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LEVEL I: TOPIC

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SUMMARY: The manner in which we have addressed organised crime, drugs and corruption, while structured to deal with each matter individually, does point to one aspect that they share, the International Conventions approved by the UN, specifically the *UN Convention against transnational organised crime*, approved in New York on 15 November 2000, the *UN Convention against Corruption*, signed in Mérida, Mexico, on 31 October 2003 and *the UN Convention against the illicit traffic in narcotic drugs and psychotropic substances*, adopted in Vienna on 20 December 1988.

Starting out with a criminological overview of the problems caused by organised crime, corruption and drugs and the normative responses in the form of the above-mentioned Conventions highlight the lack of international cooperation, legislative harmonisation in terms of both substantive and procedural law and respect for fundamental rights.

The aim is, in relation to each of the topics, to highlight the problems that arise today, mainly in relation to corruption and drugs, where trends are emerging on a global level which the different national criminal policies are attempting to implement, be it in the sphere of prevention or that of suppression.

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INTRODUCTION

Organised crime, drugs and corruption can be seen today as a triptych. Even though they are different from a dogmatic and normative perspective, with some specific, individualised problems, they should be seen and understood, both from the point of view of the criminological phenomenon as well as from a normative one, in exactly the same way as one looks at a 'medieval triptych', i.e. as a whole.

The criminal-legal problems that arise in each of the areas mentioned are interrelated and, as such, the legal-normative solutions are identical.

The responses offered by the International Conventions, specifically United Nations (UN Convention against Transnational Organised Crime, approved in New York on 15 November 2000; UN Convention against Corruption, signed in Mérida, (Mexico), on 31 October 2003 and UN Convention against the Illicit Trafficking of Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 20 December 1988, both in the context of the rules of criminal procedure and in the sphere of international police or judicial cooperation, are similar.

In this regard, it is possible to identify the basic principles of these international provisions: normative harmonisation in relation to types of crimes, the liability of legal persons, the extension of the statute of limitations of crimes, the creation of specific rules in judicial proceedings, specific attention to the system for the confiscation of property, protection of witnesses and victims of crime, creation of specialist authorities in the sphere of investigation, and maximum cooperation between the authorities that investigate and prosecute.

All of these principles assume a specific dimension depending on whether they refer to drugs, organised crime or corruption.

While each of these areas has its own problems, they must, nonetheless, be seen from a global perspective from the point of view of the effectiveness of criminal policy.

1. ORGANISED CRIME

1.1. Towards a Definition of Organised Crime

Any approach to defining organised crime, without wishing to resort to clichés, must refer to the fact that the concept has its origins in the police. This is a concept that was used in police reports in the last century, from the 1920s on, during the prohibition period in the United States (from 1919 to 1933) in relation to the clandestine traffic that developed and allowed criminal organisations, in particular the mafias of Sicilian origin, to obtain a period of dominance and influence in society, thanks to the profits they obtained under the Prohibition.

As of the 1970s, when the criminal organisations extended their activities, particularly into the sphere of drugs on a large scale, criminology began to take more notice of the concept of organised crime.

In the last two decades of the 20th century organised crime underwent an extraordinary development in several ways. Nicolas Queloz[1] identifies three dimensions of this expansion. As a criminal reality, the quantitative increase (rise in the number of acts of violence and intimidation, cases of fraud, all kinds of theft or corruption, illicit trafficking and recycling of proceeds) has been verified, but the qualitative leap has been striking (professionalisation, rationalisation, extension and internationalisation). It is broadcast on the media as a generic notion or expression; it is studied in literature and scientific meetings and increasingly used in common, everyday language. Political concern has led to it being the subject of innumerable governmental reports, discussed in Germany (since 1990), in Italy (above all after the *Tangentopolis* operation, as of 1992), in France and in Sweden (as of 1993), in seminars and international political summits. As an object of criminological analysis, organised crime has been dealt with in a thorough and in-depth manner.

The term "organised crime", however, is often used as an indefinite general category, as it is assumed that everyone knows what it means. Claus Roxin says that there is a notion of organised crime that is clear from a legal point of view, capable of promoting a minimum consensus. We would only have heterogeneous descriptions regarding a phenomenon that, to date, has not been addressed in a precise manner[2].

Juarez Cirino dos Santos[3] makes an interesting distinction between the American discourse on organised crime and the Italian one. The former is defined as a national conspiracy by foreign ethnic groups, a kind of underworld of evil citizens that threatens to destroy the community of good citizens, be it via alcohol, drug trafficking and always against the spirit of the "American way of life". This is a concept that must be regarded as a myth, with all the consequences that this implies. Meanwhile, the Italian concept identifies organised crime with mafia activities, which is a regional, localised activity with some unique features that, according to this author, mean that, while it is scientifically correct to affirm this concept of organised crime, it cannot be transferred to the reality of Brazil (that of the author) for example. Thus, the author questions the criminal policies followed in the different countries under the umbrella of a concept whose "nature" and utility are highly dubious.

From a dogmatic perspective it is virtually impossible to present a definition of organised crime. There is but minimal consensus on the identification of what one is talking about when using the term "organised crime". Therefore, it will be more useful to talk about definitions of organised crime: criminalist or police ones; legal ones, in relation to criminal codes and criminal procedure; and criminological ones, etc.

Nicolas Queloz proposes a criminological and merely working definition that comprises the following fundamental characteristics:

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[1] Nicolas Queloz, "Acciones internacionales de lucha contra la delincuencia organizada: el caso de Europa", *Revue de Science criminelle et de droit pénale comparé*, October-December 1997.
[2] Claus Roxin, "Problemas de autoría y participación en la delincuencia organizada", *Revista Penal*, no.2, July 1998, page 65.
[3] Juarez Cirini dos Santos, "Delincuencia organizada", *Revista Brasileña de Ciencias Criminales*, no. 42, March 2003.

- it is composed of groups (generally families, clans or ethnic groups) or associations of criminals (such as professional gangs, terrorist organisations or occult groups and sects);
- they have a deliberate intention of committing exclusively criminal acts or ones that are not related to legal activities (on a covert basis involving infiltration into the formal economic sphere);
- the preparation, the methodology and the execution of their acts are characterised by thorough strategic and professional organisation, constituting a genuine criminal enterprise or industry with a strategy of rationalisation or international extension (without frontiers);
- they usually operate in three groups of activities without renouncing their relationship with lesser crimes or minor day-to-day delinquency; said groups of activities fall within organised and violent crime (attacks, hostage-taking, terrorist acts, threats, intimidation, etc.), the organisation of highly remunerated illegal trafficking (operating betting houses, procuring, trafficking in persons, drugs, medicines, arms, vehicles) and white-collar or economic crime;
- they obtain significant income that ensures their members have a high standard of living in order to continue with their activities, as well as using influence and pressure;
- they have a structure of national and transnational subsidiaries and offices that give them a significant capacity for adaptation to political, economic and legal changes and significant triumphs in relation to power and influence.

1.2. Organised Crime and the Internationalisation of Crime

The internationalisation of the phenomenon of crime affects the day-to-day activity of police, judges and even lawyers, both at the criminal investigation and trial stages.

Growing coca plants in Colombia, transporting it by air to Mexico, the US or Brazil, and from there on to central Europe, where it will be consumed, via countries like Portugal, Spain or the Netherlands where a substantial part remains, is just one example. Growing cannabis in the mountains of the Rif, Morocco, and its export to the European

countries through Spain is also a well-known reality. Trafficking in persons, particularly women and children from Eastern European countries, in the Philippines, Thailand, Brazil, Venezuela or in other Central American countries, destined for countries in Western Europe or the US, is a fact that cannot be denied. The traffic of vehicles stolen in Europe destined for Northern and Central African countries is flourishing. The traffic of human organs coming from countries in Africa, Latin America and Asia, destined for rich countries has begun to acquire a worrying relevance. Today, arms trafficking is a multi-million euro business that affects virtually all the countries in the world. Similarly, a traffic in natural resources has recently emerged, where uranium is particularly important, with a strategic value that cannot be ignored from a criminal perspective. But, moreover, property as trivial as passports and other identity documents are of fundamental importance for the economy of international crime in the criminal networks devoted to the illegal trafficking of human beings. The counterfeiting of products with registered trademarks, protected at an international level, in countries described as “third world”, for export worldwide, has acquired a magnitude that would have been unthinkable not too long ago. Meanwhile, the laundering of the money originating from such criminal activities must take place above all in well-known tax havens, situated all over the world, and which can be done in seconds via the Internet; the possibilities that this has opened up for the transmission of financial flows online are tremendous.

This is a reality that currently affects all the countries in the world, without exception, the only difference being the scope that the phenomenon acquires in each one.

Ultimately, this represents the internationalisation of the phenomenon of crime requiring an appropriate criminal policy that, in order to be effective, must acquire a transnational dimension. There have been some legal responses along the lines of acknowledging this reality, controlling it and providing legal instruments that make it possible to combat it.

A paradigmatic example can be found in the UN Convention against Transnational Organised Crime, approved in New York on 15 November 2000.

It is a fundamental instrument for addressing the need for an effective, realistic fight on a global level against the broad, diffuse and complex phenomenon of organised crime.

The object of the Convention is to promote collaboration between states in order to combat organised and transnational crime more effectively, and establishes some extremely significant definitions both regarding types of offences and the procedural instruments that should be introduced in domestic legislation.

The worrying panorama with a specific group of crimes related to the international trafficking of persons led the UN General Assembly to propose that, at the same time as the Convention, specific protocols be prepared in order to suppress the trafficking of persons and, in particular, of women and children. Thus, two additional protocols to said Convention were approved, designed specifically to tackle global criminal activities, the magnitude of which is acquiring dangerous proportions.

In this way, the object of the Additional Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, is to prevent and combat the illicit trafficking of immigrants, as well as promoting cooperation between the states parties to that end, while at the same time protecting the rights of immigrants that entered countries illegally.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children aims to prevent and combat trafficking in persons, in particular women and children, protecting and assisting the victims of trafficking, ensuring full respect of their human rights and promoting cooperation between the states parties so that these objectives are attained.

Finally, a Third Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplements the United Nations Convention against Transnational Organized Crime.

The relevance of the fight against organised crime, as an autonomous field in which concerted policies can be adopted is currently one of the essential points of the European Union's Stockholm Programme[4]. In this sphere the European Council urges the Council and the Commission to adopt a strategy for combating organised crime, within the strategic framework for internal security, defining priorities in the area of criminal policy, identifying the types of offence against which the instruments implemented may be used.

1.3. The United Nations Convention Against Transnational Organised Crime

1.3.1. "Power Structure" Crime

The definition established in the UN Convention against Transnational Organised Crime[5], aimed to respond to the dogmatic ambiguities that conditioned the practical need to understand and resolve many specific problems related to the effective fight against crime that had become irremediably internationalised.

The dogmatic difficulties in reaching a consensus on a definition of organised crime did not prevent "minimum rules" being established in the Convention, thus allowing the states to move towards specific policies providing a global response to the problems caused by such crime.

For the Convention, "Organised criminal group" shall mean "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit" [Article 2, section a)].

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[4] The Stockholm Programme is a multi-annual programme (2010 to 2014), adopted on 2 December 2009 by the Council of Ministers of the Union, that intends to develop a space of freedom, security and justice with the motto "An Open and Secure Europe Serving and Protecting Citizens".

[5] The convention was adopted by Resolution A/RES/55/25 of 15 November 2000.

In addition to the above definition, the scope of application of the Convention aimed to cover the collection of criminal activities that generally fall within the phenomenon of organised crime, namely, violence, sophistication, continuity, structure, discipline, diversified activities, involvement in legitimate business activities and corruption.

As a result, one of the key points about organised crime is that it is a concept with a power structure at its heart. On the other hand, organised crime cannot be separated from transnational, global crime. Similarly, there is also a direct connection between organised crime and illicit lucrative activities.

Organised crime covers a spectrum of damaging acts that includes, in addition to serious offences punished with lengthy prison terms (over 4 years' imprisonment, according to the Convention), economic and financial offences, IT-related offences, offences against the environment, the international trafficking of narcotics, of arms, of pornography, of human beings, prostitution of minors, terrorism, tax evasion and espionage.

As Alberto Silva Franco[6] points out, “said forms of crime go no further than the visible action of a person or a well-characterised group of persons, which makes it very difficult to detect and identify the activities carried out”.

What are present in all cases are “common details represented by a sophisticated organisational structure, a general purpose of obtaining unlimited wealth, great difficulty in delimiting the territory and a capacity to create a grey area between what is legal and what is not”[7].

The importance of this structure, and above all an effective criminal response to the problems that this causes, are revealed in the Convention, which affirms the need to criminalise participation in a criminal group with a scope that is sufficiently broad to protect the different legal assets involved (see Article 5).

[6] Globalización y delincuencia de los poderosos, *Revista brasileña de Ciencias criminales*, no. 31, July-September, 2000, page 123.

1.3.2. Types of Offences

The Convention applies to serious offences of a transnational nature that involve an organised criminal group, reflected in conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty [Article 2, section b)] but also applies to a specific group of offences whose connection with organised crime is evident.

Thus, according to Article 3, section a), the Convention will apply to participation in an organised criminal group, laundering the proceeds of crime, corruption and obstruction of justice.

The Convention identifies dealing with these phenomena as one of the structural objectives of any criminal policy that aims to take organised crime seriously, insofar as it affirms the need to criminalise such conduct as an appropriate response on the part of the states.

1.3.3. Liability of Legal Persons

What was a classic criminal law principle that only a human being had the mental and physical capacity to act, understand what to do or what not to do and, as such, the only one who could be considered guilty, has undergone a substantial modification in recent years.

That is, as of the moment it is accepted that the capacity to act or the capacity for guilt are legal concepts and should not be confused with the physical, mental and intellectual capacities of human beings, the philosophical obstacles to the criminal liability of legal persons can be overcome.

[7] *Ibidem*, p. 123.

It is worth remembering that in civil law legal persons have long enjoyed rights and are treated in the same way as natural persons, as far as the allocation of rights and obligations is concerned.

The actual presence of legal persons in society, doing business, intervening socially, even in highly complex and technological societies, strengthens the need to hold legal persons responsible for their actions as their social intervention is increasingly relevant. As Hurtado Pozo and Del Rosal Blasco state[8], "their relevant influence, both in terms of technical and economic development, is a determining factor in the creation of situations of risk (for example on the financial market and in the environment) and constitutes a fundamental fact for delimiting the role they play in society". Nowadays, it is companies that constitute the main actors in all economic and social activity, and also assume a leading role in the economy of criminal activities. The presence of legal persons and companies in the world of crime is no longer an exception; rather, it has become the rule[9].

With the state of civilisation of modern society and in view of the profiles assumed by crime today, the criminal liability of legal persons is established on the basis of criminal policy. Aware of this reality and attributing it special significance, the UN Convention gives an incentive for the states to establish the criminal liability of legal persons who participate in serious crimes in which an organised criminal group is involved and that commit the offences envisaged in the Convention (Article 10). This is about the admissibility of the criminal, civil and administrative liability, regardless of the personal liability of the persons that committed the offences.

Meanwhile, and taking into account the above-mentioned dogmatic difficulty regarding the application of sanctions to legal persons, the Convention states that each state will adopt "effective, proportionate and dissuasive […] sanctions".

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[8] JOSÉ HURTADO POZO Y BERNARDO DEL ROSAL BLASCO *La responsabilidad penal de las personas jurídicas: una perspectiva comparada,* Tirant lo Blanch, 2001, page 13.
[9] KLAUS TIEDEMANN, "La Responsabilidad Penal de las personas jurídicas en el Derecho Comparado", *Rivista Italiana di Diritto e Procedura Penale*, Fasc. 3, July-September, 1995, p. 617.

1.3.4. Confiscation of Property

This is an instrument that has become fundamental in national criminal policies that aspire to effectively strike at the heart of those who commit serious crimes by seizing the property resulting from criminal activities.

States cannot allow those who commit serious crimes, even if they are subject to criminal sanctions, to obtain any kind of financial benefit from such conduct. In this regard, the Convention pays special attention to the confiscation and seizure of property, both on an internal level and using the mechanisms that make it possible in the realm of international cooperation (see Articles 12, 13 and 14).

1.3.5. Procedural Policies

The Convention aimed to intervene in a more effective manner in the sphere of the normative instruments that shape an effective criminal policy at a procedural level. The adaptation of the specific procedural means available to address this reality will, as a result, be the best realisation of this situation. Consequently, with the unequivocal defence of the application of said means to crimes belonging to a limited catalogue, some new avenues for dealing with this reality can and must be opened up.

Criminal investigation of organised crime must continue to be linked to a highly specialised police force, both in terms of training and technical means, different to the police on the beat, and equipped with knowledge orientated exclusively at organised crime. In this regard, this kind of institution should rid itself of responsibilities that other branches of the police can perform, thus enabling it to channel all its available resources towards the investigation of organised crime.

Similarly, there is an undeniable need to invest in strengthening information systems and acquiring an overall view of what an information system should comprise if it has to

adapt to the type of crime we are dealing with. In this regard, a combination of all the investigation and security forces in the sphere of international and interregional cooperation is fundamental in relation to transnational violent crime. Thus, the rules that appear in the Convention on joint investigation (Article 19), the measures for intensifying cooperation with authorities responsible for law enforcement (Article 26), and the gathering, exchange and analysis of information on the nature of organised crime (Article 28) should be observed.

1.3.6. Special Investigation Techniques

The specificity of criminal investigation in the sphere of organised crime of a transnational nature imposes the adoption, in national procedural contexts, of individual investigation mechanisms that are appropriate to said reality. In this regard, the Convention, in Article 20, allows the states to adopt the measures necessary to facilitate controlled deliveries and, when considered appropriate, to take recourse to other special investigative techniques such as electronic or other forms of surveillance and covert actions.

In relation to controlled deliveries, whose specific effectiveness in the context of drug trafficking is clear, the Convention establishes the procedure when they take place at an international level, which will always entail agreement between the states involved and may include methods such as the interception of the goods and allowing them to continue intact or be removed or replaced in whole or in part (see Article 20, no. 3).

1.3.7. Protection of Witnesses

The confirmation that the evidence of witnesses still plays a fundamental role in court cases when it comes to proving the acts in question meant that this need had to be made compatible with the complex and serious criminal reality that surrounds organised crime. As early as 1995, the Council of the European Union, conscious of the need to transfer to all Member States the fundamental obligation to guarantee

adequate protection to witnesses, issued a Resolution on 23 November 1995 regarding the protection of witnesses in the context of the fight against organised crime. The Resolution referred to witnesses in general, meaning any person that may have data and information that the competent authority considers important, who must be protected from any kind of direct or indirect threat, pressure or intimidation.

Article 24 of the Convention establishes the normative framework on the protection of witnesses on a global level, calling on states to develop normative frameworks that protect witnesses in criminal actions in general against acts of intimidation and reprisal and, specifically, to develop procedures directed at providing a new address and, if necessary, prevent or restrict disclosure of information regarding the person's identity and whereabouts, as well as establishing rules regarding evidence that enable witnesses to testify safely.

1.3.8. Protection of Victims

In this area, the Convention recognises the vulnerability of the victims of crimes covered by the Convention, and to that end calls on the States to create specific protection mechanisms that protect those who feel threatened by reprisals or who are intimidated. It also obliges the states to guarantee the reparation of the damages caused to the victims of the crimes in question.

2. CORRUPTION

2.1. The Phenomenon of Corruption

The phenomenon of corruption currently covers a grouping of diverse types of behaviour and practices related to the deviation from appropriate and admissible behavioural patterns in the exercise of a public or related responsibility, that questions the very structure of democratic states.

Corruption undermines the principles of good administration, fairness and social justice, distorts competition, hinders economic development and endangers democratic institutions and the ethical foundations of society.

Corruption is not, at present, an offence that is specific to senior officials of the public administration, but affects all civil servants in the broad sense of the term as well as the private sector in those aspects which are also related to the abuse of power for one's own benefit.

In criminological terms we can identify two large areas or aspects in the sphere of corruption:

On the one hand, we have a kind of "minor corruption" –which is typical of civil servants with little decision-making power and, as such, less public effect–, where in addition to "backhanders" and other vices, benefits are still accepted (bribery) in order to ensure the administrative machinery "works". Doctrine considers, looking at the larger picture of the society in question, that insignificant offers or those that are tolerated or permitted by social custom are not considered offences.

However, nowadays it is clear that the economic equilibrium of societies is under serious threat from "large-scale corruption", and although it is considered to be widespread, it is scarcely investigated and rarely detected at a judicial level. This is an activity that involves senior public officials that have decision-making power regarding deals of a high economic value, where the mechanism for acceptance of bribery involves extraordinary amounts. On the other hand there are usually large companies or economic groups, multinationals or even other states –acting through specific departments– that also aim to benefit from this activity.

2.2. The International Legal Responses

The expansion of the phenomenon of corruption in modern societies, with the resulting threat that it entails for the good governance required of the rule of law, have led

international bodies to vigorously attack the phenomenon, particularly from the point of view of the adaptation and comparison of types of offence on the one hand, and the creation of international mechanisms to control corruption, on the other.

The different international conventions approved by different authorities are an example of the first aspect, in particular the Inter-American Convention against Corruption, entered into in the context of the Organisation of American States (OAS), of 29 March 1996, the 1997 Convention against acts of corruption involving civil servants of the European Communities or of Member States of the EU, the Criminal Convention on corruption of the Council of Europe, signed in Strasbourg on 30 April 1999, the Convention of the African Union for preventing and combating corruption and related offences, approved in Maputo on 11 July 2003 and, finally, the UN Convention against Corruption signed in Merida, Mexico, on 31 October 2003[10]. In a more specific ambit, reference must be made to the OECD Convention on the fight against the corruption of public officials in international commercial transactions, of 17 December 1997.

In the second aspect of prevention, in addition to the relevant role of non-governmental organisations, such as *Transparency International*[11], the Council of Europe has assumed a fundamental role, which surpasses even the "European space" insofar as countries such as the USA signed the Strasbourg Convention, via the Group of States against corruption (GRECO) and its activities. Similarly, the Organisation for Economic Co-operation and Development (OECD)[12] carries out periodic cycles of evaluation of the member states in order to check the adaptation of the internal mechanisms of the countries to the legal instruments made available by the Convention. Today there is great concern regarding the OECD evaluations in the analysis of the political system and specifically on the manner in which the judicial, political and economic systems are set up and cross over.

[10] Juliette Tricot makes a critical assessment of the regulatory instruments provided by the OECD, the EU, the Council of Europe and the UN on corruption in en "La corrupción internacional", *Revue de Science Criminelle et de Droit Pénal Comparé*, October-December 2005, page 769.
[11] www.transparency.org/.
[12] On the OECD, in particular it structure in terms of anti-corruption policy, see www.oecd.org.

In the sphere of the European Union, in addition to the Communication of 26 August 2003, "On a Comprehensive EU Policy Against Corruption" (COM.2003 (317) final), the Stockholm Programme, approved on 2 December 2009, assumes the fight against corruption as one of the priorities of the EU's Security and Justice programme. Among the different measures proposed, it is intended to improve judicial persecution of tax evasion and corruption in the private sector as well as increasing the transparency of legal persons.

Acknowledging the role played by GRECO, it is envisaged that the EU itself will join this group and implement a global anti-corruption policy throughout the Union in close cooperation with this body.

The European Parliament, assuming that the citizens of Europe want the EU to play a more important role in fighting corruption, defends the idea of a broad anti-corruption policy, strengthening police and judicial cooperation, the intervention of Europol and Eurojust in investigations in a more systematic manner and the creation of a European Prosecutor's Office. The European Parliament also proposes the adoption of a European legislative instrument designed to seize the profits and assets of international criminal organisations and reuse them for social purposes.

2.3. The Role of the Council of Europe: G.R.E.C.O.

In order to oversee the application of the Council of Europe Convention, by virtue of a Decision of the Committee of Ministers dated 5 March 1998, GRECO was set up as a permanent control mechanism for the twenty guiding principles[13] and the two conventions of the Council of Europe on Corruption[14]. GRECO establishes evaluation cycles for states on the basis of pre-defined topics that the political systems of the states claim to be profoundly familiar with and evaluate their practices in relation to these questions. In the evaluations performed by the Member States on the "status" of countries in relation to corruption, the questionnaires, evaluations and reports are

[13] Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption
[14] On the composition, mission and structure of GRECO, see www.coe.int.

structured either in the legal context resulting from the Convention of the Council of Europe against Corruption, or in the criminal-legal context of the states examined[15].

The cycles of evaluation, aimed at criminal prosecution and the manner in which criminal investigations were carried out, the means used and the repercussions in the states, have subsequently expanded systematically. But in addition to covering knowledge of the organisational structures of the fight against corruption, the policies developed by public institutions in the ambit of investigation or prevention, and even by non-governmental organisations and by companies in relation to matters that directly or indirectly involve situations of corruption, the need rapidly becomes apparent to address the question of the financing of the political system.

In the most recent cycles it is not merely a question of identifying criminal statistics on corruption in the different countries with legislative tools implemented by states for use by the authorities with the power to investigate, prosecute and try types of crimes. The cycles of evaluation performed in the countries of the Council of Europe go far further than said normative, organisational and statistical identification of the 'situation' of corruption in the different states –which nevertheless continues to be a point of reference–, and now identifies the other types of pathological conduct that surround the political systems that promote or allow the development of a culture of corruption.

In the evaluations, particular importance is attributed to the content of integrated policies for the prevention of conduct, at a public and private level, that may give rise to or create conditions that are ideal for the phenomena of corruption and to which special attention is paid.

Meanwhile, increasing attention is paid to the perception on the part of different public and private institutions of the negative effects of the acts and conduct of businesses and citizens on the social and economic structure that question the credibility of the decision-making system, via the manipulation of free enterprise.

Finally, the political system itself and the financing of its fundamental structures, i.e. the political parties, as well as election campaigns, are also the object of direct attention and concern in terms of evaluation.

In accordance with Recommendation Rec (2003)4 of the Committee of Ministers[16] of the Council of Europe to member states on common rules against corruption in the funding of political parties and electoral campaigns, the third GRECO evaluation cycle, started in 2007, approves the system of funding political parties and election campaigns and any relationship with phenomena of corruption.

2.4. Diversification and Harmonisation of the Types of Corruption Offences

The harmonisation of the types of offences in different legal systems would seem to be an essential step towards the development of policies on fighting corruption. This is one of the main aims behind the international conventions. Having effective legislative instruments that are common to all, allowing them to resolve their own problems while, at the same time, permitting them to relate to each other effectively, enables states to combat this kind of crime. As the phenomenon is common to all countries, the legal instruments made available to them have common parameters that each state must of course adapt to its own reality depending on its own specific circumstances.

In this regard, both the Council of Europe Convention and the UN Convention establish a collection of types of offences that cover that entire area adopted by the states in this sphere. On the need to harmonise a system of punishment that aims to cover a global reality, said texts must be said to have a highly relevant role due to the classification they contain of the types of offences to be established by the states on the phenomenon of corruption as well as their consequences from a sanctioning point of view.

Virtually all the texts mentioned define a series of investigative measures that are appropriate for the establishment of a programme of criminal investigation in the

[16] Adopted by the Committee of Ministers on 8 April 2003.

different states that is considered effective and, as such, relatively separate from other forms of crime.

Thus, recourse is taken to the establishment of specific, necessary prevention policies to be implemented by each state. Despite the fact that some of the instruments show some discontinuity regarding rules and even values, on a regulatory level the effort made to attempt to impose the perception of a global reality on states is commendable.

2.4.1. Active and Passive Corruption

There are two main types of offences: active corruption and passive corruption, enshrined in Article 15, sections a) and b) of the UN Convention. Corruption may take the form of an illicit act (active corruption) or a licit one (passive corruption), and it is at times difficult to establish the boundary between the two, which leads to problems in terms of the criminal investigation – (see, for example, the case of investigations regarding medical prescriptions "in exchange" for economic benefits supplied by the pharmaceutical industry). It is worth pointing out that the legal asset affected by the crime of corruption, i.e., what the criminalisation of corruption seeks to protect, is the functional autonomy of the state / public administration or administrative legality.

In a brief and always partial analysis of the type of social phenomena in which typical forms of conduct that can be attributed to corruption are most visible, i.e., areas of "risk", we have of course some public services, especially in relation to the state security forces, the tax administration, healthcare (doctors and the pharmaceutical industry, specifically via the improper issue of prescriptions) and local administration. This reality becomes relevant when it comes to awarding public works, acquiring public goods or services and permits and the supervision of public and private works.

Partly accompanying the globalisation of the economy itself, the transnational dimension of the phenomenon of corruption shows that deals involving large sums of money, such as the acquisition of arms or international public works are areas of effective risk that as such require special attention in terms of both prevention and investigation. Moreover, new forms of management of public services, such as the public-private enterprises, both

due to the values they contain and the bureaucratic process they entail, bring with them a series of pathological types of behaviour that are transformed into phenomena of corruption.
In the cases in which civil servants or international institutions are questioned, the Convention warns of the need to treat the two situations differently (Article 16).

2.4.2. Trading in Influence

The criminalisation of negotiating with a third party to use one's influence over a public entity in order to attempt to obtain an illegal decision, favourable to the interests of said third party, represents a new type of offence that characterises trading in influence. This offence is established in Article 18 of the UN Convention.

It is important to highlight that the typical action consists of soliciting or accepting advantages with the promise, for one's self or for a third party, to either consent to or ratify or accept a request by an intermediary, where the consequence of this is the trading in influence by the civil servant, over the public entity, in order to obtain a favourable illegal decision.

2.4.3. Crimes Related to Corruption: Embezzlement and Abuse of Functions

The existence of a criminological reality that is not specifically treated as corruption, but that has direct links to it, is currently taken into account in anti-corruption policies. The UN Convention includes this reality. Consequently, both the crime of embezzlement and the abuse of functions are covered by the same. In relation to embezzlement, the aim is to protect a complex legal asset which comprises both the honesty and loyalty of civil servants and the state's property rights. In this regard, a conduct will be considered as a crime if it leads civil servants to misappropriate funds or other movables, public or private, for their own benefit or for that of another person, which has been entrusted to them, is in their possession or that they have access to as a part of their functions (see Article 17 of the Convention).

The abuse of functions or of one's post is an offence that is committed intentionally by performing or omitting to perform an activity, in violation of the law, on the part of a civil servant in the exercise of his/her functions with a view to obtaining improper benefits either for himself/herself or for another person or entity. In the Convention (Article 19), this kind of offence is destined to cover a possible void in the articles in the chapter on crimes committed in the exercise of public functions, meaning that it acquires a subsidiary importance vis-à-vis the other kinds of abuse of authority.

2.5. Corruption and Holders of Public Office

The fact that corruption often reaches the holders of public office in many countries, taking into account the huge responsibilities they have, has led a large number of states to specifically criminalise crimes of corruption affecting holders of public office.
On the one hand, specific crimes of corruption for holders of public office are established, usually with more severe sentences and, on the other, the procedural mechanisms are also different, in such a way that they guarantee speedy proceedings. However, that was not the route chosen by the UN Convention.

The realisation that public decisions and those responsible for taking them, through the activity of the parties, have been easy for phenomena of corruption to permeate has raised the question of the protection of the democratic system itself, in particular with regard to the control of the political parties, as essential structures of the democratic state.

Some authors, in relation to the corruption of the political system by means of illegal funding mechanisms used by political parties, use the concept of "the mother of all corruption"[17], taking into account the perverse effects that it has for the entire political system based on the democratic rule of law. As Perfecto Andrés Ibáñez points out,

[17] The expression is used by Perfecto Andrés Ibáñez in the article "Tangentopoli tiene traducción al castellano" in the work *Corrupcion y Estado de Derecho. El Papel de La Jurisdiccion*, Trotta, Madrid, 1996, page 102.

"when corruption is in the centre, at the heart of the political system, it will inevitably radiate in all directions"[18].

The confirmation of this evidence led the Council of Europe to include in its priorities the establishment of guidelines for Member States directly related to the funding of political parties and election campaigns in view of their importance in the functioning of democracies[19]. The tenor of Council of Europe Recommendation Rec (2003)4 on the set of duties established therein which are addressed directly at the states, motivated by the need for transparency in accounts in a democracy, is symptomatic.

2.6. Corruption in Sports

Moreover, there have been unusual situations of corruption in the world of sport leading, particularly in view of the unique nature of the area, to the creation of specific mechanisms. As it is a phenomenon that is localised from a social perspective, and one that aims to protect truth and loyalty in sports in particular, the UN Convention does not deal with said phenomenon specifically. Nevertheless, to the extent that the sports federations and clubs in each country perform a public function or provide a public service in the terms set out in Article 2 of the Convention, they can be included in the types of offence established in criminal law as fraudulent conduct committed in the sphere of sport.

This is a field that can be considered relatively unique and as a result cannot be seen as "high risk", but as a "yellow area", meaning that there are several phenomena that require significant attention in the context of investigation. The areas related to business and the huge sums of money involved in professional sport, or refereeing, particularly in football, are clearly highly sensitive areas. Moreover, there are direct links between this phenomenon and those related to trading in influence.

2.7. Corruption in International Trade

[18] Op cit «Tangentopoli tiene traducción al castellano», page 103.

It cannot be disputed that corruption is a frequent phenomenon in international commercial transactions and that, in addition to creating serious public concern, affects the correct administration of public business and economic development, particularly in an era of inevitable economic globalisation.

On the other hand, the international conditions of competition are affected by such corruption. For this reason, international mechanisms have been created to deal with this serious situation. In this regard, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris, on 17 December 1997 is particularly relevant.

2.8. Corruption in the Private Sector

Several international instruments offer a perspective and include another dimension of corruption that is more distant from the essential core of this concept from a dogmatic perspective. What we are talking about here is corruption in the private sector and imposition of the criminalisation of corrupt conduct in this field[20]. We move on from the strictly public concept of corruption, which ceases to be a matter of the "public sector" and its officials, based on a perception that there is a private aspect to corruption. According to Contreras Alfaro, who echoes the opinion of many authors, "a misappropriation of public funds, for one's own benefit or that of a third party, is just as corrupt as misappropriating the private resources of companies by means of operations of financial engineering that take advantage of the absence of controls and legal loopholes in legislation that is insufficiently adapted to the complexity of modern economic relations"[21].

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[19] On this problem, see. Ingrid Van Bizen, *Financement des partis politiques et des campagnes électorales – lignes directrices, éditions du Conseil de l'Europe*, Strasbourg, 2003, page 9

[20] Likewise, the EU dealt with this area in Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, (OJEC L 192, 31 July 2003, page 54).

[21] See Luis H. Contreras Alfaro, *Corrupción y Principio de Oportunidad Penal*, *op. Cit.,* page 131.

Similarly, the World Bank and the Council of Europe, through GRECO, currently insist on the need to include the treatment of corruption within a "private" perspective, both as a diagnosis and a treatment of the blight. The aim here is for the private sector to accept some criteria of transparency in its decisions, to accept sanctions for the failure to respect such criteria and, moreover, to accept the interventionist role of private professional associations which are capable, to a certain extent, of regulating different sectors and safeguarding all the interests at stake.

The perception of this reality led the UN Convention to establish two types of offences related to corruption and "embezzlement" in the private sector (Articles 21 and 22), as well as setting out a series of measures to be implemented by the states regarding prevention in this area (Article 12).

2.9. Criminal Investigation in the Sphere of Corruption

A stage as broad, diffuse and complex as the one on which the phenomenon of corruption can be seen represents in itself a high degree of difficulty in the sphere of criminal investigation. It means that the authorities must have a collection of specific methods of criminal investigation that make it possible to carry to effective investigations, taking into account this diffuse and complex reality. The identification, importance and knowledge of a large part of the situations mentioned, so that evidence of the acts occurring is recognised, will be the main objective of the investigation. Establishing a predefined investigation strategy that needs to have adequate means at its disposal to obtain evidence has become an essential priority.

On this point, faced with the opaque reality to be investigated, it has become vital to be able to intervene telephones, to use adequate measures of surveillance, covert agents, controlled deliveries, specific expert evidence attached to the investigation, so that the "paper trail" can be followed effectively.

On the other hand, there is a perception of the serious difficulty in investigations in relation to the identification and determination of the financial circuits that surround

corruption. The use of financial entities strategically located in tax havens makes it more difficult to determine and follow the "trail" of the amounts of money involved and here the Financial Information Units (Article 58 of the Merida Convention) play an important role. For this reason judicial and police cooperation policies are essential.

It is also essential that the investigation in the sphere of corruption be up to date. Real-time investigation, i.e., performed when the events are to occur, is one of the fundamental principles for effective investigation. In this field, it makes little sense to invest in archaeological investigation based on the recreation of the past when this may be impossible to recover.

As we are dealing with a diffuse, foggy reality, where the traditional mechanisms of criminal investigation become redundant, the mechanisms established in the criminal laws that offer both investigators and judicial authorities the possibility to dismantle the activities related to corruption more easily are accepted. This is referred to as 'premial law' (*derecho premial*)[22]. This "law" establishes substantive criminal laws or procedural mechanisms for protecting persons who offer relevant information (Article 33 of the Convention), mechanisms exonerating or mitigating guilt or simply mechanisms for reducing the sentences imposed on persons who collaborate with police or judicial authorities in the investigation of offences related to corruption (Article 37 of the Convention).

2.10. Authorities Responsible for Investigation Corruption

Pursuant to what has been mentioned above, the magnitude of the phenomenon of corruption in modern societies, together with the difficulty of investigating such offences, where above all it is difficult to have the means of evidence recognised, mean that the investigation must also use capable professionals duly equipped with specific training for said reality. For this reason, many legal systems have specific entities for carrying out investigations into corruption and all activities related to it, staffed by

[22] Translator's note: not a widely used term, *premial law* refers to a system of rewards, as opposed to criminal law, which deals with punishments.

specifically trained officers. This is also the perspective assumed by the UN Convention (Article 36).

3. DRUGS

3.1. Globalisation of the Drug Phenomenon

As for the phenomenon of drugs, the current state of affairs is that drug consumption, production and trafficking overflows state frontiers. The globalisation of this phenomenon of drugs is a reality in terms of studies, policies and the application of the laws in this area.

The information available (the 2007 OEDT[23] report) indicates that drug use in the USA, Canada and Australia, where the statistical data is relatively reliable, is like that of the EU: "UNDOC estimates show that the prevalence of opioid use in these countries is broadly similar to that in the EU, ranging between 0.4% and 0.6% of the adult population, with Canada slightly lower and the USA slightly higher." The estimated consumption of cannabis is on average considerably lower in the EU than in the USA, Canada or Australia. As for stimulants, the levels of consumption of ecstasy are similar the world over. As for cocaine, consumption is higher in the USA and Canada than in the EU and Australia.

When it comes to the negative global consequences of drugs, particularly the impact of consumption on public health in different countries, a prudent comparison of the estimated indexes of cases of HIV infection diagnosed, related to the consumption of intravenous drug use, suggested in 2005 that the levels in Australia, Canada and the EU are less than 10 cases per million inhabitants and approximately 36 cases per million inhabitants in the USA.

[23] European Monitoring Centre for Drugs and Drug Addiction (http://www.emcdda.europa.eu) is the central axis of information on drugs in the European Union. Its function consists of gathering, analysing and disseminating information that is objective, reliable and comparable on drugs and drug-addiction in Europe.

Such data obviously points to the conclusion that nobody questions nowadays, namely that the drug phenomenon is a global one, and the states must bear this in mind when designing their policies.

A realistic vision of how to tackle the question of drugs on the policy, criminal and judicial fronts must take into account a transnational perspective, if it aspires to understand anything at all and, above all, find any kind of solution. The Preamble to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 1988, warns states of the direct relationship between trafficking and international organised crime and urges states to treat all the circumstances that surround such relationship individually and grant them more importance.

Whoever traffics in drugs does so with a view to obtaining very high profits. This is because, like in any business, the aim is to obtain profits in order to be able to cover the investments made in the networks on which the entire structure is based. That is, sufficient financial resources are necessary to finance the extensive machinery of the business. Meanwhile, the financial resources and profits need to circulate all over the world in order to be invested and applied, and this fact entails the involvement of banking activities, the incorporation of companies, the use of some states and even some leaders installed in strategic positions. This is to say that nowadays it is obvious that the trafficking in narcotic drugs is going to be related to money laundering, corruption, the public and private financial system and the commercial activity of other illicit activities, such as the arms trade and trafficking in human beings.

Only an integrated vision of the system will ultimately make it possible to understand the entire reality and, at the same time, perceive an appropriate use of the exceptional instruments that must be placed at the disposal of the investigating authorities with a view to dealing with this reality. However, the approach to this situation must be a realistic one, as it is not going to be easy to deal with such powerful realities. Stratenwerth, in referring to the US “war on drugs” policy, states incisively: “the longer the US obstinately insists on continuing, the clearer it becomes that it is not doing so in

order to win"[24]. That is, nowadays it is not possible to wage a "war" on the traffic of drugs and all the organised crime related to it. The global reality is clearly more fertile than the virtual nature of some apparently effective solutions, which ultimately take a tragic turn when implemented.

It is important to highlight the European drugs strategy (2005-2012)[25] which advocates a global, balanced treatment based on a simultaneous reduction of supply and demand. Also included in the principles established by said Recommendation, adapted by the approval of the Stockholm Programme, it is important to underline the coordination and cooperation, taking advantage of all the measures provided by the Treaty of Lisbon, particularly in those countries where there are serious drug problems, be they related to production or consumption, such as the Western Balkans, Latin America, Western Africa, Russia, Central Asia, including Afghanistan and the US.

3.2. Legal Control Mechanisms

The plural dimension of the questions related to drugs in contemporary societies requires a multi-disciplinary treatment. However, it is possible to identify two major subsystems in terms of which the matter can be divided for the purposes of the legal control of all the problems it causes: that of health and the police and judicial consequences, the latter being the one that requires our attention in this context.

The normative legal framework which should bind the states as much as possible in the jurisdictional sphere, is derived from the international Conventions of the UN on narcotic drugs. The 1961 Single Convention on Narcotic Drugs intended, by means of a single document, to reduce the number of international bodies existing and ensure global control of the raw materials used for narcotics, establishing what products and substances needed to be controlled worldwide. Later, the 1971 Convention on

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[24] Gunter Stratenwerth, "La lucha contra el blanqueo de capitales a través del Derecho Penal: el ejemplo de Suiza", conference given at the Universidad Lusíada de Lisboa, on 6 November 2002 (unpublished).

psychotropic substances completed the scope of application of the 1961Convention, albeit not without differentiating between legal and illegal psychotropic substances and the conditioning factors. While both Conventions deal with global rules on the legal market for drugs, only the UN Convention on the illicit trafficking of narcotic drugs and psychotropic substances of 1988 represents a powerful international instrument linked to the mechanisms to be adopted by the states, so that the serious consequences of drug trafficking and, above, international trafficking, could be combated.

3.3. Preventative Policies

Some degree of criminal-political realism has served to guide criminal policies related to drugs. That is to say that the need for progress in this field has long been obvious; without renouncing "strong" criminal policies in the area of investigation and suppression of the crime related to drug trafficking and the serious criminality related to it, the criminal prevention policies related to the reduction of risks and even the non-punishment of certain degrees of consumption have represented a significant parameter in certain areas of the world.

In the field of crime prevention it is also important to mention what the policies entailing a widening of the objectives related to money laundering have represented. The questions related to the trafficking in narcotic drugs and the succulent profits of the people who devote themselves to it are what has originated the rapid expansion of the mechanisms for extending anti-money laundering policies and placing emphasis on what is done nowadays, on a global level, in controlling the circuits of money that are usually related to criminal phenomena related to drug trafficking and other serious crimes. An example of this is the widening of the scope of the offence of laundering, the introduction of the Financial Information Units and the exchange of information between them, so that "dirty money" can be detected effectively.

[25] European Parliament recommendation to the Council and the European Council on the EU drugs strategy (2005-2012) (2004/2221(INI)) http://eur-

3.4. Suppressive Policies (Criminalisation, Investigation and Prosecution)

As mentioned earlier, the main action of preventative policies related to drugs means that the principle of legislative harmonisation must be fulfilled in relation to the different types of offences which, generally speaking, although they are "risk" offences, are still very general, as can be seen from the UN Convention itself.

In this way, the Convention pays special attention to the criminalisation of conduct linked to the trafficking of narcotic drugs, psychotropic substances and the precursors of the activities which follow on from the profits derived from the same, including money laundering (Article 3) the confiscation of merchandise by the states (Article 5) and the extension of the statute of limitations for the crimes (Article 3, no. 8).

Meanwhile, the Convention is far clearer on the need to address criminal investigation in a serious manner, appropriate for the transformation involved in the phenomenon of drug trafficking and the areas where trafficking is a problem, particularly in traffic by sea (Article 17). In this regard, rules have been established in relation to extradition (Article 6), judicial assistance for gathering evidence and prosecuting accused persons (Article 7), the transmission of proceedings (Article 8), the exchange of information (Article 9) and the use of special investigation techniques, specifically controlled deliveries (Article 11).

The overall framework of criminal policies is reflected in national and international policies on fighting drugs. The legislations have followed the recommendations and international rules established in the UN Convention against the illicit trafficking in narcotic drugs and psychotropic substances as well as other conventions, in particular the Convention against transnational organised crime, insofar as they contain broader indications that also apply to drugs. This is the case, in relation to trafficking, regarding joint investigations or other special investigation techniques not initially envisaged in the 1988 Convention, such as covert actions, electronic or other forms of surveillance. However, these measures are absolutely essential in investigations taking into account

lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:226E:0233:0233:EN:PDF

the means used by those involved in the trafficking of narcotic drugs in an organised fashion.

The rapid evolution was first noted in the late eighties and above all during the nineties. The perfection of the measures of investigation and, above all, the huge investment made in this area, is the result of such policies. In relation to investigation, in addition to the normative and legal instruments mentioned earlier, here we should also highlight the effectiveness of the international police and judicial cooperation. The globalised phenomenon of drugs shows that trafficking can no longer be considered as something that is limited by a particular territorial space. The transnational dimension of drug trafficking is clear. The different laws on international judicial cooperation, the mechanisms for the search and surrender of suspected or sentenced persons, and even the existence of some authorities with powers to coordinate the investigation on a transnational level –such as Eurojust in Europe– are examples of effective policies, as well as policies that are adapted to a broader territorial space.

3.5. A Brief Critical Note on Suppressive Policies Regarding Drugs

The major drug suppression policies used on a global level and the results they have obtained suggest that there are questions as to whether, in the ambit of suppressive policies, efforts should not be directed at adapting to a certain social, geographic and territorial reality. The studies published on the evolution of the subject of drugs, either from the point of view of consumption or that of trafficking, suggest highlighting that the massive, indiscriminate policies of total “war” on drugs make no sense today, unless they are accompanied by varied and different policies. They highlight two completely different recent realities, for example: at the NATO summit held in Romania on 2 and 3 April 2008, to discuss Afghanistan, which is one of the world’s two main producers of opioids by means of intensive agriculture –12.6 % of the population earn their living growing poppies[26]–, this country was warned of the need to control the traffic of drugs within its borders; unless the authorities of this country gave a strong commitment in this regard, all the other global aid policies from NATO and the EU would be cancelled.

On that same day (3 April 2008) on the other side of the world, in Río de Janeiro, a sortie by the Brazilian state police into one of the city's *favelas*, as part of the fight on drug trafficking, led to 10 deaths. This sortie formed part of a massive policy of suppression that was set in motion by the state government of Río de Janeiro in an effort to bring to an end years of powerlessness in some *favelas* dominated by drug-trafficking cartels that often assumed the role of the institutions. More recently, the daily events in Mexico, in Ciudad Juarez in particular, are common knowledge, with people being massacred on a daily basis, often in a brutal manner, which is directly caused by local control of the drug trade.

The above examples confirm the ineffectiveness of the "hardline" policy of suppression when it is not accompanied by social policies that adapt it to local realities, so that they offer alternatives to those whose livelihoods depend on drugs. While this confirmation seems to be gaining support at a political level, perspectives also emerge on a criminal law level that aim to create diverse "types" of criminal law.

In October 1999, Jakobs, at a conference in Berlin, defended the idea that the punishment established and considered legitimate under the rule of law is not sufficient for some kinds of crime. In his opinion, only those who act as human beings, generally speaking, should be treated as such, i.e., as citizens. Whoever does not act like a human being will be excluded from citizenship, thus becoming an "enemy" or a non-person[27]. A dogmatic debate on this proposition followed in Europe and, later on, worldwide, and was amplified following the attacks of 2001 in relation to cases of terrorism, and while fertile, it has nonetheless not been widely translated into practical terms, despite being of interest to those who defend the idea of an authoritarian criminal law system. Together with the criticisms received, in general, on the futility, non-necessity and undesirability of this kind of dogmatic discourse, it should also be pointed out that the maximum exponent of this doctrine, translated into the shameful chapter of the prison of Guantánamo, makes no practical contribution to the system of justice. Indeed, in addition to not resolving any problem related to terrorism, it renders

[26] Data taken from the 2006 UNDOC report.
[27] On this doctrine and its critics, see Cornelius Prittwitz, "Derecho Penal del Enemigo: Análisis crítico o programa del derecho Penal?", in *La Política criminal en Europa*, coord. Víctor Gómez Martín, Atelier, Barcelona, 2004.

the criminal intervention of states that use such policies illegitimate, making them even more fragile. Thus, it makes no sense to use this kind of dogmatic umbrella in the ambit of a total “war” on drugs.

Another entirely different matter is the need to respond to the diversity of problems involved in the question of drugs, in particular, providing an appropriate multi-disciplinary response to the different situations that arise in this regard. The different and multiple interests that are behind the drug problem (from the economy of some producer countries to the pleasure-seeking involved in the behaviour of large-scale consumers, which are more relevant than “the intention to renege on one’s duties”[28]), all need to be assessed and considered in order to view the policies of suppression of crimes related to drugs with a sense of perspective.

As there are no alternative solutions to the criminal policies established in the application of a prison sentence to suppress trafficking in narcotics, non-criminal systems of punishment would seem to be a solution for some areas of suppression of consumption and even cases of a combination of traffic and consumption. Suppress and punish, but only to the extent necessary. Nevertheless, the imposition of prison sentences does not require a maximalist criminal policy that goes beyond what is required in other serious types of conduct. Suppress and punish, but only to the extent necessary.

[28] Assim Cândido Agra, *Entre la droga y el delito*, page 80.

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5. MORE INFORMATION

ORGANISED CRIME

www.unodc.org/unodc/en/organized-crime/ (UN)

http://ec.europa.eu/justice_home/fsj/crime/fsj_crime_intro_en.htm (EU)

CORRUPTION:

www.unodc.org/unodc/en/corruption/ (UN)

http://ec.europa.eu/justice_home/fsj/crime/corruption (EU)

www.transparency.org (International transparency)

www.coe.int/t/dghl/monitoring/greco (Council of Europe- GRECO)

www.ec.europa.eu/anti_fraud (OLAF)

http://www.state.gov/www/global/narcotics_law/global_forum/appendix2.html (US Department of State: Global forum on the fight against corruption)

www.worldbank.org/publicsector/anticorrupt/ (World Bank: anticorruption)

www.u4.no (Utstein anticorruption resource centre).

http://www.oecd.org/department/0,3355,en_2649_34855_1_1_1_1_1,00.html (OECD anti-bribery web)

http://www.stabilitypact.org/anticorruption/default.asp (Stability pact anticorruption initiative)

http://www.stabilitypact.org/anticorruption/ (stability pact anti-corruption initiative)

http://www.epac.at/ (European partners against corruption - EU's National Police Oversight Bodies and Anti-Corruption Authorities)

DRUGS:

www.unodc.org (UN)

www.coe.int/t/dg3/pompidou (Council of Europe, Pompidou Group)

www.ec.europa.eu/health-eu/my_lifestyle/drugs. (EU)

www.emcdda.europa.eu (European Observatory for Drugs)