

CND

UNITED NATIONS COMMISSION ON NARCOTIC DRUGS
POLICYMAKING BODY OF THE UNITED NATIONS SYSTEM WITH PRIME RESPONSIBILITY FOR DRUG-RELATED MATTERS



CND THEMATIC DISCUSSIONS AUTUMN 2021

19-21 OCTOBER 2021

BACKGROUND PAPER



UNODC
United Nations Office on Drugs and Crime
Secretariat to the Governing Bodies

INTRODUCTION

At its sixty-second session, in March 2019, the Commission adopted by consensus the Ministerial Declaration on Strengthening Our Actions at the National, Regional and International Levels to Accelerate the Implementation of Our Joint Commitments to Address and Counter the World Drug Problem.¹ In the Ministerial Declaration, Member States, while acknowledging that tangible progress had been achieved over the past decade, noted with concern the persistent and emerging challenges posed by the world drug problem and committed to accelerating, based on the principle of common and shared responsibility, the full implementation of the 2009 Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem,² the Joint Ministerial Statement of the 2014 high-level review by the Commission on Narcotic Drugs of the implementation by Member States of the Political Declaration and Plan of Action,³ and the outcome document of the special session of the General Assembly on the world drug problem held in 2016,⁴ aimed at achieving all commitments, operational recommendations and aspirational goals set out therein. In the Ministerial Declaration of 2019, under the heading “Stocktaking”, Member States identified a number of challenges to the effective implementation of international commitments.

In the Ministerial Declaration of 2019, under the heading “Way forward”, Member States committed to supporting the Commission on Narcotic Drugs in continuing transparent and inclusive discussions involving all relevant stakeholders on effective strategies to address and counter the world drug problem, including through the sharing of information, best practices and lessons learned. As a core part of the Commission-led follow-up process, the annual thematic discussions are focused on the exchange of good practices, challenges and lessons learned in the implementation of all international drug policy commitments. On the basis of the challenges identified in the Ministerial Declaration of 2019, the Commission adopted in June 2019 a multi-year workplan to discuss how those challenges could be addressed through effectively implementing the provisions contained in the documents adopted in 2016, 2014 and 2009.

The following challenges will be discussed during the thematic discussions to be held from 19 to 21 October 2021:

- a) Increasing links between drug trafficking, corruption and other forms of organized crime, including trafficking in persons, trafficking in firearms, cybercrime and money-laundering and, in some cases, terrorism, including money-laundering in connection with the financing of terrorism, are observed (19 October 2021);
- b) The value of confiscated proceeds of crime related to money-laundering arising from drug trafficking at the global level remains low (20 October 2021);
- c) The criminal misuse of information and communications technologies for illicit drug-related activities is increasing (21 October 2021).

As was the case in the thematic discussions in 2019 and 2020, the Secretariat has prepared the present document in order to provide background information on the challenges under discussion in 2021 with a view to facilitating dialogue during the Commission’s thematic sessions. The background paper reflects findings contained in the *World Drug Report 2021*, the *Global Report on Trafficking in Persons 2020*, the *Global Study on Smuggling of Migrants 2018*, the *Global Study on Firearms Trafficking 2020*, various policy briefs by the United Nations Office on Drugs and Crime (UNODC) on the impact of the coronavirus disease (COVID-19) pandemic, contributions provided by substantive branches and sections of UNODC, and some of the proposed discussion questions.

¹ See [E/2019/28](#), chap. I, sect. B.

² See [E/2009/28](#), chap. I, sect. C.

³ See [E/2014/28](#), chap. I, sect. C.

⁴ General Assembly resolution [S-30/1](#), annex.

19 OCTOBER 2021 - INCREASING LINKS BETWEEN DRUG TRAFFICKING, CORRUPTION AND OTHER FORMS OF ORGANIZED CRIME, INCLUDING TRAFFICKING IN PERSONS, TRAFFICKING IN FIREARMS, CYBERCRIME AND MONEY-LAUNDERING AND, IN SOME CASES, TERRORISM, INCLUDING MONEY-LAUNDERING IN CONNECTION WITH THE FINANCING OF TERRORISM, ARE OBSERVED

POLICY COMMITMENTS

In the Ministerial Declaration of 2019, Member States noted the persistent and emerging challenges related to the increasing links between drug trafficking, corruption and other forms of organized crime, including trafficking in persons, trafficking in firearms, cybercrime and money-laundering and, in some cases, terrorism, including money-laundering in connection with the financing of terrorism. In response to those challenges, Member States committed to strengthening bilateral, regional and international cooperation and promoting information-sharing, in particular among judicial and law enforcement authorities.

In the outcome document of the special session of the General Assembly held in 2016, Member States adopted a set of operational recommendations on addressing links with other forms of organized crime, including money-laundering, corruption and other criminal activities. In those recommendations, Member States called for an integrated, multidisciplinary approach, such as through promoting and supporting reliable data collection, research and, as appropriate, intelligence- and analysis-sharing to ensure effective policymaking and interventions.⁵ In the recommendations, Member States were also encouraged to use the existing subregional, regional and international cooperation mechanisms to combat all forms of drug-related crime.⁶ The recommendations further called upon Member States to improve the availability and quality of statistical information and analysis of illicit drug cultivation, production and manufacturing, drug trafficking, money-laundering and illicit financial flows, including for appropriate reflection in reports of UNODC and the International Narcotics Control Board, in order to better measure and evaluate the impact of such crimes and to further enhance the effectiveness of criminal justice responses in that regard.⁷

In the Joint Ministerial Statement of 2014, Member States stressed the urgent need to respond to the serious challenges posed by the increasing links between drug trafficking, corruption and other forms of organized crime.

In the Political Declaration and Plan of Action of 2009, it was highlighted that Member States should take into account possible linkages between trafficking in narcotic drugs and trafficking in psychotropic substances, the involvement of terrorist groups in some parts of the world, corruption and transnational organized crime, including trafficking in firearms and money-laundering, when developing and implementing supply reduction strategies. In order to reduce violence related to drug trafficking, the Political Declaration and Plan of Action of 2009 called for the implementation of preventive and enforcement measures to combat all forms of criminal activity that may be linked to trafficking in narcotic drugs and psychotropic substances. Member States also committed to increasing information-sharing among law enforcement authorities and judicial cooperation in order to identify and investigate possible links between the criminal organizations involved in trafficking in narcotic drugs and psychotropic substances and other criminal activities, including, in particular, the illicit manufacturing of and trafficking in firearms. In addition, Member States were encouraged to strengthen anti-corruption measures and the provision of technical assistance and capacity-building in order to disrupt organized criminal groups' illicit trade in drugs and reduce supply.

⁵ Ibid., recommendation 3 (k).

⁶ Ibid., recommendation 3 (l).

⁷ Ibid., recommendation 3 (u).

BACKGROUND INFORMATION

The links between drug trafficking, corruption and other forms of organized crime, including trafficking in persons, trafficking in firearms, cybercrime and money-laundering and, in some cases, terrorism, including money-laundering in connection with the financing of terrorism, have caused increased concern.⁸

Corruption and money-laundering are considered enabling crimes for drug trafficking and are regulated in the United Nations Convention against Corruption,⁹ the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,¹⁰ and as offences of transnational organized crime in the United Nations Convention against Transnational Organized Crime.¹¹ Acts of corruption can serve as facilitators of organized crime, including drug trafficking. Links between corruption and organized crime can range from sporadic or regular bribery of public officials to facilitate criminal acts, to the capture of a State's institutions and influence over law-making, law enforcement and judicial decisions.¹²

Money-laundering is crucial to the economic success of organized crime operations, as offenders would be discovered easily if they could not integrate the proceeds of crime into the legal economy. As the custodian agencies for indicator 16.4.1 of the Sustainable Development Goals, UNODC and the United Nations Conference on Trade and Development have, since 2017, jointly developed a statistical measurement framework to estimate illicit financial flows and methodological guidelines to measure such flows from selected illegal market activities.¹³ The conceptual framework is expected to generate comprehensive, compatible and disaggregated data on illicit financial flows at the country level. A regional pilot project to measure illicit financial flows in Latin America has generated preliminary figures on flows related to drug trafficking, trafficking in persons, the smuggling of migrants and illegal mining.¹⁴

Trafficking in persons appears to be interlinked with drug trafficking to various extents, depending on the scale of the criminal groups involved.¹⁵ On the one hand, large and well-organized criminal groups operating as business enterprises and seeking territorial control that engage in trafficking in persons also regularly commit other crimes, such as drug trafficking, often using the same routes and infrastructure. In such cases, for traffickers, people are another source of profit, just like drugs. Not all trafficking is committed by large organized groups, however, and individual traffickers or small groups operating on an opportunistic basis are less likely to also engage in drug trafficking. In addition, victims of trafficking in persons are forced to become involved in the cultivation and trafficking of illicit drugs. According to the *Global Report on Trafficking in Persons 2020*, about 6 per cent of all victims of trafficking in persons detected globally are exploited for the commission of crimes, such as drug cultivation and drug trafficking, thereby constituting the third largest group detected, after those exploited for forced labour and sexual exploitation.¹⁶ This form of exploitation has often been detected among child victims of trafficking. Beyond the direct revenue that traffickers receive from victims forced to perpetrate crimes, forcing victims to commit crimes is a way of preventing them from reporting their abusers, seeking protection or cooperating with law enforcement, by inciting fear of prosecution and punishment in the victims.

A slightly different picture emerges when the links between drug trafficking and the smuggling of migrants are analysed. According to the *Global Study on Smuggling of Migrants 2018*, links between migrant smuggling and other criminal activities generally seem to be exceptions rather than the rule, and smugglers of migrants do not appear to systematically engage in drug trafficking. However, there are exceptions, and in some regions illegal trade routes, including those for the transportation of migrants and for trafficking in drugs, often overlap across State territories. In other areas, drug cartels have been

⁸ See *World Drug Report 2017*, booklet 5, *The Drug Problem and Organized Crime, Illicit Financial Flows, Corruption and Terrorism* (United Nations publication, 2017).

⁹ A broad range of acts of corruption, such as bribery, trading in influence, abuse of functions and money-laundering, are criminalized in chapter III of the United Nations Convention against Corruption.

¹⁰ See art. 3, para. 1 (b), of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

¹¹ See arts. 6 and 8 of the United Nations Convention against Transnational Organized Crime.

¹² Quentin Reed, "Squeezing a balloon? Challenging the nexus between organised crime and corruption", *U4 Issue 2009*, no. 7, citing Edgardo Buscaglia and Jan van Dijk, "Controlling organized crime and corruption in the public sector", *Forum on Crime and Society*, vol. 3, Nos. 1 and 2 (United Nations publication, 2003).

¹³ United Nations Office on Drugs and Crime (UNODC) and United Nations Conference on Trade and Development, "Conceptual framework for the statistical measurement of illicit financial flows" (Vienna, 2020).

¹⁴ UNODC and Centre of Excellence for Statistical Information on Governance, Victims of Crime, Public Security and Justice, "Preliminary results of the pilot to measure illicit financial flows in Latin America", presentation, October 2020. Available at www.unodc.org.

¹⁵ See *Global Report on Trafficking in Persons 2020* (United Nations publication, 2020).

¹⁶ *Ibid.*, figure 9.

known to impose taxes on smuggler-facilitated travel on specific routes, which puts smuggled migrants at a particularly high safety risk when smugglers do not pay. Smuggled migrants, including children, are also forced to engage in illegal activities, such as transporting and selling illicit drugs, and can become victims of trafficking in persons.¹⁷

According to the *Global Study on Firearms Trafficking 2020*, a close link between drug trafficking and other forms of crime is demonstrated by arms seizure data. In some regions, the criminal conduct most commonly linked with firearms seizures is violent crime, while in others it is drug trafficking. Data from selected countries show that 90 per cent of homicides committed in organized crime or gang contexts are committed using firearms. In countries with high homicide rates, a larger share of firearms is generally seized in the context of drug trafficking and violent crimes than in countries with lower homicide rates. In addition, illicit drugs are the most common non-firearms-related commodities seized together with firearms, followed by counterfeit goods, cultural property and natural resources. Furthermore, the provision of firearms constitutes a well-documented link between organized crime groups and terrorist organizations.¹⁸

In recent years, greater attention has been paid to the links that have been proven, in some cases, between drug trafficking and terrorism, including money-laundering in connection with the financing of terrorism. Although terrorists and organized criminal groups have distinct objectives, a variety of links have been documented. In a report prepared by UNODC and the Office of Counter-Terrorism in 2020 on the basis of input from 50 States,¹⁹ a number of States confirmed opportunistic linkages between organized crime groups engaging, inter alia, in drug trafficking, and terrorist groups. Links were reportedly based on shared territory, desire for profit or personal connections potentially developed in prisons. It was also reported that terrorists benefited from illicit trafficking in drugs and a range of other goods, along with crimes such as kidnapping for ransom and robbery. Organized criminal groups were reportedly also involved in the transport of terrorists and returning foreign terrorist fighters.²⁰ However, some countries also reported that criminal organizations had recently tended not to engage with terrorist groups in order to avoid additional scrutiny, and in other countries, no linkages between terrorism and organized crime could be confirmed.²¹

In the early stages of the COVID-19 pandemic, drug markets were temporarily disrupted in most parts of the world, but since then they have recovered quickly. Nevertheless, the pandemic has triggered new or accelerated existing trends in trafficking. Those trends include larger shipment sizes and increased use of land and waterway routes, private planes, air cargo and postal parcels and contactless methods for delivering drugs to consumers, such as mail delivery.²² The data available on trafficking in opioids and methamphetamine suggest that, despite short-term fluctuations owing to COVID-19-related restrictions in some countries, drug trafficking continued along the well-known routes throughout the pandemic.²³ It is too early to assess the impact of the pandemic on the links between drug trafficking and other types of crime. However, there is evidence that organized criminal groups have managed to tighten their control over communities and territories during the pandemic, by exploiting weaknesses in public governance, stepping in to deliver aid packages to the population and infiltrating new business areas, such as medical and protection equipment. Those tendencies may change the dynamics of the relationship between drug trafficking and other forms of crime in the short and medium term.²⁴

¹⁷ See *Global Study on Smuggling of Migrants 2018* (United Nations publication, 2018).

¹⁸ See *Global Study on Firearms Trafficking 2020* (United Nations publication, 2020).

¹⁹ [S/2020/754](#).

²⁰ *Ibid.*, paras. 1–5.

²¹ *Ibid.*, para. 6.

²² See *World Drug Report 2021*, booklet 5, *COVID-19 and Drugs: Impact and Outlook* (United Nations publication, 2021).

²³ UNODC, “Drugs Monitoring Platform Brief: possible impact of the COVID-19 pandemic on trafficking in opiates and methamphetamine originating in Afghanistan” (March 2021).

²⁴ UNODC, “The impact of COVID-19 on organized crime”, Research Brief (July 2020).

DISCUSSION QUESTIONS:

Possible questions for discussion include:

- a) What are the enabling factors for increasing links between drug trafficking and other offences? What role do factors such as different levels of governance, weaknesses in the rule of law, lack of economic opportunities and conflict play?
- b) How has the COVID-19 pandemic exacerbated conditions conducive to links between drug trafficking and other forms of crime?
- c) What challenges have been observed in the detection and prosecution of drug trafficking linked with other types of crime, for example, relating to intelligence collection and sharing, domestic coordination, border security and interdiction, effective investigation and prosecution, international cooperation and prison management?
- d) Are there successful examples of legislative, institutional and operational measures taken to address these challenges in your country?
- e) Which subregional, regional and international cooperation mechanisms have proven successful in your country to address the links between drug trafficking and other forms of crime?

20 OCTOBER 2021 - THE VALUE OF CONFISCATED PROCEEDS OF CRIME RELATED TO MONEY-LAUNDERING ARISING FROM DRUG TRAFFICKING AT THE GLOBAL LEVEL REMAINS LOW

POLICY COMMITMENTS

In the Ministerial Declaration of 2019, Member States noted with concern that the value of confiscated proceeds of crime related to money-laundering arising from drug trafficking remained low at the global level. Member States committed to strengthening bilateral, regional and international cooperation and promoting information-sharing, in particular among judicial and law enforcement authorities, in order to effectively identify, trace, freeze, seize and confiscate assets and proceeds of drug-related crime and ensure their disposal, including sharing, in accordance with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, and, as appropriate, their return, consistent with the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime.

In the outcome document of the special session of the General Assembly held in 2016, Member States committed to continuing to foster international cooperation by implementing the provisions against money-laundering contained in all relevant international and multilateral instruments.²⁵ In addition, Member States committed to enhancing national, regional, subregional, interregional and international capacity to prevent and counter money-laundering and illicit financial flows stemming from drug trafficking and related crimes, including, as appropriate, through detection, investigation and prosecution of such activities, with a view to effectively addressing safe havens, and to identifying and mitigating money-laundering risks linked to new technologies, as well as emerging money-laundering methods and techniques, by using, *inter alia*, existing UNODC technical assistance tools.²⁶ Member States were called upon to develop and strengthen bilateral, subregional and international mechanisms to share information among competent authorities and promote their cooperation to effectively and in a timely manner identify, trace, freeze, seize and confiscate assets and proceeds of drug-related crime and ensure their disposal, including sharing, in accordance with the 1988 Convention, as well as their return, in appropriate drug-related corruption cases, in the framework of the Convention against Corruption, or, as appropriate, in cases of drug-related crimes involving transnational organized groups, consistent with the Organized Crime Convention, and to encourage the timely sharing of operational information among relevant law enforcement and prosecutorial agencies and financial intelligence units.²⁷

In the Joint Ministerial Statement of 2014, Member States agreed on a number of recommendations to counter money-laundering and promote judicial cooperation. Member States underscored the need for increased availability of information on proceeds of crime resulting from transnational organized crime, in order to enhance the capacity of Member States to prevent and combat money-laundering arising from drug trafficking. They also underscored the need to strengthen national, regional and international networks for the exchange of operational information in compliance with national legislation and procedures among the relevant authorities, in order to facilitate the detection, seizure and confiscation of proceeds of drug trafficking and related crimes and criminal asset recovery.

Member States adopted the Political Declaration and Plan of Action of 2009 with a pillar on countering money-laundering and promoting judicial cooperation to enhance international cooperation. Member States committed to: (a) establishing new or strengthening existing domestic legislative frameworks to criminalize the laundering of money derived from drug trafficking, precursor diversion and other serious crimes of a transnational nature in order to provide for the prevention, detection, investigation and prosecution of money-laundering; (b) establishing new or strengthening existing financial and regulatory regimes for banks and non-bank financial institutions, including natural and legal persons providing formal or informal financial services, thus preserving the integrity, reliability and stability of financial and trade systems; (c) implementing effective detection, investigation, prosecution and conviction measures; and

²⁵ General Assembly resolution [S-30/1](#), annex, recommendation 3 (o).

²⁶ *Ibid.*, recommendation 3 (r).

²⁷ *Ibid.*, recommendation 3 (s).

(d) promoting effective cooperation in strategies for countering money-laundering and in money-laundering cases.

In its resolution 64/1, entitled “Statement of the Commission on Narcotic Drugs on the impact of the coronavirus disease (COVID-19) pandemic on the implementation of Member States’ joint commitments to address and counter all aspects of the world drug problem”, the Commission recognized and supported the efforts of law enforcement authorities and members of security forces in the fight against drug trafficking and related crimes, noting that their sustained efforts during the COVID-19 pandemic, often undertaken at great risk to their health and that of their families, had resulted in increases in arrests, seizures of drugs and property and the freezing of assets.²⁸

BACKGROUND INFORMATION

The confiscation of assets or property means “the permanent deprivation of property by order of a court or other competent authority”.²⁹ Recovering the proceeds and instrumentalities of organized crime, ensuring that crime does not pay off and disrupting illicit financial transactions are at the core of international commitments relating to the identification, freezing, seizure and confiscation of proceeds of crime.

Articles 5 and 7 of the 1988 Convention contain detailed international obligations relating to the identification, tracing, freezing, seizure and confiscation of proceeds of drug-related crime and relating to international cooperation for the purposes of seizure and confiscation and the final disposal of confiscated assets. According to the 1988 Convention, confiscation must extend to proceeds, or the assessed value thereof, if they have been transformed or converted into other property or intermingled with property acquired from legitimate sources, and to the income or other benefits derived from it. Articles 12 to 14 of the Organized Crime Convention (2000) contain nearly identical provisions, with the notable addition of a provision that obliges States parties to give priority consideration to returning the confiscated proceeds of crime or property to the requesting State party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners. Articles 31 and 57 of the Convention against Corruption (2003), adopted three years later, also contain largely identical provisions, except for some corruption-specific provisions regarding the disposal of confiscated assets. Those instruments are complemented by a number of regional conventions, such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism and the Inter-American Convention against Corruption, and by the work of the Financial Action Task Force, in particular on its recommendation 4.

Although the United Nations framework has been in place at the international level for over 25 years and enjoys near-universal adherence, the value of confiscated proceeds of crime remains low. In a study on illicit financial flows published in 2011,³⁰ UNODC estimated that less than 1 per cent of proceeds of crime were seized and frozen globally – and only a part of that amount was forfeited or confiscated. The European Union Agency for Law Enforcement Cooperation (Europol) has estimated that only 2.2 per cent of proceeds of crime are frozen and only 1.1 per cent of such proceeds are confiscated.³¹

The confiscation of proceeds of crime generally follows a process starting with the identification and tracing of assets, followed by seizure or freezing, confiscation or forfeiture³² (conviction-based or non-conviction-based, property-based or value-based) and concluding with the final disposal of assets. International cooperation through informal information-sharing and formal mutual legal assistance plays a role in many proceeds of crime cases, during the tracing and identification, seizure or freezing, and confiscation and disposal stages. The rapid response to requests for assistance and the enforcement of foreign seizure and confiscation orders are key objectives in international cooperation in this context.

²⁸ [E/2021/28](#), chap. I, sect. B, resolution 64/1, para. 6.

²⁹ Art. 1, para. (f), of the 1988 Convention; art. 2, para. (g), of the Convention against Corruption; art. 2, para. (g), of the Organized Crime Convention.

³⁰ UNODC, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes: Research Report* (Vienna, 2011).

³¹ European Union Agency for Law Enforcement Cooperation (Europol), “Does crime still pay? Criminal asset recovery in the EU – survey of statistical information 2010–2014” (The Hague, 2016).

³² Regarding terminology, see art. 1 (e) of the 1988 Convention and the *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations publication, 1998), para. 1.9.

At each step of the process, a number of challenges and factors for successful national and international proceedings have been identified, of which only a small selection is listed below.³³

From the start of criminal proceedings related to drug trafficking, the confiscation of the proceeds and instrumentalities of the crime, along with the conviction of the perpetrators, should be an integral objective of the case strategy.

Regarding the identification and tracing of assets, the full implementation and enforcement of measures to combat money-laundering and counter the financing of terrorism are important elements for the identification of proceeds of crime. The regime contained in the Organized Crime Convention, the Convention against Corruption and in the recommendations of the Financial Action Task Force aims at obliging financial institutions to exercise appropriate due diligence and know-your-customer measures and to submit suspicious transaction reports with a view to enabling authorities to detect and intercept suspicious transactions. The identification of beneficial owners of companies or other legal vehicles is an important aspect of successful “follow the money” investigations.³⁴

Law enforcement personnel should be appropriately trained in financial investigations and provided with sufficient resources. National legislation should contain rapid freeze or seizure mechanisms and appropriate measures for asset management to preserve the value of seized or confiscated assets prior to their final disposal. Obstacles to asset identification have been observed, inter alia, in complex structures for the coordination of financial investigations at the national level, especially in federal States,³⁵ and in strict bank secrecy laws.³⁶

At the confiscation stage, a broad, flexible confiscation regime in accordance with the 1988 Convention, the Organized Crime Convention and the Convention against Corruption should be in place, including value-based confiscation (confiscation of legitimate assets equivalent in value to proceeds or instrumentalities of crime) and, where consistent with the domestic legal system, non-conviction-based forfeiture. Alternatives to criminal asset confiscation should be explored, such as criminal fines or tax assessments.³⁷

Before a mutual legal assistance request is submitted to another jurisdiction, domestic coordination should be streamlined, information available through open sources should be collected, and informal communication with the requested State should be sought in order to avoid delays. Regional asset confiscation networks, such as the asset recovery inter-agency networks, can provide informal contacts, give targeted advice and facilitate the exchange of intelligence before the submission of a formal request for mutual legal assistance.³⁸

The capacity of central or competent national authorities for mutual legal assistance should be sufficient to efficiently request assistance and respond to requests. Among other obstacles, differences in legal traditions can result in difficulties in international cooperation, for example in the enforcement of foreign orders or tools that may not be part of the national legal system of the requested countries, such as orders for non-conviction-based forfeiture or extended confiscation. Different evidentiary requirements in the requesting and requested countries can also result in challenges.³⁹ As reduced judicial activities resulting from lockdown measures taken in response to the COVID-19 pandemic led to a prioritization of cases in many countries, mutual legal assistance requests for the freezing and seizure of assets were generally considered urgent and prioritized owing to the risk of dissipation of assets.⁴⁰ In addition, practices such as the electronic transmission of international cooperation requests, video conferencing and the use of electronic evidence have been tested and gained some support.⁴¹

³³ UNODC, *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime*; Kevin Stephenson and others, *Barriers to Asset Recovery, An Analysis of the Key Barriers and Recommendations for Action* (Washington, D.C., World Bank, 2011). See also the preliminary findings of a study conducted by the Stolen Asset Recovery (StAR) Initiative on the recovery of proceeds of corruption, reported in document [CAC/COSP/WG.2/2020/4](#).

³⁴ See art. 7 of the Organized Crime Convention; see also Financial Action Task Force, *Best Practices on Beneficial Ownership for Legal Persons* (Paris, 2019).

³⁵ UNODC, *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* (Vienna, 2012), para. 5.

³⁶ See art. 5, para. 3, of the 1988 Convention; art. 12, para. 6, of the Organized Crime Convention; Financial Action Task Force recommendation No. 9.

³⁷ UNODC, *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime*, para. 46.

³⁸ *Ibid.*, box 3.

³⁹ UNODC, *Manual on Mutual Legal Assistance and Extradition* (Vienna, 2021), paras. 39–40.

⁴⁰ [CTOC/COP/WG.3/2021/2](#), para. 17.

⁴¹ *Ibid.*, sect. IV.

DISCUSSION QUESTIONS:

Possible questions for discussion include:

- a) What are the main challenges for your country in the identification, tracing, seizure, freezing and confiscation of proceeds of drug trafficking?
- b) What are the most promising legislative and practical tools in your country to improve international cooperation for the identification, tracing, seizure, freezing and confiscation of proceeds of drug trafficking?
- c) Which good practices have been observed in your country in the management and final disposal of proceeds of drug trafficking?
- d) What impact did the COVID-19 pandemic have on the confiscation of proceeds of drug trafficking and related international cooperation?
- e) Can alternative avenues to criminal law, such as administrative proceedings, tax assessments, private lawsuits or settlements, play a role in the confiscation of proceeds of drug trafficking?
- f) Has your country successfully relied on asset confiscation networks and other regional and international cooperation mechanisms?

21 OCTOBER 2021 - CRIMINAL MISUSE OF INFORMATION AND COMMUNICATIONS TECHNOLOGIES FOR ILLICIT DRUG-RELATED ACTIVITIES IS INCREASING

POLICY COMMITMENTS

In the Ministerial Declaration of 2019, Member States expressed concern that the criminal misuse of information and communications technologies for illicit drug-related activities was increasing.

In the outcome document of the special session of the General Assembly held in 2016, Member States committed to supporting research, data collection, analysis of evidence and sharing of information and to strengthening law enforcement, criminal justice and legal responses, as well as international cooperation, to prevent and counter drug-related criminal activities using the Internet, consistent with relevant and applicable law.⁴² In addition, they called for increasing the provision of technical assistance and capacity-building at all levels to Member States, upon request, to prevent and counter the use of technologies, including the Internet, by drug trafficking networks and transnational criminal organizations, to facilitate drug-related activities.⁴³

Furthermore, in the outcome document, Member States were called upon to enhance the capacity of national authorities, in particular law enforcement authorities, to preserve and analyse electronic evidence related to illicit activities, including drug trafficking and money-laundering, and to monitor sales of illicit drugs using the Internet.⁴⁴ Member States were encouraged to use the *Guidelines for Governments on Preventing the Illegal Sale of Internationally Controlled Substances through the Internet*, as appropriate.⁴⁵ Regarding the use of the Internet for prevention purposes, Member States committed to supporting measures on the use of the Internet for prevention purposes, including appropriate counselling and information provision, to developing, implementing and promoting, in accordance with national legislation, prevention strategies, programmes and measures, including via social media and other social networks, aimed at, inter alia, protecting children and young people from the abuse of controlled substances and new psychoactive substances and from involvement in their illicit sale and purchase via the Internet, and to enhancing cooperation at all levels.⁴⁶

In the Joint Ministerial Statement of 2014, Member States reiterated the need to respond to shifting trafficking routes and new drug trafficking trends, including Internet-based e-commerce and mail-order services. In addition, they underlined that information and communications technologies were a facilitator of the distribution of new psychotropic substances, and they stressed the need to strengthen cooperation by collecting and sharing data on the production, distribution and effects of those substances.

In the Political Declaration and Plan of Action of 2009, Member States were called upon to make efforts to ensure that appropriate procedural and substantive legislation was developed at the national level to deal with drug trafficking carried out in an electronic environment, including a framework for the effective regulation and oversight of online pharmacies operating or delivering pharmaceutical preparations containing internationally controlled narcotic drugs and/or psychotropic substances within their respective jurisdictions. It was also recommended that Member States address, through concerted action, the illegal sale of preparations containing amphetamine-type stimulants through the Internet and the misuse of postal and courier services for smuggling such preparations.

In its statement on the impact of the COVID-19 pandemic on the implementation of Member States' joint commitments to address and counter all aspects of the world drug problem, the Commission noted that changes in trafficking routes and methods, including increased maritime trafficking and online sales of drugs through both the darknet and the surface web, had resulted in new challenges for law enforcement authorities.⁴⁷ The Commission encouraged Member States to expand law enforcement activities targeting trafficking modalities that had emerged or increased in the context of COVID-19 and to increase coordination between Member States.⁴⁸ In addition, the Commission urged Member States to strengthen bilateral, regional and international cooperation

⁴² General Assembly resolution [S-30/1](#), annex, recommendation 5 (p).

⁴³ *Ibid.*, recommendation 5 (q).

⁴⁴ *Ibid.*, recommendation 5 (r).

⁴⁵ *Ibid.*, recommendation 5 (s).

⁴⁶ *Ibid.*, recommendation 5 (t).

⁴⁷ [E/2021/28](#), chap. I, sect. B, resolution 64/1, para. 15.

⁴⁸ *Ibid.*, para. 31.

to counter the exploitation by drug traffickers of traditional and online trafficking methods and routes during the COVID-19 pandemic and beyond.⁴⁹

BACKGROUND INFORMATION

According to the *World Drug Report 2021*, drug markets on the dark web emerged only a decade or so ago, but the main ones are now worth at least \$315 million in annual sales. Although this is a tiny fraction of overall drug sales, the trend is upward, with a fourfold increase in annual sales between the beginning of the 2010s (2011 to mid-2017) and more recent years (mid-2017 to 2020). The expansion of online drug markets to social media and popular e-commerce platforms further suggests that their accessibility is widening. While cannabis dominates darknet sales, marketing on the “clear web” often involves new psychoactive substances and substances used in the manufacture of synthetic drugs, including precursor chemicals. Vendors play a cat-and-mouse game with law enforcement by marketing their products as “research chemicals” or advertising “custom synthesis”. While that is a legitimate practice in the pharmaceutical industry, it may be misused by traffickers to distribute controlled substances. Rapid technological innovation, combined with the agility and adaptability of those using new platforms to sell drugs and other substances, may usher in a globalized market where more drugs become available in more locations, especially since traffickers can quickly adapt their distribution networks. This in turn will trigger accelerated changes in patterns of drug use.⁵⁰

Increased digital interconnectivity has brought about innovations in how global drug supply chains operate. In particular, the evolution of digital communication platforms has added a new dimension to drug distribution. Purchasing drugs online arguably brings a number of advantages to traffickers and users as compared with purchases made in person, on the street. Online platforms connect buyers with sellers and can cut out intermediaries, which saves costs and shortens supply chains. Following an online purchase, drugs are delivered to a mailbox or another location in a “dead drop”, reducing potentially risky interactions with drug traffickers. Moreover, the use of mail courier services and international trade networks may make detection and interdiction less likely owing to the sheer scale and volume of global trade.⁵¹

The marketing and sale of controlled drugs and new psychoactive substances on the Internet can take place at different levels: on the open Internet, also known as the clear web, sometimes using encrypted communications tools; on certain social media applications; and on darknets, which form part of the deep web.

Drug trafficking over the clear web

The online marketing and sale of some synthetic drugs, rather than being restricted to the dark corners of the Internet (i.e., the dark web), also occurs on the open Internet, or clear web, where such drugs are readily discoverable for purchase on easily accessible platforms. While the online sale of traditional drugs, such as heroin, amphetamine-type stimulants, cannabis and cocaine remains confined to anonymized platforms on the deep web, the clear web is used for selling products, in particular synthetic drugs, that feed into the market for those traditional drugs. According to the *World Drug Report 2021*, a number of vendors, who operate alone or through well-established online commercial platforms, are now openly selling substances that feed the synthetic drug market, including precursors, pre-precursors, new psychoactive substances and other controlled substances. Those vendors continually change their offer in order to adapt to national and international control systems and government interventions so that they remain legal and can operate in open view. They have the potential to drive changes in synthetic drug markets with new or adapted substances for the manufacturing of synthetic drugs or for the cutting of drugs. They can also play a role in the market for new psychoactive substances.⁵²

In addition to using e-commerce websites and chemical marketplaces, many vendors of synthetic drugs and related chemicals on the clear web operate independent websites where they list substances for sale. They use social media to help build and cultivate a client base and ultimately direct potential buyers to

⁴⁹ Ibid., para. 33.

⁵⁰ See *World Drug Report 2021*, booklet 1, *Executive Summary: Policy Implications* (United Nations publication, 2021).

⁵¹ See *World Drug Report 2021*, booklet 2, *Global Overview of Drug Demand and Drug Supply* (United Nations publication, 2021).

⁵² Ibid.

either their own site or that of an affiliated chemical company to complete transactions. Payment options typically include the use of commercial money transmission services and more traditional means of making financial transactions, such as wire transfers. However, payment in cryptocurrencies, such as bitcoin, is the most popular option. For shipping, commercial mail courier services are commonly listed as preferred methods of distribution.⁵³

Drug trafficking over the dark web

The findings of the *World Drug Report 2021* indicate that the characteristics, opportunities and challenges of drug trafficking over the dark web on the darknets have changed little over the years. Indeed, the anonymity offered by specific software (such as the onion router (Tor)), the wide selection of drugs on offer, the dark web's global reach and the use of cryptocurrencies have remained largely the same. The Tor network is the largest darknet and contains the most sites. In mid-2020, there were approximately 200,000 onion services worldwide. The number of marketplaces in the Tor network increased from 1 in 2011 to 118 in 2019. Products available include drugs, firearms and ammunition, and hacking tools and services. According to the *World Drug Report 2021*, darknet marketplaces are characterized by high turnover and volatility. In recent years, major law enforcement operations have led to the dismantling of a number of darknet platforms, and some darknet marketplaces have been the subject of exit scams, whereby their owners remove the funds accumulated in their customer escrow accounts and vanish. The darknet market ecosystem is both dynamic and resilient, even though it is possible that, without law enforcement intervention, the markets would have grown even faster over the past decade. More than 100 darknet market platforms have emerged over the past decade, but many of them, including the largest, last for only a short period. An analysis of 103 darknet markets over the period 2010–2017 revealed that they were active for, on average, just over eight months. On average, all darknet marketplaces taken together showed an overall increase in drug sales, with the annual minimum doubling and the average estimated total increasing almost fourfold between the early years of the dark web (2011 to mid-2017) and more recent years (mid-2017 to 2020). Nonetheless, overall sales on those major darknet markets appear to have remained modest when compared with overall illicit drug sales.⁵⁴

Cannabis accounts for the largest share of drug transactions made on the 19 major darknet markets analysed over the period 2011–2020, and its share has been increasing. After cannabis, the substances accounting for the largest shares are synthetic stimulants (mostly amphetamine, dexamphetamine, Ritalin (methylphenidate), Adderall (i.e., tablets containing amphetamine), Modafinil (a substitute for amphetamine), methamphetamine and various cathinones, such as mephedrone, 3,4-methylenedioxypropylone (MDPV), methylone or α -pyrrolidinovalerophenone (α -PVP)), 3,4-methylenedioxymethamphetamine (MDMA, commonly known as "ecstasy") and cocaine. Opioids sold on the dark web include oxycodone, hydromorphone, hydrocodone, codeine, buprenorphine, methadone, tramadol, tapentadol, fentanyl and heroin.⁵⁵

Drug trafficking using the Internet may have accelerated during the COVID-19 pandemic

The COVID-19 pandemic has affected global supply chains of drugs. According to the *World Drug Report 2021*, in many countries, there has been an increase in seizures by mail and an increased use of technology to facilitate drug trafficking at the retail level, for example, using the Internet or darknet markets or encrypted cell phone communication tools.⁵⁶

The COVID-19 pandemic has changed shopping behaviour by accelerating the shift towards e-commerce and online shopping, and it is likely to have lasting effects. There are indications that this trend has affected not only licit goods but also illicit purchases of controlled drugs. Increased digital interconnectivity has brought about innovations in how global drug supply chains operate, with technology and the Internet increasingly serving as an avenue for the advertisement and sale of a variety of substances that are supplied on illicit drug markets, whether they are controlled drugs, new psychoactive substances or drug precursors. While some of those substances are sold on the clear web, others have found their way to

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ See *World Drug Report 2021*, booklet 5.

the deep web, onto darknet markets. The high volatility of darknet market sites makes them challenging to monitor. Some analyses suggest that, on the dark web, purchases of small quantities of cannabis have increased, while purchases of large quantities have decreased during the pandemic. Other studies suggest there have been no changes or even declining drug sales over the dark web. There seems to be more consensus about an emerging increase in the delivery of drugs by mail, suggesting that the pandemic may have accelerated an ongoing trend towards more remote or contactless modes of buying drugs. Drug sales on darknet markets constitute only a small fraction of total drug sales by volume, but they are still relevant for understanding the effects of COVID-19 restrictions on drug supply, in particular because they provide an opportunity to understand trends in real time. Those markets have provided indications of drug prices and supply and demand during the pandemic and may also point to future changes.⁵⁷

DISCUSSION QUESTIONS:

Possible questions for discussion include:

- a) What are the greatest challenges your country encounters in addressing the criminal misuse of information and communications technologies for illicit drug-related activities?
- b) What good practices can you share regarding research, data collection, analysis of evidence and sharing of information in this area?
- c) Which strategies have proven successful in strengthening law enforcement, criminal justice and legal responses in this regard? How can Internet service providers, technology companies, postal and parcel services be better integrated in the government response to drug trafficking?
- d) What steps can be taken to regulate cryptocurrency markets and monitor electronic payments in order to detect suspicious transactions and illicit financial flows from drug trafficking?
- e) What good practices has your country identified in taking down online markets and platforms?
- f) What steps can be taken to strengthen bilateral, regional and international cooperation to counter the exploitation by drug traffickers of traditional and online trafficking methods and routes during the COVID-19 pandemic and beyond?

⁵⁷ Ibid.