

The status of narcotics in the criminal court rules

Ali Mazarei ^{1*}, Kobra Bistouni ²

¹Department of Law, Marvdasht Branch, Islamic Azad University, Marvdasht, Iran

²Department of International Law, Fars Sciences and Researches Branch, Islamic Azad University, Shiraz, Iran

Abstract: The purpose of this study is to investigate the role of drugs in the rules of the International Criminal Court. The international community considers one of its most important problems as the problem of drug and has so far taken numerous actions in this area, such as the Treaty of 1961 that was adopted in New York signed by eighty countries and other supplementary treaty was ratified in 1971 in order that an international monitoring is done on drugs and the countries membered in the pact should rush for their help to fight for it and make appropriate the laws and regulations in the country. This study is done with the aim of explaining how drugs and the rules related to it followed by explaining the legislation to combat drug-related crime.

Key words: Drugs; Law; Criminal court; International

1. Introduction

For more than a century, the opiates are the subject of criminalization and penalizing in international rules and domestic laws economically, politically, healthily and criminally speaking. Thus these substances are of certain rules in various stages of detection, production, distribution and consumption that they have taken a global perspective in particular after the establishment of the United Nations and within the framework of its documents. It can be said that the criminal laws of narcotics of those states that are its members have been largely coordinated and developed towards convergence. Also the cultivation, production, transportation, distribution and consumption of narcotics are related to the international community, additionally scientific progresses is made about 247 simple and compound types of narcotics produced. Meanwhile the issues like that have made the subject of narcotics as an important and international issue. The international community now believes that one of the most important problems of itself is the problem of narcotics and had taken all necessary measures in this regard. Like eighty countries signed the Treaty of 1961 which was adopted in New York and another supplementary protocol was adopted in 1971 so that narcotics was supervised internationally, and member states of the pact rush to help each other fight with it and legislate the appropriate laws and regulations in their own countries as well. The trading of narcotics which usually takes from one country to another is considered as an international and global trade. Addiction morally speaking is not only an ugly thing but also is a predicament from socially and politically

point of view, and unfortunately Mafia Enterprise networks have taken its control due to a good income. Among them, there can be seen some senior officials and representatives of countries that have immunity, besides they have enough powers that military forces of countries cannot deal with them. They handle a secret and clandestine economy run on illegitimate means, and this is where the role of scientists and people becomes obvious in the fight against narcotics and informing the young and creating a culture that makes the feeling of hatred of it. Jurists and religious scholars have not entered into it as it should have been despite the fact that many religious people have been affected by this ominous phenomenon and have not declared any great Jihad against it so that believers are warned by this way. As the history of the country shows us that the fatwa of legal authorities has a significant impact on the fight against prohibitions (*Zirā'at*, 1386).

2. Convention related to fighting against Narcotics prior to ratification of Convention 1988

2.1. First enunciation: Single Convention on Narcotic 1961

By the conclusion of the Protocol of 1953, several conventions and protocols prevailed on international narcotics control, and it led to the cooperation of some international institution do their duties in parallel. On the other hand the progressive development of international control had caused some complications. Meanwhile some efforts have been done to solve these problems in the Narcotics Commission of Economic and Social Council since 1948 by which the resolution 689(6)-Geneva on 28 July 1958 was issued. In the resolution

* Corresponding Author.

which was in accordance with the UN Charter and the resolution 36614 of the General Assembly dated December 3, 1945, it was appointed that the conference with full authority would form a single convention on narcotic. On January 24, 1961 Seventy-three countries attended the conference in New York. Moreover, countries had sent representatives to the conference and Ceylon was as an observer at meetings. Institutions and international organizations also attended the conference; which included the United Nations, International Civil Aviation Organization (ICAO), Food and Agriculture Organization of the United Nations (FAO), the International Labor Organization and the World Health Organization and representatives of non-governmental organizations attended the conference:

- International Conference of Catholic Charities
- International Federation of Women Lawyers
- International Air Force Police Organization

The following representatives of international organizations attended the conference regarding the fight against narcotics:

- Opium Permanent Central Board
- Board of control on Narcotics
- Permanent Office of control on Narcotics of Arab League

Certainly, in accordance with Resolution 689(6) of Economic-Social Council and regarding to the local bylaw of the Conference of observers and representatives of organizations, the above boards did not have the right to vote and only attended the meetings of the Conference.

The representatives elected Mr. Karl Sherman (Netherlands) as the chairman, and he elected 18 people as his vice president to assist him in carrying out his duties. According to the economic-social Council, the base of Conference's task was to prepare the draft of a single contract on Narcotic that had been prepared by the Commission of narcotics; of course the Commission was informed by other documents delivered by the Secretariat. In addition, the Conference formed some committees to investigate different substances of the convention draft. Finally, on March 30, 1961 before the end of negotiations and the proceedings of the expert committees, the single convention of narcotics was approved. Five resolutions annexed to the Convention were adopted too. The Convention contains a preamble, 51 articles and 4 indexes attached. The Secretary-General has been entrusted with the treaty. According to the first paragraph of Article 41 of the Convention, the treaty after the expiration of 30 days after depositing the fortieth instrument of ratification of accession ... will be binding. The treaty was binding since 1964, and 175 countries have signed it to November 2001. Nine cases of agreement and convention were already canceled due to being binding of the Single Convention of Narcotics. (According to Article 44 of the Single Convention of Narcotics) (*Hussayn-ābād*, 1391).

2.1.1. The introduction of Convention of 1961

In the introduction of the aforesaid convention, the jurisdiction of the United Nations on controlling narcotics has been recognized, and there has been emphasized over the necessities of coordination of the measures taken. At the end of the introduction, the parties to the Convention are inclined to conclude an international convention to make the use of narcotics ((limited to the scientific-medical intentions)). There are items listed in the introduction to the Convention generally about the principles and objectives of the Convention of 1961, and in the provisions of the Convention there have been predicted some important tips more on how to achieve these goals that in order to prevent the prolongation of the words the following is the summary of the contents. The principles and objectives consist of: narcotics' cultivating, producing, importing and exporting must be for medical and scientific consumptions, and all these cases are controlled by specialized agencies of the United Nations.

2.1.2. The benefits of Convention of 1961

However about strong points of the treaty the following cases can be mentioned: The Convention is the first legally binding international agreements in connection with narcotics from the inception of the United Nations met with universal acceptance. The second strong point of the Convention is its lawful controllable system governed by the competent authorities. Finally it could be referred to the cooperation of regulatory institutions together and with governments. Cooperation inserted in the Convention would not be limited to the exchange of information, and there had been planned on legal aid as well.

2.2. Second enunciation: the Amended Protocol of the single Convention of 1961 approved in 1972-Geneva

The Amended protocol was signed on March 25, 1972 in Geneva. The protocol consists of a preamble and 22 articles and from August 8th, 1975 was carried out (according to the article of amendatory protocol) as a matter of fact by Article 19 of the Amended Protocol being binding of the protocol will have two effects for its members:

A) They will be considered as the contracting party to the Single Convention amended.

B) Toward each of the contracting parties to the Single Treaty who have joined this Protocol, the party joined by the pact will be considered as the single amended. Until November 2001, 175 countries have ratified the Protocol membership. The signatories of the agreement were aware of the fact that the Single Convention on narcotics needs some reforms, especially 11 years was passed since the signing of the treaty and its weaknesses were

specified to everybody. The protocol emphasizes to increase efforts to prevent the cultivation and production, trafficking and drug abuse. The amended protocol also on the role of the International Board of Narcotics Control and enhancement of functions and powers of the Board in making the balance between supply and demand of narcotics for medical and scientific purposes points to the new notes that was not included in the Single Convention of 1961 on Narcotics. The important Articles are the Article 11 in repetition of 21 times (limitation of the production of opium) and Article 12 or the amendments of Article 22 of the Single Treaty (controlling poppy, Ergthroglom coca or cannabis, and any unauthorized plant grown). Also there has been emphasized in the treatment and rehabilitation (quitting the addiction) of addicts and their compatibility with the community by Article 15 (amendments to Article 38 of the Single Treaty) of amended protocol (*Hussaynī Hussayn-ābād*, 1391).

2.3. Third enunciation: the Convention on hallucinogens

After a decade of valuable experiences gained in the fight against narcotics, countries, non-governmental institutions and international organizations involved in this field; in 1971 the United Nations and its agencies associated with narcotics came to the conclusion that there are weak points in the Single Convention of 1961. These weaknesses were due to two reasons; first is the violation of the provisions of the Convention described in the section relating to the convention, and the second is the production and manufacturing of hallucinogens made of human none of which was not found in the regular list of narcotics in Convention of 1961. Human was able to combine various substances and extraction of plants' juice in natural or synthetic to take substances and medicines that in addition to the treatment of diseases and medical and scientific purposes their misuse are much stronger and more dangerous than the addition to narcotics for the body and soul of human. The Convention on Psychotropic Substances was adopted on 21 February 1971 in Vienna. The Convention contains a preamble, 33 articles and four lists. Psychotropic Substances consist of hallucinogens which are in the lists of quartet (listed in the earlier tables) that their production, use, distribution, imports, exports and or having them is prohibited. Lists 2, 3 and 4 include Amphetamines, Barbiturates, etc. that their production are limited by the Contracting, and exports and imports, distribution and warehousing and storage, trading and distribution of these substances in industrial and medical dimensions must be controlled. It should be noted that according to the Convention the number of 111 of Psychotropic Substances will be under control that most of which affect the central system of nerves. Until November 2001, 169 countries have joined the Convention. It was binding on August 16th, 1976.

2.3.1. The introduction of the Convention of 1971

In the introduction of the Convention along with ((showing the interest in the health and welfare of mankind)) and taking into account the consequences of ((inappropriate use of hallucinogens)) the members of the treaty have made a firm decision to prevent addiction and combat against drug abuse; however, in the continuance of the introduction, it is mentioned that the medical and scientific usages of these (hallucinogens) is necessary. Meanwhile at the end of the introduction, it is said that the members of the Convention of the United Nations and its specialized agencies are competent to take effective measures to combat against the abuse of these substances and acknowledge that there would be a need of an international convention to achieve the above goals.

2.3.2. The benefits of the Convention

However the following cases are the positive points of this convention:

The treaty eliminated the vacuum of the Single Convention of 1961 on Narcotics which was addressing to hallucinogens. The growing concern of the harmful effects of psychoactive substances, Amphetamine stimulants and hallucinatory narcotics led to the adoption of the Convention on Psychotropic Substances that there have been named of 111 types of psychoactive substance in the lists of quartet of the Convention. In addition, the Convention on Psychotropic Substances has also some ratification on the abuse prevention, detection, treatment, training and caring after giving up, rehabilitation and accepting the addicts of community. Finally, it should be noted that the text of the Single Convention on narcotics and the Convention on Psychotropic Substances is very similar, and in fact it could be said that the Convention on Psychotropic Substances is a kind of the draft of the Single Convention on Narcotics, and only where the term (narcotics) has been put up in the Single Convention, the term (psychoactive substances) has been used instead. (The distinct example of this matter is the introductions of the aforesaid Conventions which are so similar to each other); however, about the type of substances under control of both Conventions aforesaid, it should be mentioned that the lists annexed to them are different. About the criminal provisions of both treaties predicted, because penal provisions have evolved in the Convention on Combating Trafficking of Narcotics and Psychotropic Drugs approved in 1988, the provisions of these Conventions should be referred to, so there have been mentioned nothing about them while reviewing the 1961&1971 Conventions. (*Hussaynī Hussayn-ābād*, 1391)

3. The role of international institutions in the process of criminal policy

3.1. First enunciation: The main bodies of the United Nations

International control system of narcotics is under a series of treaties and conventions which have been ratified by the United Nations, and governments are recommended to control production and distribution of narcotic drugs and psychotropic medications and confront with addiction and drug dealing and organize administrative institutions necessary for this important matter and inform the United Nations of their activities. The United Nations have established institutions to coordinate international efforts to combat against the trafficking of narcotics and prevent drug abuse in the world and monitor and control the cultivation, production and distribution of narcotics for the purpose of pharmaceutical consumption in countries and follow and check the implementation of the Conventions and international treaties. (*Bāširī*, 1386) United Nations General Assembly as the legislative organ of the United Nations approves and communicates resolutions, conventions and protocols, budget and facilities needed to combat narcotics and its international control.

The International Narcotics Control Board (INCB) is a controlling, monitoring, independent and quasi-judicial institution of the United Nations that control how international treaties and conventions prepared by the United Nations are implemented and is of 13 members. United Nations International Drug Control Program (UNDCP) - Drug Commission - United Nations Economic and Social Council are the main institutions of the United Nations in this regard as well.

3.2. Second enunciation: subsidiary bodies of the United Nations

Other organizations and establishments' affiliate of the United Nations each of them are active in their specialized field in the matter of supervision, coordination and implementation of international conventions of narcotics. The most important of these subsidiary bodies are: 1. World Health Organization; 2. International Criminal Police Organization (Interpol); 3. World Customs Organization; 4. International Civil Aviation Commission (ICAO)

Third enunciation: common strategies

International conventions governing narcotics and programs of the United Nations and affiliate agencies, countries and states of the world guide to fight against narcotics and various aspects of drug abuse, the trafficking of narcotics and addiction. The global measure program of United Nations adopted in 1990 has asked the government to be much more aggressive about the fight against narcotics and its negative effects and had the fight against this ominous calamity accelerated and strengthened through international cooperation. The program has provided strategies and a suitable framework for the

international community the countries by working together and cooperation with international organizations enforce national and international projects and programs. The first international convention against drug phenomenon was held in February 1909 in Shanghai, China, attended by 13 countries including Iran connecting opium and its Alkaloids and International Opium Commission was established. The Board would be able to warn people of the world of the risk of producing, selling and using narcotics and advised governments to take narcotics under the strict control of their sovereign territory and recommended the gradual prohibition of narcotics. The opium production was controlled, non-medical use of opium banned, and International Opium Commission established by the efforts of the International Board in the gathering of the countries in January 1912.

4. The international trafficking of narcotics; an international crime

The following features could be considered as the elements of an international crime by reviewing international crimes:

- A) The international element;
- B) The transnational element;
- C) The state element.

All three of the above features can be found in the trafficking of narcotics. It is a transnational organized crime. These types of crimes are threatening of human health, sovereignty of nations, global security and violating the principles and international regulations in the international arena. The meaning of the international element is to give up an act that is directly threatening the security and interest of the international community and its committing makes the human collective consciousness hurt. And the meaning of the International crime is being transnational is that the criminal behavior has an effect on the interests and national security of more than a country and or a criminal act goes beyond the limits of national borders of a country and or takes over citizens of more than a country. The meaning of the involvement of the government in the international crime is that the crime in the features mentioned is formed by the policy or practice of government, the representatives of governments and governmental officials. «International crimes consist of those illegal acts that violate a major and fundamental commitment from the interests of the international community point of view». (*Muqtadir*, 1376)

International trafficking of narcotics is one of the crimes that occur in the international arena, and it is threatening human health, the sovereignty of nations and the security of the international community and violating the international principles and rules. Moreover this criminal behavior threatens major foundations of communities including economic, social, cultural, political, and families and affects the national and regional interests, it encompasses the citizens of more than a country and has a

transnational element. Why the trafficking of narcotics is also an international crime can be due to the inability of one or several governments to cope and deal with this organized phenomenon and concerns of countries and the international community mentioned in the introduction of conventions. Because the crimes of narcotics are now one of the organized crimes at the international level and also considering that the perpetrators of this crime are extensively doing their activities in various countries around the world have the citizenship of different countries and the consequences of this ruinous substance become a source of trouble for all countries this crime is not like the mentioned crimes in Article 5 of the Statute of the International Criminal Court against humanity and genocide, but the crimes of narcotics are capable of the features of these crimes altogether; because these crimes are not only committed against the people of a particular race or individuals, but its dimensions are beyond these and have targeted all the nations in the worldwide. In the meantime, Iran is more than other countries at risk of penetration of narcotics among the young due to having a long border with countries such as Afghanistan and Pakistan and according to statistics released Afghanistan is the only country that produces nearly 3500 tons of narcotics in the year, and Iran geographically has a good position for transiting narcotics to European countries.

5. Organized groups and international trafficking of narcotics

When we speak of organized groups, the organized crime will also cross in our mind. The international trafficking of narcotics is also a transnational organized crime that put the borders of countries behind by gangs and organized groups with hierarchy forces, facilities and equipment and violate the territorial jurisdiction of the states; furthermore on the way of transporting to destination there will also happen other crimes such as hijackings, assassinations and killings, destruction of the environment, trafficking of arms and ammunitions. The criminal actions that are committed by gangs and groups of individuals coherent and organized have gathered together and their intention is the financial benefits are called the organized crime. A group is called organized that has accumulated its power, facilities and financial organized strength to perform criminal activities. An organized crime is a threat to international security whenever it has a transnational character, and the trafficking of narcotics carried out by organized groups and gangs has a transnational character and is an international crime. Organized groups unworriedly are trading narcotics internationally due to the profitability and impact of the trafficking of them on the economy and politics relying on cartels and mafia organizations and the hidden support and guidance of authorities, and they are considered as the biggest economic investors in

narcotics and psychotropic drugs in the international arena. Medellin and Cali cartels in Colombia, the mafia in Eastern Europe, the Triads in Europe, America and Asia and the group of narcotics of Moscow in Afghanistan, London and Laos are in the limelight cartels and the agents of transportation of the international trafficking of narcotics that control and drive from the stage of production to the distribution of them universally. Mafia group has a worldwide fame among the criminal organizations and has tend to trafficking of heroin and cocaine after the low interest in tobacco cigarette smuggling since 1969 onwards, they are taking other measures such as arms trade and prostitution extensively as well (*Mir Muhammad Şadighi*, 1377).

6. Conclusion

Since the trafficking of narcotics is widely used across the world moreover the extent of damages have involved all human society in itself and for a long time that all governments of the world have tried at least by conclusion of contracts and holding various commissions somewhat to minimize the devastating effects of them, this will be infeasible but by including the trafficking of narcotics in the statutes of the International Criminal Court among other crimes referred to in Article 5 of the Statutes; because the crime of the trafficking of narcotics has been mentioned not only as a crime of genocide intends to destroy in whole or in part of a national, ethnical, racial or religious group and or in these respects as the crimes against humanity while committed as part of a widespread or systematic attack directed against a civilian population intentionally; however, a particular national, ethnical or racial group are not just targeted by distributing narcotics in the entire world, entire generations and races have been targeted too.

Inasmuch as the crimes of narcotics are now one of the organized crime at the international level and also considering that the perpetrators of this crime extensively doing their activities in various countries around the world have different citizenship meanwhile the consequences of this ruinous substance become a burden to all countries, This crime as the mentioned crimes of Article 5 of the Statutes of the International Criminal Court is not the crimes against humanity, crimes of genocide, war crimes and crimes of aggression, but narcotics crimes have all together the features of these crimes, for they are not committed only against some individuals or the people of a particular race but they are beyond these dimensions and have targeted all the nations in the world; as such, it is better for the relevant international organizations to define the crime of narcotics as part of the crimes of Article 5 of the Statute of the International Criminal Court, so that traffickers of narcotics sense the alarm by legislation and the statistics of crimes (money laundering, murder, extortion, etc.) created by is reduced.

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