comparative Law

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Introduction

This section aims at setting out a proposal for an amnesty scheme in Afghanistan as part of the larger proposal through which licensed opium production can be successfully implemented. It sets out the notion of an ‘amnesty’ more generally, examining the proposal’s viability and compatibility with Afghanistan’s pre-existing legal obligations and institutional framework, and makes preliminary proposals on the implementation of the scheme. It shows that the precise sort of amnesty envisaged as part of the licensing scheme is without an exact precedent. It also shows that, as a secondary implementing measure, the legality of such a scheme is largely dependent upon the legitimacy of the opium licensing proposals overall; once these obtain the appropriate levels of international and national approval, the legitimacy of other efforts will be more easily recognized.

1 The Notion of ‘Amnesty’ Generally

Amnesties have long been employed as a means of promoting a political settlement and advancing reconciliation, particularly in societies in the process of emerging from conflict. For these purposes, amnesty can be best described as an act by which an

individual or a group of people is granted immunity from criminal prosecution, and in some cases civil liability, for a crime committed in the past. (There is also the more colloquial usage of the term to apply to the anonymous surrender of goods held illegally, such as firearms or drugs.) They need not be subject-specific, having been employed in many differing contexts.¹ Their common feature is simply that they adopt an approach that is *restorative* rather than *retributive*; their adoption is based on the assumption of the benefits of non-enforcement to be sufficiently strong to warrant circumvention of the normal legal process. As demonstrated by the other contributions to the feasibility study, this trait of the amnesty process has much in common with traditional Afghan justice mechanisms.

The success and legitimacy of an amnesty depends upon a range of factors. Some of these might be cited as:

- 1 Compatibility with existing legislation – both domestic and international.
- 2 Duration and timing.
- 3 The conditions for amnesty (including perceptions of and tensions surrounding the crime(s) in question).
- 4 Communication and publicity.
- 5 Incentives for compliance.
- 6 Internal organisational planning and capacity.

Some of these can be legislated for; others depend upon extra-legal factors, such as whether compliance is financially viable for the subjects of the amnesty, and whether State bodies (both central and regional) are sufficiently strong – and well-trusted – to implement an amnesty and follow it up with appropriate enforcement measures.

Amnesties are typically a matter for domestic law (although their design and implementation may benefit from international assistance). However, the compatibility

¹ Recent examples include immigration (Spain) firearms (Australia, UK), taxation (Germany, South Africa, USA). Their application in a range of more contentious contexts will be mentioned later in this section.

of a nationally-implemented amnesty with the State's international obligations is important for their validity and enforceability. From a legal viewpoint, international rules often oblige States to refrain from granting amnesty for 'international' crimes, or where such amnesty is contrary to their international obligations. Where the crime to which amnesty applies is prohibited under international law, it is doubtful that the amnesty provisions can be upheld.² Indeed, there may be a positive obligation on the state to prosecute the crime in question.

Alternatively, the more recent innovation of a 'truth and reconciliation' commission may be employed – as has been the case in post-Apartheid South Africa, which combines the granting of amnesty under specific conditions with attempts at fact-finding and reconciliation. The compatibility of the proposed amnesty scheme with Afghanistan's international law obligations will be examined below.

Much of the long term success of an amnesty depends upon perceptions of the measures and the crimes to which they apply. Where serious crimes are not met with prosecution, amnesties may represent a failure of the duty to ensure laws are enforced, not least because they can be seen as encouraging rather than discouraging further violation of laws.

2 The Proposed Amnesty Scheme in Afghanistan

As will be seen, the success of the amnesty scheme in Afghanistan depends partially upon the overall acceptance of the programme of licensed opium production. Once this obtains the appropriate levels of international and national approval, the legitimacy of other efforts will be more easily recognized. There are already indications that the conditions in Afghanistan are conducive to the implementation of amnesty measures.

² This has proved to be the case where 'self-imposed' amnesties are intended to confer immunity from violations of human rights, such as in many countries across South America in the second half of the Twentieth Century (Argentina, Brazil, Chile, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Peru, Suriname and Uruguay). Fearful that democratic change might bring accountability for human rights violations, outgoing military regimes have insisted on amnesty laws as a form of insurance against prosecution.

Large-scale pragmatic measures such as a wide scale amnesty scheme discussed here may be considered favourably in a fledgling state such as Afghanistan, which needs to bring about drastic shifts in patterns of activity whilst strengthening its law enforcement institutions.

One example is provided by the Disarmament, Demobilisation, and Reintegration of Ex-Combatants programme, which began in 2003 with the aim of replacing the former armed forces of Afghanistan with a new, professional Afghan National Army.³ This is a conditional amnesty, dependent upon the willingness by individuals allied with various military organisations to lay down their weapons, accept Afghanistan's new constitution, and comply with the decrees of the current government. Almost 63,000 soldiers and officers have entered into the agreement since its inception.

In addition, proposals have already been discussed to grant a large-scale amnesty to drugs traffickers on condition that they divert their funds into Afghan reconstruction.⁴ This has not been followed with any formal arrangements, however, and it is not clear whether such an amnesty would result in long-term positive effects on the heroin trafficking economy. Nonetheless, it does give some indications of a possible role to play for the proposed amnesty scheme within the licensing system.

2.1 Why is an Amnesty Scheme Appropriate?

There are a number of reasons advanced as to why an amnesty should be adopted in the process of shifting Afghanistan towards licensed opium production. ***Overwhelmingly, given the entrenched nature of heroin production and distribution in Afghanistan, the licensing programme and its inbuilt amnesty is the only pragmatic solution to the***

³ An overview of the Programme and its implementing activities can be found at: <http://www.undpanbp.org>. In the space of just over 20 months it has seen 250 units decommissioned, which has included ten corps, with their divisions, brigades and supporting elements. It has also allowed many combatants to trade in their weapons for the chance to build a future in civilian life. This makes the process in Afghanistan among the largest demobilisation efforts completed worldwide.

⁴ See the statements by the minister of rural rehabilitation and development in 'Afghanistan Considers an Amnesty for Drug Lords', *Financial Times*, 11 January 2005

current crisis. Opium cultivation for heroin is so widespread in Afghanistan that a comprehensive prosecution programme could destabilize the economy and security, thus undermining moves towards good governance, raised expectations of justice and propagation of the rule of law. Therefore it is necessary to create roles in the new legal framework for the individuals and communities involved in different stages of the activity.

The arguments for the amnesty scheme, as part of the overall licensing system, may be summarised as follows:

- 1 The amnesty itself will form part of the incentive to shift from illegal to legal cultivation.** Although there are varying perceptions of the criminal nature of opium production and distribution for heroin amongst Afghans - which mean that it attracts less stigma (see below) – there is still evidence to suggest that the transition to a licensed system of production is a desirable one for those currently involved in illegal activities.
- 2 The amnesty can be a response to the needs of justice, stability and economic development,** insofar as it is a necessary element of the licensing programme, and insofar as its execution is concurrent with capacity building for legal institutions. If implemented effectively and taking into account the recommendations made below, the amnesty will offer a chance of re-engagement with the state. The amnesty process will be one of consolidation and transition – a preferable alternative to an immediate shift to licensed production.
- 3 Rather than detracting from legal institution building, the amnesty will recognise existing Afghan law enforcement structures and help strengthen the rule of law.** It will consolidate current expertise in opium cultivation and, by granting amnesty to a number of specified categories of people, it will respect community structures and social control systems.

- 4 The proposed amnesty scheme will ensure a continuous pattern of activity, but with greater legitimacy of outcome.** It will be integral to the provision of a short-term transitional solution to the opium crisis affecting Afghanistan's redevelopment. In so doing, it may help provide a response to the demand-supply imbalance affecting opium-based medicine.

However, the amnesty cannot be realised in isolation; it requires substantial development of the existing law enforcement structures – the amnesty must form a carefully delineated exception to an otherwise rigorous justice system. The amnesty scheme would replace the current *de facto* impunity with a system which permits *de jure* exemptions from prosecution in those instances where it would serve a positive outcome. This would then be followed by the prospect of enhanced enforcement of counter-narcotics legislation, for those not participating in the amnesty process.

3 Possible Forms of Amnesty

Amnesties can be said to fall into one of two categories: 'general' and 'conditional', both described below. This division reflects not to whom the amnesty is to apply, but the terms on which it is granted.

3.1 General Amnesty

A 'general' or 'blanket' amnesty refers to amnesty given to groups of individuals, usually covering all crimes committed during a specific period of time. These are often granted by governments in post-conflict or post-authoritarian transitions to members of specific institutions, for crimes committed during the relevant period.

3.2 Conditional Amnesty

Amnesty may alternatively be granted upon fulfilment of one or a number of conditions. This differs from a general amnesty in that individual responsibility must be determined. Often the result is that the process is made more complex and is likely to be more protracted as individual cases are examined.

It is probable that in order to promote the transition necessary for a system of licensed opium production such as that envisaged in Afghanistan, a conditional amnesty would be the optimal solution. However, serious consideration should be given to a 'mixed' amnesty scheme. As will be seen below, the proposed amnesty scheme will address a number of different types of criminal activity. The amnesty should be constructed in such a way that it will obtain maximum compliance with its objectives. Therefore it may incorporate elements of both general and conditional amnesty measures, depending on the persons or groups of persons to whom it is being applied.

This said, the amnesty scheme overall would be insufficient if it were simply to apply a general measure of impunity to all past illegal activity in this field. Some undertakings that future production would only be in accordance with the licensing system would have to be given. In addition, information about the location and extent of current opium production would be vital for the granting of licences.

Given the circumstances under which the amnesty is being applied, one might suggest three minimum proposals to be applied in the Afghan context:

- 1 The agreement to cease illegal opium production or distribution (whether in favour of subsequent licensed production or cessation in favour of alternative means of subsistence).
- 2 The surrender of any illegally-produced opium crop or reserves still held, possibly on payment of appropriate compensation.

- 3 Where possible, the provision of relevant information on the extent of opium production, distribution routes and the like, in order that:
 - a. Prosecution post-amnesty of illegal opium producers and distributors be made easier; and
 - b. The proposed licensing system works efficiently, being based upon as accurate a picture as possible of the illegal opium industry in Afghanistan.

It is suggested that discussions in existing proposals to appropriate profits from the illegal trade in opium would be almost impossible to implement, principally because of the difficulties involved in their calculation and the lack of appropriate incentives.

4 Transitions Made in other Opium-Cultivating Countries

The proposed amnesty scheme for Afghanistan is quite unique; none of the countries with a significant history of opium cultivation, and in which there have been measures to reduce or eliminate its production, such as India, Turkey and Thailand, are able to supply examples of amnesty measures adopted. Where an amnesty has not been formally adopted, and where non-prosecution has taken on more of a discretionary character, there are fewer parallels with the Afghan situation.

India's programme was one of unification and rationalization of the production of opium over a ten-year period, commencing with its establishment of the Narcotics Commission in 1950. A ten-year period of phasing out commenced in 1949, with steady consolidation of law enforcement, but there is no indication of an amnesty having been employed.⁵

⁵ See D N Kohli, then Narcotics Commissioner to the Government of India, *The story of narcotics control in India (Opium)* (1966) available at: http://www.unodc.org/unodc/en/bulletin/bulletin_1966-01-01_3_page003.html; and the

In Turkey, opium production was banned in 1971,⁶ followed by a resumption of opium production in 1974 for pharmaceutical purposes only.⁷ Its absolute ban was sustained for two years and followed by a licensed recommencement; there was no transition phase corresponding to the proposed amnesty scheme in this paper.

Thailand, after commencing its opium control project in 1978, gave farmers a four-year interlude in which to end their opium cultivation and find alternative crops. This approach focused primarily on combating heroin processing and trafficking networks, and only penalised the opium farmers when the four-year period had elapsed.⁸ Nevertheless, this ‘grace period’, which was more informal in nature, is not directly analogous to the proposed amnesty scheme. It operated more in the form of a delayed enforcement mechanism, was only partial in its scope (applying only to farmers), and was part of a shift towards eradication rather than sanctioned continuation of opium production.

Other countries, such as Australia, the Czech Republic, France, Hungary and Slovakia, have systems of opium production introduced essentially on a licensed basis for legal commercial purposes. Whilst these countries have much to offer as models for a fully developed licensing system, they cannot be used as complete references for the process of transition represented by the amnesty scheme.

proceedings of the All-India Narcotics Conference, 1956, available at: http://www.unodc.org/unodc/en/bulletin/bulletin_1957-01-01_1_page002.html.

⁶ (26/06/1971, Cabinet Decree 7/2654). This took effect in the autumn of 1972.

⁷ (01/07/1974, Cabinet Decree 7/8522)

⁸ See Reuters, *Thailand's anti-opium drive a model for Afghanistan*, 28 January 2002, interview with Dr Sandro Calvani, UNODC.

5 To whom might Amnesty Measures Apply?

It is necessary to examine the applicability of amnesty measures to actors at all levels of the opium for heroin cultivation, production and distribution chain, on the basis that halting their involvement in illegal activities will help strengthen licensed production. The offences relating to production are dealt with in the New Law on the Classification of Drugs and Precursors, Regulation of the Licit Activities, Drug Related Offences (October 2003), which in Articles 23 and 24 outlaws the producing, processing, selling, buying, importing, exporting, keeping and carrying of illegal drugs. Articles 32 and 33 address the organization and derivation of profit from illegal opium production for heroin. Whilst the amnesty should be phrased in terms of the prohibited acts to which it will apply, some scrutiny of the ‘actors’ in the opium for heroin trade is necessary. This will better delineate the structure of opium for heroin production that the amnesty scheme is being designed to address.

The actors to which the amnesty scheme could apply include:

- 1 **Farmers** who may own their own land or be itinerant labourers who follow the opium harvests around the country.
- 2 **Opium and heroin traffickers** who include a range of actors – from small itinerant buyers to shopkeepers who handle small amounts of opium or heroin on a part-time basis to relatively large wholesalers.
- 3 **Itinerant buyers** who purchase opium or heroin at the farm-gate, buying directly from farmers and perhaps providing advice, inputs, or credit. They may buy forward on commission.
- 4 **Shop owners** in the regional opium and heroin bazaars – who buy from farmers or from itinerant traders. They sell to local consumers, clandestine laboratories, wholesale traders, or foreign traffickers.

- 5 **Bulk buyers** – who buy throughout the year and organize shipments to border areas or directly abroad. This group consists of a small number of large traders, often linked by family ties, who are willing to commit substantial capital.

- 6 **Refinery workers** who manufacture heroin from the opium.

- 7 **Heroin traffickers** – who move the opium or heroin out of the country. These can be individual drug ‘mules’ or professional smugglers.

It should be borne in mind that there are provincial and regional variations in the way the opium and heroin markets are organised, and the fact that workers do not always occupy fixed positions – working as they do for different employers. In some provinces (Badakshan, for example) production is on a very small scale and so amnesty provisions will be easier to implement. In other areas, (Nangarhar, for example), opium is processed into heroin prior to export and so the value chain is more complex. In such cases it may be much harder for an amnesty arrangement to provide an incentive for those higher up the value chain to shift towards legal activities.

There should be an element of consistency in the design and application of amnesty measures to various members of the production and distribution chain. Yet there can be said to be varying degrees of culpability in the process – from the farmer driven to opium cultivation out of opium denominated debt bondage to the ‘drug baron’ closer to the top of the value chain, whose opium-related activities may encompass other criminal acts.

However, providing that those involved in previous illegal activity make appropriate commitments, and are able to act within the new framework of licensed production, it can be argued that amnesty can be granted. Other illegal activities in which they are involved should be dealt with by separate measures, although perhaps concurrently with the amnesty scheme, and using the scheme as a valuable source of information.

The proposed amnesty scheme will only extend to crimes committed in Afghanistan. There can be no guarantee that those traffickers who cross the border into neighbouring countries will not be prosecuted under the drugs laws of those jurisdictions. However, in order to promote participation in the amnesty scheme, there may be a case for extending the amnesty scheme in certain circumstances. This could include the limiting of adherence to extradition requests where the criminal conduct under investigation in the other country is the same as that covered by the amnesty.

5.1 Servants of the State

Having addressed the main participants in the illegal opium economy, there is the additional issue of whether state servants, be they provincial governors, police or others in government benefiting from the proceeds of the drugs trade, should receive some form of exemption from punishment. This might be given in return for information concerning the production and supply of illegal opium products.

However, serious consideration should be given as to whether those employed by the state and tasked with controlling illegal opium production and distribution should not be eligible for the amnesty scheme. The interests of such individuals are served by a weak central government which allows them to participate in the opium business. Such a measure could be more in the nature of a 'self-imposed' amnesty if applied to servants of the State, which is quite contrary to current thinking. It would also serve to detract from ongoing anti-corruption efforts in Afghanistan.

6 Compatibility of the Opium Amnesty Scheme with Afghanistan's Pre-Existing Commitments

The licensing programme and amnesty scheme would be implemented alongside Afghanistan's pre-existing initiatives, such as the Counter Narcotics Directorate's National Drug Control Strategy.⁹ Moreover, there are legal standards – the Afghan Constitution, the requirements of Shari'a law, and the international agreements to which Afghanistan is a party – which require to be examined.

The Afghan Constitution does not give a specific right to amnesty and is silent on the positive obligation to punish criminal offences. However, Article 64 of the Constitution states, among the powers and duties of the president, '[r]educing and pardoning penalties in accordance with law'. This suggests that the act of granting pardon is of a less discretionary nature, although the precise meaning of 'in accordance with law' has yet to be elucidated. It is conceivable that this may be in accordance with models applied elsewhere, whereby the legislature would set out the procedures that the president would have to follow in order to grant amnesty.

Afghanistan's international law obligations concerning opium production are covered by the United Nations Drug Conventions regime, which constitutes the basic international legal framework concerning drug-related issues. This regime comprises the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol; the 1971 Convention on Psychotropic Substances; and the 1988 United Nations Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances. Afghanistan is party to all three UN Drug Conventions, although at the time of writing, it is not yet party to the 1972 Protocol. The licensing system as a whole would need to respect the applicable control regime established by the Convention. By extension, it must be examined whether the proposed amnesty scheme is in accordance with the UN Conventions Regime.

⁹ Available at <http://www.mcn.gov.af/ndcs.html>.

Of the UN Conventions above, the penal measures imposed by the 1961 Convention are of signal importance since they are the elements that the amnesty scheme might contravene. Perhaps unsurprisingly, the Convention does not address situations in which there might be exemption from prosecution.

The relevant provision, Article 36 (Penal Provisions), reads in relevant part as follows:

1 a) Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs **contrary to the provisions of this Convention**, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, **shall be punishable offences** when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty. [Emphasis added.]

From this it is clear that the obligation upon the State to punish these activities is contingent upon their being contrary to the provisions of the Convention; not every instance of opium production and distribution requires to be criminalized, since the Convention aims partially to regulate its production for medicinal purposes. If a State announces its intention to produce opium in accordance with the Convention, (the procedure for which is dealt with elsewhere in this Feasibility Study), those activities in connection with legal production fall outside the remit of Article 36.

Moreover, Afghanistan is required to ‘adopt such measures as will ensure’ that certain acts are offences where they fall contrary to the Convention, and that ‘serious offences’ shall be liable to adequate punishment. It is important to note that this provision is not phrased in terms of an obligation to punish every such offence. This does not interfere

with the ability of a State to decline to punish an offence. In any event, a more function-based reading of the Convention should be possible. Such an interpretation would render a single, strictly controlled amnesty permissible under the Convention to make possible the transition from illegal to legal production. Moreover, it would ultimately result in more success in complying with the requirements of the Convention by the State, given the current, relatively unchecked conditions of illegal opium production.

7 Perceptions of Illegal Opium Production and Distribution

Perceptions of the illegality of opium production and distribution will be critical in the amnesty scheme, as will those of the scheme itself and the proposed licensing system. Together with enhanced enforcement mechanisms, these perceptions will determine the willingness on the part of those involved in the illegal trade to shift towards legal methods of production. It is likely that most of those currently involved in illegal opium production would prefer to carry out their activities without the prospect of punishment for doing so. For farmers, the licensing and amnesty scheme would be preferable to enforced cessation of opium production and thereby defaulting on the opium denominated debt that many have accrued.

Unlike other situations, there are difficulties in applying the terms ‘legal’ and ‘illegal’ too strongly, when the activity of opium production in a country with a weak legislative framework may not be viewed in such terms.¹⁰ This may be accentuated by the fact that there is a degree of removal between the producers of illegal opium and its ultimate consumers in other countries. With the level of opium abuse in Afghanistan still being relatively low, its harmful effects are much less evident. Therefore the perception of this activity as ‘criminal’ is diminished. As a consequence, the illegal nature of unlicensed, illegal opium production and distribution is a notion that will have to be carefully reinforced as part of the amnesty process.

¹⁰ *Frontiers and Wars: A study of the opium economy in Afghanistan*, Jonathan Goodhand, SOAS, University of London, 2003, 12, available at: <http://www.crisisstates.com/download/others/SeminarJG29012003.pdf>

There is not extensive knowledge of perceptions and the stigma attached to illegal opium cultivation, and the motives for choosing to avoid it are mixed.¹¹ The motives for its production, however, are principally financial. For example, the United Nations Office for Drugs and Crime's *Afghanistan Farmers' Intentions Survey 2003-2004* suggest that producers in Afghanistan are mainly involved in opium cultivation principally because of persistent poverty; the tradition of opium poppy cultivation; relatively high opium prices; and the advanced sale of future opium harvests and other loan arrangements. Given that the current legal framework does not represent any kind of meaningful deterrent, those involved in opium production consider the risks to be outweighed by the short-term benefits of its continuance. And further up the chain, economic benefits become greater and more entrenched; this may be similarly matched by opposition to or lack of interest in the amnesty scheme.

8 Implementing and Enforcing the Amnesty

Thorough enforcement of amnesty measures is vital to their legitimacy and success. Given that law enforcement measures in Afghanistan have historically been weak,¹² an amnesty followed by further lax enforcement would be ineffective at resolving the current situation. Rather, punitive measures applied to those not participating in the licensing programme, or those who lapse into recidivism, which fall after the amnesty period should be applied promptly and effectively. To this end, monitoring of activities after granting of amnesty would be essential to prevent further criminal acts. For example, if poppy farmers were to divert opium to the illegal market, evidenced by a failure to produce a minimum qualifying yield, they would then lose their licences to cultivate opium and be subject to fines or imprisonment.

¹¹ Among those who chose to abstain from production, the most important inhibiting factors are the religious argument that the growth of opium poppy is against Islam (17%), followed by fear of imprisonment (16%), fear of eradication (16%) and the fact that a ban on opium poppy cultivation is in place in Afghanistan (15%). These four factors together account for 65% of all the reasons put forward by the headmen. UNODC's *Afghanistan Farmers' Intentions Survey 2003-2004* 19 see: http://www.unodc.org/pdf/afg/afg_fis_report_2003-2004.pdf

¹² See, for example, William Byrd and Christopher Ward, *Afghanistan's Opium Drug Economy*, World Bank Working Paper, December 2004, 57.

In the process of enforcement, consideration must be given to social control mechanisms as well as institutional capacity. Weakness of the latter in Afghanistan has ensured the continued existence of traditional justice institutions – such as the *jirga* and *shura*. These may be instrumental in both decision-making and dispute settlement, and form part of both the incentive system and part of the control system.

The domestic law section of this Feasibility Study contains full discussion of these traditional justice mechanisms as having the strong potential to be mobilised for an effective enforcement of opium licensing in Afghanistan.

9 Possible Structure of the Amnesty Scheme

The amnesty scheme must be clearly outlined in order for it to be successfully implemented at all levels. Based on reviews of other amnesty legislation, the following are suggested as the basic necessary elements for the amnesty scheme.

9.1 Definitions

Definitions will be required for the exact nature of the offence(s) to which the scheme applies, which may include: illegal cultivation, production, processing, acquisition, possession, distribution, possession with intent to distribute, manufacture, trade, brokering, importation, exportation, transportation, offering, use, storage, concealment, and trafficking of narcotic drugs, psychotropic substances, chemical precursors, other illegal substances, and equipment used for these illegal activities.

9.2 Conditions attached to the Amnesty Scheme

As discussed previously, the objectives of the amnesty scheme in Afghanistan would demand the attachment of a number of conditions (undertakings to cease illegal opium production or distribution, the surrender of illegal opium, provision of information, and the like).

9.3 Criminal Proceedings

It needs to be clearly stated that no proceedings are to be brought for certain offences in respect of anything done in accordance with the amnesty scheme. These offences should be enumerated.

In addition, provisions for the following might be included:

- a. **Pending Criminal Proceedings:** There should be a provision to the effect that pending criminal proceedings for the crimes covered by the amnesty be waived – on the basis of suitable undertakings. Given that few such proceedings have been embarked upon to date, this task should be facilitated.

- b. **Admissibility:** One potential feature of the process could be that information derived from the amnesty scheme should not be admissible in evidence in criminal proceedings. This would mean that evidence of anything done, and of any information obtained, in accordance with the amnesty scheme shall not be admissible in criminal proceedings. One should bear in mind the breadth of this bar on admissibility, however. A wide bar might restrict prosecutions against those who continue illegal production where evidence by others involved in the legal scheme might be inadmissible. It might also entail that certain crimes committed in connection with illegal opium production and distribution, such as bribery, would not be addressed satisfactorily.

c. **Criminal Acts Committed during the Amnesty:** It is important that the exemption from punishment offered by the amnesty scheme is not construed as extending to opium-related crimes committed during the amnesty period. This emphasis might be made in addition to the statement of the time period for which the amnesty scheme is to apply (below).

9.4 Implementation

Institutional implications

Even if carried out initially as a pilot programme, the implementation of amnesty measures will require much effort and application of resources. It is likely that some form of amnesty commission should be established to oversee the process, verify the system for amnesty and to engage in subsequent monitoring. It would be logical for the Commission to fall under the auspices of the Counter Narcotics Ministry. Doing so would ensure that the amnesty scheme is executed in accordance with intensified subsequent control of illegal opium production.

Communication

Publicising amnesty measures could pose a challenge in Afghanistan given possible limitations on communication networks. Particular thought should be given to the means of informing the public via traditional bodies such as *jirgas* or *shuras*, for example, prior to implementation of the amnesty, and whether extension of the amnesty period may be necessary.

9.5 Circumstances under which the Amnesty is not to be Applied

The implementing body should have the discretion not to apply amnesty provisions, for example where it has cause to believe that undertakings are made in bad faith.

9.6 Time Periods

The following time periods might be taken into consideration for incorporation in the scheme:

- a. When the amnesty is to be implemented: undue delay in implementing the amnesty scheme might result in its prospective abuse by those involved in the opium trade.
- b. The time required to effectively communicate the amnesty scheme prior to its implementation.
- c. The length of the amnesty period itself for declaration of previous illegal opium cultivation.
- d. How the amnesty period should coincide with the opium harvest and production cycle.
- e. The amnesty period must coincide or overlap with development of the licensing scheme. The latter should be fully operational once the amnesty period has ended.

9.7 Adoption

To guarantee the scheme's legal validity, it must be adopted both centrally and at all regional levels as part of a package with the licensing system. There is much under this head which cannot be legislated for, for example, the necessity of enlisting the support of religious leaders and others respected by rural communities, which would nonetheless form an important part of the amnesty process. Further, there is the question of how to

win over the powerful and wealthy local and central elites. In order to implement the amnesty itself and subsequent licensing system, the government must decide on how to deal with such vested interests.

9.8 ‘Rehabilitation’

As previously stated, it is necessary to create new or equivalent roles in the legal framework for the individuals and communities involved in different stages of opium production. In many respects the structure of licensed production will differ from the current illegal system. Moreover, the government will have to effectively monopolise production from its current fragmented state.

The amnesty process will offer the best chance for re-allocation and training of personnel. There is not only this consideration, but also that individuals should not be locked into opium production. Therefore they should be given the opportunity to opt out from opium production, thus necessitating the provision of ‘alternative livelihoods’ support.

9.9 Monitoring

Almost inevitably there may be unforeseen impediments to the successful implementation of an amnesty scheme. The incentives, for example, in terms of profits for reverting to illegal cultivation may render implementation problematic. This and other risks necessitate a follow-up to the amnesty scheme, coupled with strong enforcement mechanisms, to ensure its long-term success. Such measures would probably be best taken by the law enforcement bodies currently in development – most notably the Afghan Special Narcotics Force.

Conclusion

The amnesty scheme under consideration in the present context does have something in common with other previously established amnesty schemes in other countries insofar as it will systematically grant absolution in the interests of the future development of the State in which it is implemented. The scope of amnesty envisaged as part of the licensing scheme is, however, without an exact precedent. It is difficult to find exact analogies in those countries in which there have been measures to reduce or eliminate illegal opium production. Moreover, the methodology of the amnesty scheme under consideration here is distinct insofar as it seeks to sanction an activity that is presently illegal and use it as a tool for future development. This speaks to the amnesty scheme's uniqueness, but not its potential effectiveness: the amnesty scheme will be a crucial element of the licensing system and the overall reconstruction process. A detailed investigation into the nature of an amnesty scheme in the context of establishing a related opium licensing scheme should therefore be completed.

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Initial Guideline and Policy Options for the Implementation of Opium Licensing System in Afghanistan

Executive Summary

Defining Policy Guidelines for a Licensing Framework

Numerous methodological guidelines have been determined by the initial findings of this Feasibility Study. It will be essential to work within these parameters in order to accurately consider the options available in implementing an opium licensing system. In particular:

Using the variety of opium poppies and their specific features to optimise a licensed opium production in Afghanistan

There is a paucity of scientific data currently available on the biochemical and agronomical dimensions of opium poppy cultivation in Afghanistan. The generation of such data will be a necessary precursor to any decision on the poppy variety or varieties to be used in an opium licensing system. It will also be necessary to consider the application of biotechnology in poppy cultivation to a licensing system. One example could be the introduction of an easily identifiable marker such as flower colour which would ensure the easy identification of the poppy fields which have been licensed by the Afghan Government.

Adjusting the farmer and field selection parameters to the reality of the situation in Afghanistan

Analysis of farmer and land selection criteria and processes under the Turkish system may well prove enlightening in helping to identify the optimal approach to be taken in Afghanistan. Farmer selection criteria will likely include: expertise, access to experienced labour and availability of productive land. Field selection criteria may cover access to irrigation systems, feasibility of developing new irrigation systems and the

observance of local traditions concerning opium cultivation. Particular attention must be paid to the effective control of the selected areas and the minimisation of the risk of diversion. This will require an adequate level of access by the monitoring teams to the selected areas.

Mobilising formal and informal control systems to control a licensing system

It will be necessary to address the need for appropriate social control systems and sound economic structures in order for a licensing system to be effective. In particular, it is imperative that consideration be given to mobilising *jirga* and *shura* (traditional mechanisms of collective judiciary decision-making and dispute settlement) to provide effective control of opium licensing. This can be part of a wider strategy that also involves formal Afghan national law enforcement agencies, and international security forces, at different levels of the opium licensing strategy.

Providing the missing link in the Afghan drug policy framework

Serious consideration must be given to how the licensing system can make optimal use of the drug policy structures developed in Afghanistan over the last few years; the development of a licensing system need not run counter to the current improvements already being made. On the contrary, opium licensing will provide the missing link between law enforcement and rural economic development strategies. Furthermore, since both the formal legal system and the transitional institutions of informal justice are, to a certain extent, complementary, both must be utilised fully in the implementation of the licensing scheme.

An amnesty scheme to integrate informal actors into the opium licensing system

Amnesty considerations must be closely allied to building the capacities of existing law enforcement institutions as well as those of traditional social control mechanisms. Particular attention will have to be paid. For example, such factors as: the effect of the amnesty on pending criminal proceedings, the circumstances under which the amnesty is not to be applied; the time-line for the amnesty scheme; communication and publicity;

‘rehabilitation’ of those currently involved in illegal opium production; and subsequent monitoring arrangements.

International law poses no obstacles

Licensed opium production in Afghanistan will be obliged to respect the applicable control regime established by the 1961 Single Convention on Narcotics. This aims at ensuring the limitation of opium production to medical and scientific purposes and needs. In principle, Afghanistan could grow opium legally provided that it sets up a national opium agency to control the licensed cultivation, and takes steps to prevent diversion of licensed opium.



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Introduction

Numerous methodological guidelines have been determined by the preliminary findings in this Feasibility Study. In order to give accurate consideration to the options available in implementing an opium licensing system, a brief restatement of some of these guidelines is presented below. This is followed by a timeline that illustrates options for the incremental formulation and establishment of an opium licensing system in Afghanistan.

1 Pharmacological guidelines

There is a lack of scientific data currently available on the biochemical and agronomical dimensions of opium poppy cultivation in Afghanistan. Further research in these areas will be a necessary precondition to any decision on the poppy variety or varieties to be used in an opium licensing system.

Data should also be generated to enable proper consideration of how advances in cultivation technology might be applied within the context of a licensed opium industry

in Afghanistan. An important application of biotechnological advances will be to the improvement of protection against insects, weeds and harmful fungi.

Equally important will be consideration of crop sensitivity to a range of weather conditions. The resistance of opium species to climatic circumstances such as frost, drought, wind and disease needs to be carefully examined. It is notable, for example, that India uses satellite imagery to survey weather conditions in order to determine potential crop yields as well to determine whether opium has been diverted.

To combat diversion of opium into the heroin trade, further scientific examination should be made of the possibilities that exist to introduce an easy visual identification of licensed poppies such as flower colour. This could, for example, ensure the easy identification of those poppy fields which have been licensed by the Afghan Government.

2 Farmer and field selection guidelines

A number of criteria require to be considered when selecting the farmers who are to receive licenses to cultivate opium. These include: expertise; access to experienced labour, availability of productive land, and past involvement in poppy cultivation (See discussion in the Social Implementation and Amnesty papers)

In terms of field selection, criteria for consideration include: access to irrigation systems; feasibility of developing new irrigation systems; observing local agricultural traditions concerning opium cultivation, and; accessibility to the selected areas by monitoring teams.

Analysis of farmer and land selection criteria and processes in Turkey may well prove illuminative in helping to identify the optimal approach to be taken in Afghanistan and should be studied in the next Phase.

3 Social control and enforcement guidelines

Appropriate social control systems and sound economic structures will require to be addressed to make the licensing system effective. Establishing the rule of law, reinforcing social bonds and building an effective state in control of all its provinces and rural regions are essential prerequisites for Afghanistan's security and development. Security, stability and justice are highly pertinent for ordinary Afghans; their enhancement will create more favourable conditions for effective decision making – enabling agricultural diversification rather than dependence on a single crop. They will also assist in the regulation of licensed opium production. Furthermore, development of the appropriate enforcement and control mechanisms would be conducive to the reduction of domestic consumption and accompanying social harm.

Jirga and *shura* are mechanisms of collective decision-making and dispute settlement that are closely bound up with the social order of rural Afghan life. These mechanisms are able to contribute to the maintenance of social order effectively and quickly. It is imperative that consideration be given to mobilising and incorporating these mechanisms to provide effective enforcement of opium licensing. Mobilisation of *jirga* and *shura* can be part of a wider strategy that also involves formal Afghan national law enforcement agencies, and international security forces, at different levels of the opium licensing enforcement strategy.

Such integration should be viewed as forming the cornerstone of a “bottom-up” approach with the two-fold benefits of:

- (1) rooting the opium licensing framework in the fabric of Afghan society and
- (2) formalising traditional social systems.

4 Structural institutional and judicial guidelines

Serious consideration must be given to how a licensing system can make optimal use of Afghanistan's drug policy structures developed over the last few years; the development of a licensing system need not run counter to the current improvements already being made. One of the key factors that the licensing scheme will have to take into account is the relationship between the formal legal system and transitional institutions of informal justice. Whilst there are conflicts, the two systems enjoy a degree of complementarity, and both must be utilised fully in the implementation of the licensing scheme. In particular, this will be a precondition for opium licensing to bridge the divide between rural communities and central authorities.

5 Amnesty guidelines

The amnesty considerations set out in this feasibility study must be closely allied to building the capacities of existing counter narcotics institutions as well as those of traditional social control mechanisms. An amnesty scheme could create an appropriate transition phase as well as conditions for farmers to continue their activities within the framework of the opium licensing system. Particular account will have to be taken of such factors as: the effect of the amnesty on pending criminal proceedings; circumstances under which the amnesty is not to be applied; the timings for the amnesty scheme; communication and publicity; 'rehabilitation' of those currently involved in illegal opium production; and subsequent monitoring arrangements.

6 International law guidelines

Afghanistan is party to all three UN drug conventions comprising the international drug control legal framework.¹ Any Afghan system of licensed opium cultivation for the production of medicines must therefore conform to this Conventions regime. Of signal importance, is the 1961 Single Convention on Narcotic Drugs, which was established as a universal system to control, amongst other things, the cultivation, production, manufacture, export and import, of opium poppy.

There are three key constraints contained in the control system laid down in the 1961 Convention which merit attention above all others. First, opium poppy cultivation must be prohibited where this will protect public health and prevent diversion of opium into the heroin market. Secondly, the international and wholesale trade in opium must be overseen by an effective government agency (a National Opium Agency). Thirdly, cultivation must not contribute to the overproduction of opium in the world.

The control system establishes rules governing the production of opium both for domestic requirement and for export. Afghanistan could grow licensed opium if a National Opium Agency was set up and had effective control over cultivation, including designating areas of land for opium cultivation, as well as issuing licenses to selected farmers. Notification to the INCB of estimated production levels would also be required, and steps would have to be taken in order to prevent diversion of opium into illegal channels. Satisfaction of these criteria could enable Afghanistan to produce opium sufficient for its own requirements which includes, crucially, the quantities of opium required for domestic manufacture of opium alkaloids (such as morphine and codeine), whether for domestic use or export.

In the longer term, as the opium licensing system expands, Afghanistan may wish to export domestically produced opium (i.e. the base drug itself). In such case it may need

¹ The three Conventions are: the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol (hereinafter “the 1961 Convention”); the 1971 Convention on Psychotropic Substances (hereinafter “the 1971 Convention”); and the 1988 United Nations Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter “the 1988 Convention”).

to seek formal approval from the ECOSOC for such export. Key to this effort will be to supply information on control mechanisms, be they existing or proposed, as well as information on those markets to which Afghan opium would be exported.

With regard to the manufacture of drugs such as morphine and codeine, public or private sector manufacturing must be done under licence and the manufacturers may not accumulate stocks of drugs or raw materials outside of business requirements. The exporter must be properly licensed and obtain an export certificate from the country's drug regulatory authority.

Political consensus to support licensed opium production in Afghanistan could be codified in an ad hoc agreement between State parties to the Conventions. Such agreement would not seek to formally amend the UN drug Conventions regime, but could be used to create flexibility in its application to the special situation affecting Afghanistan. (Detailed discussion of such possibilities is contained the University of Ghent paper on the UN Conventions regime) It could, for example, be agreed between Afghanistan and (some) of its international donors that Afghanistan was to be the recognised exporter of opium to those neighbouring countries with a chronic shortage in opium-based medicines, or those countries who which to support Afghanistan's economic transition. In a sense, this could operate in a similar way to the 80: 20 rule currently in force in the USA that offers preferential trade treatment to India and Turkey regarding their licensed opium production.

7 Timeline and sequence for implementation (and phasing out) of opium licensing in the short and medium term

The timeline proposed below sets out a framework that is indicative of the steps to be taken to achieve, in order: (1) the implementation of scientific study projects; (2) the staged transition to nationwide implementation of an opium licensing system; (3) the establishment of a national opium export industry. Realisation of this sequencing is divided according to three phases:

Phase 1

The preparation and implementation of scientific test projects are the initial, essential steps to be taken in order to determine the key guidelines, mechanisms and considerations in setting up an opium licensing in Afghanistan. It will be crucial in this phase to undertake a comprehensive scientific assessment of opium yields and quality, and production and manufacturing systems elsewhere.

A further important aspect for consideration will be the details of the amnesty arrangements such that amnesty forms part of the incentive to shift to licensed cultivation. The entire phase is underpinned by ongoing internal consultation with an emphasis on monitoring methodological competency as well as control mechanism efficacy.

Phase 2

The second phase aims at achieving phased in nation-wide implementation of the opium licensing system. This will require the establishment of a National Opium Agency, which will grant licences to opium cultivators, take steps to prevent diversion, and inform the INCB of the country's estimated production of opium. It will also be essential to incorporate local and regional authorities and other actors in the implementation process. Such broad consultation will help identify and ensure the infrastructure and mechanisms necessary for the implementation and monitoring of licensed cultivation. Implementation will also involve public information campaigns; building partnerships with local Afghan partners and NGOs; ensuring economic viability; granting of licenses to selected farmers in selected provinces; and the design and implementation of amnesty provisions to integrate formerly illegitimate actors into the new system.

During the latter part of this second phase, a comprehensive review must be made of the successes and failures of the first phase monitoring and the economic dimensions, as well as the impact of the licensing system on other rural development strategies being pursued in Afghanistan. At the same time, advocacy outreach for public support

education should be undertaken to initiate a positive shift in public perceptions of the role of law enforcement officials will continue, and coordination with national and international actors involved on alternative livelihood strategies will be stepped up. ***Such advocacy will also reiterate the prohibition against diversion for heroin and the fact that those diversions endanger the commercial opportunities related to opium licensing.***

Phase 3

One crucial aspect of opium licensing, certainly in the latter part of this implementation process, concerns the market opportunities for opium exports. For Afghanistan to export more than five tons of opium of its own production (that is, rather than exporting the medicines themselves), it would have to obtain formal approval from ECOSOC. This third phase will therefore encompass organizing scientific data and advising the Government of Afghanistan on seeking such approval. In addition, market access agreements with target-export countries should be explored.

The national opium export industry should thereafter be consolidated within the new framework. This will be an ongoing process, whose aspects include: the monitoring and development of law enforcement mechanisms to minimise diversion; evaluation of the economic and social implementation impact on the Afghan economy; monitoring the implementation of amnesty provisions; and evaluating non-drug-related economic growth.

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