

# Section 14: Drug Offenses

## General Commentary

Drug-related criminal offenses are often prevalent in post-conflict states, whether the drugs are being cultivated there (e.g., Afghanistan) or trafficked through the state (e.g., East Timor). Often, a post-conflict state can be a safe haven for criminal elements involved in drug-related crime, particularly where borders are porous, with no customs control, or where the police force and the criminal justice system do not function effectively or are easily subject to corruption. The drug trade in post-conflict states is often closely linked to organized criminal activities. In some cases, drug trafficking is used as a means to finance terrorist elements. Its potential to destabilize a post-conflict state and to impede the return to peace and the rule of law is great. It also has the potential to cause regional destabilization and to facilitate transnational crime. Thus tackling the drug trade in post-conflict states is often very high on the agenda for both the government and international actors and donors.

In the first place, a state needs to introduce adequate legislation penalizing drug offenses and defining what drugs are illegal to possess, import, export, and so on without authorization from the state. This list of drugs should include at a minimum those prohibited narcotic drugs and psychotropic substances listed in the schedules to the United Nations conventions referenced in the provisions below. Novel drugs are constantly emerging. A state should ensure that its drug schedule is up-to-date. Recourse should be made to the work of the Commission on Narcotic Drugs. The powers of the commission, as derived from the international treaties on narcotic drugs and psychotropic substances discussed below, include the amendment of the schedules to the conventions (once the World Health Organization makes certain findings on a particular narcotic drug or psychotropic substance). Reference should also be made to the International Narcotics Control Board (INCB). Like the Commission on Narcotic Drugs, the INCB is a subsidiary body of the United Nations Economic and Social Council. Its role is to monitor the enforcement of restrictions on narcotic drugs and psychotropic substances and to decide which precursors (defined below in Article 174) should be regulated and deemed illegal. In terms of legislation on drug offenses, reference should be made to the United Nations International Drug Control Programme (UNDCP, the predecessor to the United Nations Office on Drugs and Crime) Model Drug Abuse Bill, 2000, and the United Nations Office on Drugs and Crime's Model Law on the Classification of Narcotic Drugs, Psychotropic Substances and Precursors and on the Regulation of the Licit Cultivation, Production, Manufacture and Trading of Drugs (2003).

In conjunction with the criminalization of persons who deal illegally with drugs, it is also necessary to establish a regulatory system for the import, export, supply, and use of drugs by legitimate sources, such as pharmacies or hospitals. This was done quite early on in the United Nations Mission in Kosovo under Regulation 2000/52 on the Import, Manufacture, Sale and Distribution of Pharmaceutical Products, Including Narcotic Drugs and Psychotropic Substances. The absence of such a system can prove detrimental to the local population. In one post-conflict state, unqualified persons are importing and selling many illegal, expired, and counterfeit drugs to the local population, at a great risk to buyers' health. On the other hand, a regulatory system is vital to ensure that certain priority drugs are legally imported into a post-conflict state. For example, drugs to treat post-traumatic stress disorder (a condition prevalent among populations who have lived through the ravages of conflict) may need to be imported.

It may also be important to consider whether there are sufficient legal provisions on money laundering, as often money derived from drug-related activities is taken out of the state and laundered through complex international financial transactions. This situation is referenced in the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), Article 3(b), discussed below. Reference should be made to Article 135, "Money Laundering." At Article 3(5), the convention also references the cross linkages between organized crime and drug offenses. While the convention does not require the criminalization of organized crime, it requires it to be taken into account in imposing a penalty upon a convicted person. Since 1988, when the convention was drafted, a definition of organized crime has been agreed upon under the United Nations Convention against Transnational Organized Crime. This definition has been integrated into the MCC in Article 136.

Establishing effective investigative techniques is also crucial to the effective investigation of drug offenses. Such techniques include witness protection measures (see Chapter 8, Part 4, Section 1, of the MCCC), covert measures of surveillance and provisions on controlled delivery (see Chapter 8, Part 3, Section 5 of the MCCC), confiscation of proceeds of crime and instrumentalities (see Articles 70–73 of the MCC and Chapter 13 of the MCCC), and international cooperation and extradition (see Chapter 14, Parts 1 and 2, of the MCCC). In post-conflict states, very practical issues have stood in the way of prosecuting persons for drug offenses. For example, the lack of field testing kits and the absence of laboratories to test drugs makes it difficult to successfully investigate and prosecute drug offenses. Such resource needs should be considered by international donors and the local authorities in a post-conflict state addressing the problem of narcotic drugs and psychotropic substances.

In addition to these legislative measures, some states choose to adopt a special mechanism for the prosecution of drug crimes, which makes it easier for judges and prosecutors to be specially trained to deal with these highly complex cases. In Afghanistan, for example, counternarcotics tribunals were established. For a full discussion of these tribunals, see *Combating Serious Crimes in Postconflict Societies: A Handbook for Policymakers and Practitioners*, edited by Colette Rausch and published by the United States Institute of Peace. In other countries, special "drug courts" have been established. They deal more with the problem of drug users committing criminal offenses than with drug cartels. Integral to a drug court is its alternative-sentencing procedures,

which look to rehabilitate drug-dependent offenders. Useful reference can be made to the UNDCP's Model Drug Court (Treatment and Rehabilitation of Offenders) Bill.

In addition to setting up a special mechanism to combat drug crimes, it may also be necessary to establish a special counternarcotic unit within the domestic police force. Many post-conflict states have established such units to deal solely with drug-related offenses. This process is also discussed in *Combating Serious Crimes in Postconflict Societies*. To address the problem of border control, a border-control police unit may also need to be established. The personnel involved in these units will require specialist and intensive training in the effective investigation of serious drug offenses.

Other measures to address serious drug problems in a post-conflict state include the development of alternative-livelihood programs (including crop-substitution programs) and eradication of drug crops (in conjunction with an alternative-livelihood program). Useful reference can be made to the United Nations Office on Drugs and Crime's *Alternative Development: A Global Thematic Evaluation, Final Synthesis Report*.

Drug offenses are the subject of a number of international treaties drafted between 1961 and 1988. They are the Single Convention on Narcotic Drugs (1961) (as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs), the Convention on Psychotropic Substances (1971), and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The 1961 convention is primarily concerned with the regulation of the production and manufacture of controlled substances, and it limits their use to medical and scientific purposes. The convention, based entirely on the voluntary cooperation of states, sets out a system of international control under the leadership of the Commission on Narcotic Drugs of the United Nations Economic and Social Council and the International Narcotics Control Board (Article 5). The convention leaves it to the discretion of a state party to domestically implement the system. The Single Convention on Narcotic Drugs regulates only narcotic drugs. There is no definition of narcotic drugs per se. Instead, reference is made to the schedules of the convention. In short, the convention regulates only naturally derived drugs—those related to opium, cannabis, and cocaine—rather than synthetically produced drugs. The penal provision of the convention (Article 36) is discussed below under the relevant articles. In terms of procedural requirements, the convention contains provisions on seizure and confiscation (Article 37).

The Convention on Psychotropic Substances extends the scope of international control to synthetic drugs, or psychotropic substances such as amphetamine-type stimulants, sedative-hypnotics, tranquilizers, and hallucinogens such as LSD. There are numerous provisions that establish an extensive regulatory system for the control of drugs under the International Narcotics Control Board. The penal provision of the convention (Article 22) is discussed below in relation to the relevant articles. The convention also contains provisions on international cooperation (Article 27) and measures to be taken to counter drug abuse (Article 20).

The main focus of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is to harmonize the scope and definition of drug offenses, provide effective measures of international cooperation and coordination among national authorities of different states, and provide the legal means to interdict illicit trafficking. The convention also contains provisions on eradication of narcotic plants

(Article 14). Significantly, it brings precursors under the scope of the convention. Precursors are substances used in the conversion of morphine into heroine and in the illicit manufacture of psychotropic substances (listed in tables I and II annexed to the convention and discussed in Article 12). The convention also addresses materials and equipment used for the manufacture of narcotic drugs or psychotropic substances (Article 13). The penal provisions of the convention are discussed below in relation to the relevant articles, with the exception of money laundering, which is discussed in the commentary accompanying Article 135. A state wishing to implement its obligations under the convention should look at numerous procedural provisions, such as those on confiscation, Article 3(4)(a) and Article 5; extradition (Article 6); mutual legal assistance (Article 7); transfer of proceedings (Article 8); cooperation (Articles 9 and 10); and controlled delivery (Article 11).

The criminal offenses set out below seek to comply with the obligations contained in the conventions relating to the introduction of penal provisions into domestic legislation. As mentioned above, obligations relating to procedural law are dealt with in more detail in the relevant provisions of the MCCP. In implementing obligations under the conventions, reference should be made to the law enforcement section of the United Nations Office on Drugs and Crime (UNODC), the UNODC Alternative Development Programme, and the Global Assessment Programme.

## Article 170: Trafficking in Narcotic Drugs and Psychotropic Substances

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### *Article 170.1: Definition of Offense*

1. A person commits the criminal offense of trafficking in narcotic drugs and psychotropic substances when he or she, unlawfully:
  - (a) produces;
  - (b) manufactures;
  - (c) extracts;
  - (d) prepares;
  - (e) offers or offers for sale;
  - (f) distributes;
  - (g) sells;
  - (h) delivers on any terms whatsoever;
  - (i) brokers;

- (j) dispatches or dispatches in transit;
  - (k) transports; or
  - (l) imports or exports any narcotic drug or any psychotropic substance.
2. For the purposes of Article 170:
- (a) *narcotic drug* means any of the substances, natural or synthetic, in schedules I and II of the Single Convention on Narcotic Drugs, 1961, and the convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, or in the applicable law; and
  - (b) *psychotropic substance* means any substance, natural or synthetic, or any natural material in schedules I, II, III, and IV of the Convention on Psychotropic Substances, 1971, or in the applicable law.

## Commentary

**Paragraph 1:** The wording of this paragraph is derived from Article 3(1)(a)(i) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Many of the methods of trafficking are also referenced in Article 36 of the Single Convention on Narcotic Drugs, which also requires that states adopt measures to ensure that these methods are made punishable offenses in domestic law. In addition, the convention requires that the organization, management, or financing of trafficking be criminalized. This offense is dealt with in Article 172, below. The convention also requires, under Article 3(1)(c)(iii), that a person who publicly incites another to commit trafficking or induces another to commit trafficking be prosecuted. Furthermore, under Article 3(1)(c)(iv), a person who participates in, is associated with, or conspires to commit the criminal offense of trafficking, or who aids, abets, facilitates, or counsels the commission of this offense, is also be liable for criminal prosecution. These grounds of liability are covered under Articles 28–32 of the MCC.

The jurisdictional provision of the convention, Article 4, requires that states establish jurisdiction over drug trafficking when it is committed on the territory of the state, on board a vessel flying its flag, or on an aircraft registered under its laws at the time the offense is committed. It also provides that states may establish jurisdiction over persons who have habitual residence in the territory or who are nationals of the state, among others. All the grounds of jurisdiction just mentioned are contained in Article 4 (“Territorial Jurisdiction”) and Article 5 (“Extraterritorial Jurisdiction”) of the MCC. Reference should be made to these articles and their accompanying commentary.

**Paragraph 2(a):** The term *narcotic drug* does not have a self-standing definition but instead is defined in relation to the schedules to the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Reference should be made to the schedules. It is worth noting that the classification method employed in the convention is based on the medical use of the drugs. Consequently, substances that do not

have a medical use are automatically classed as particularly dangerous. For example, cannabis is classified in the same category as heroin. Instead of relying on the schedules to classify narcotic drugs, for the purpose of domestic criminal legislation, many states create a separate list, or schedule, of prohibited or controlled drugs.

It may, therefore, be wise to rethink the method by which narcotic drugs are classified. It might be better not to use the schedules as the basis for grading the dangerous nature of a particular drug. If a state chooses to do so, it may wish to add to the list of drugs contained in the convention. Hence the phrase “or in the applicable law” is used in this paragraph. The drugs that are controlled may differ from state to state. For instance, the possession of cannabis is legal in some states while not in others. Many states classify not only the category of a drug or substance but also the amount that the perpetrator traffics. In one state, for example, legislation distinguishes between a “trafficable quantity,” a “commercial quantity,” and a “large commercial quantity.”

**Paragraph 2(b):** The term *psychotropic substance* does not have a self-standing definition but instead is defined in relation to the schedules to the Convention on Psychotropic Substances. Reference should be made to the schedules. The criterion used to classify psychotropic substances in the schedules is their therapeutic value but in essence their classification is related to whether they belong to the following groups: hallucinogens, amphetamines, barbiturates, and tranquilizers. As with narcotic drugs, a state may wish to reclassify psychotropic substances or add substances to the list contained in the convention. Hence the phrase “or in the applicable law” is used in this paragraph.

## Article 170.2: Penalty

1. The applicable penalty range for the criminal offense of trafficking in narcotic drugs or psychotropic substances is two to ten years' imprisonment.
2. The applicable penalty range for the criminal offense of trafficking in narcotic drugs or psychotropic substances is three to fifteen years' imprisonment where a large quantity of narcotic drugs or psychotropic substances is trafficked.

## Commentary

**Paragraph 2:** As mentioned above, the legislation of most states on drug offenses includes schedules or tables that set out a list of narcotic drugs, psychotropic substances, and other substances that are prohibited. Often, these schedules also categorize drugs according to their quantity—for example, a schedule may distinguish between an amount deemed to be for personal use and a trafficable amount. The MCC does not have a schedule like the one just described, however, and it is advisable that a state implementing legislation on drug offenses create one in which reference is made to quantities of drugs. For the purposes of the MCC, two separate penalty ranges have

been created based on whether the drugs or psychotropic substances are a *large quantity* or not. Thus, when a very large quantity of narcotic drugs or psychotropic substances has been trafficked, a court may apply a higher penalty range to a person convicted of this offense.

## Article 171: Possession or Purchase of Narcotic Drugs or Psychotropic Substances for the Purpose of Trafficking

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### *Article 171.1: Definition of Offense*

1. A person commits the criminal offense of possession or purchase of narcotic drugs or psychotropic substances for the purpose of trafficking when he or she possesses or purchases narcotic drugs or psychotropic for the purpose of trafficking.
2. For the purposes of Article 171:
  - (a) *narcotic drug* has the same meaning as in Article 170.1(2)(a); and
  - (b) *psychotropic substance* has the same meaning as in Article 170.1(2)(b).

### Commentary

**Paragraph 1:** The wording of this paragraph is derived from Article 3(1)(a)(iii) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This offense is also contained in Article 36 of the Single Convention on Narcotic Drugs. Reference should be made to Article 170.1(1) of the MCC for the definition of *trafficking*, which is referred to in Paragraph 1. The issues relating to the grounds for criminal liability and jurisdiction, as discussed in the commentary to Article 170, above, also relate to Article 171. Reference should be made to the commentary to Article 170.

**Paragraph 2(a):** Reference should be made to the commentary accompanying Article 170.1(2)(a).

**Paragraph 2(b):** Reference should be made to the commentary accompanying Article 170.1(2)(b).

## Article 171.2: Penalty

1. The applicable penalty range for the criminal offense of possession or purchase of narcotic drugs or psychotropic substances for the purpose of trafficking is two to ten years' imprisonment.
2. The applicable penalty range for the criminal offense of possession or purchase of narcotic drugs or psychotropic substances for the purpose of trafficking is three to fifteen years' imprisonment where a person possesses or purchases a large quantity of narcotic drugs or psychotropic substances for the purpose of trafficking.

### Commentary

**Paragraph 2:** Reference should be made to the commentary to Article 170.2.

## Article 172: Organizing, Managing, or Financing Trafficking in Narcotic Drugs or Psychotropic Substances

### Article 172.1: Definition of Offense

1. A person commits the criminal offense of organizing, managing, or financing trafficking in narcotic drugs or psychotropic substances when he or she organizes, manages, or finances trafficking in narcotic drugs and psychotropic substances, as set out in Articles 170.1(l).
2. For the purposes of Article 172:
  - (a) *narcotic drug* has the same meaning as in Article 170.1(2)(a); and
  - (b) *psychotropic substance* has the same meaning as in Article 170.1(2)(b).

### Commentary

**Paragraph 1:** The wording of this paragraph is derived from Article 3(1)(a)(v) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The issues relating to the grounds for criminal liability and jurisdiction, as discussed under

the commentary to Article 170, above, also relate to Article 172. Reference should be made to the commentary to Article 170.

**Paragraph 2(a):** Reference should be made to the commentary accompanying Article 170.1(2)(a).

**Paragraph 2(b):** Reference should be made to the commentary accompanying Article 170.1(2)(b).

## *Article 172.2: Penalty*

1. The applicable penalty range for the criminal offense of organizing, managing, or financing the trafficking of narcotic drugs or psychotropic substances is two to ten years' imprisonment.
2. The applicable penalty range for the criminal offense of organizing, managing, or financing the trafficking of narcotic drugs or psychotropic substances is three to fifteen years' imprisonment where a person organizes, manages, or finances the trafficking of a large quantity of narcotic drugs or psychotropic substances.

### **Commentary**

**Paragraph 2:** Reference should be made to the commentary to Article 170.2.

## **Article 173: Cultivation of Opium Poppy, Coca Bush, or Cannabis Plant**

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### *Article 173.1: Definition of Offense*

1. A person commits the criminal offense of cultivation of opium poppy, coca bush, or cannabis plant when he or she cultivates opium poppy, coca bush, or cannabis plant for the purpose of producing narcotic drugs or psychotropic substances or for personal use.
2. For the purposes of Article 173:
  - (a) *opium poppy* means the plant of the species *Papaver somniferum L.*;
  - (b) *coca bush* means the plant of any species of the genus *Erythroxylon*;

- (c) *cannabis plant* means any plant of the genus *Cannabis*;
- (d) *narcotic drug* has the same meaning as in Article 170.1(2)(a); and
- (e) *psychotropic substance* has the same meaning as in Article 170.1(2)(b).

## Commentary

**Paragraph 1:** The wording of this paragraph is derived from Articles 3(1)(a)(ii) and (3)(2) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Article 173 targets two classes of individuals: those who are cultivating opium poppy, coca bush, or cannabis plant for the purpose of producing narcotic drugs; and those who are engaging in cultivation for their personal use. The distinction is reflected in the penalty ranges set out in Article 173.2, where a higher penalty may be imposed upon a person who cultivates opium poppy, coca bush, or cannabis plant for the purpose of producing narcotic drugs (and an even more severe penalty is imposed where a large quantity of these substances has been cultivated) than on a person who cultivates these substances for personal use.

The issues relating to the grounds for criminal liability and jurisdiction, as discussed in the commentary to Article 170, above, also relate to Article 173. Reference should be made to the commentary to Article 173.

**Paragraph 2(a):** The definition of opium poppy comes from Article 1(q) of the Single Convention on Narcotic Drugs (as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961).

**Paragraph 2(b):** The definition of coca bush comes from Article 1(e) of the Single Convention on Narcotic Drugs (as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961).

**Paragraph 2(c):** The definition of cannabis plant comes from Article 1(c) of the Single Convention on Narcotic Drugs (as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961).

**Paragraph 2(d):** Reference should be made to the commentary accompanying Article 170.1(2)(a).

**Paragraph 2(e):** Reference should be made to the commentary accompanying Article 170.1(2)(b).

## Article 173.2: Penalty

1. The applicable penalty range for the criminal offense of cultivation of opium poppy, coca bush, or cannabis plant for personal use is one to five years' imprisonment.
2. The court may impose a fine, as a principal penalty, upon a person convicted of cultivation of opium poppy, coca bush, or cannabis plant for personal use.
3. The applicable penalty range for the criminal offense of cultivation of opium poppy, coca bush, or cannabis plant for the production of narcotic drugs is two to ten years' imprisonment.
4. The applicable penalty range for the criminal offense of cultivation of opium poppy, coca bush, or cannabis plant for the production of narcotic drugs is three to fifteen years' imprisonment where a person cultivates a large quantity of opium poppy, coca bush, or cannabis plant.

### Commentary

**Paragraph 2:** As mentioned above, Article 173 deals with persons who cultivate opium poppy, coca bush, or cannabis plant for their own personal use or for the purposes of production. Consequently, it was necessary to create two distinct penalty ranges, the heavier penalty range being applied to a person involved in cultivation for the purpose of producing narcotic drugs and psychotropic substances, and the lesser range being applied to those cultivating for personal use.

**Paragraph 4:** Paragraph 4 makes a further breakdown in terms of the applicable penalty range for persons cultivating opium poppy, coca bush, or cannabis plant for the production of narcotic drugs and psychotropic substances and those cultivating “large quantities” of opium poppy, coca bush, or cannabis plant. As discussed above, the legislation of most states on drug offenses includes schedules or tables that set out a list of narcotic drugs, psychotropic substances, and other substances (such as opium poppy, coca bush, or cannabis plant) that are prohibited. Often, these schedules also distinguish between different quantities of the relevant substances and indicate, for example, what quantity of each represents an amount that would be deemed for personal use, or trafficable or a large quantity. The MCC does not have a schedule like the one just described, however, and it is advisable that a state implementing legislation on drug offenses create one in which reference is made to quantities. For the purposes of the MCC, two separate penalty ranges have been created based on whether the opium poppy, coca bush, or cannabis plant are a *large quantity* or not. This way, when a very large quantity of opium poppy, coca bush, or cannabis plant has been cultivated, a court may apply a higher penalty range to a person convicted of this offense.

## Article 174: Manufacture, Transport, or Distribution of Precursors

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### *Article 174.1: Definition of Offense*

1. A person commits the criminal offense of manufacture, transport, or distribution of precursors when he or she manufactures, transports, or distributes precursors, knowing that they are to be used in or for the illicit cultivation, production, or manufacture of narcotic drugs or psychotropic substances.
2. For the purposes of Article 174, *precursor* means a substance frequently used in drug manufacture and listed in tables I and II of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) or in the applicable law.

### Commentary

**Paragraph 1:** The wording of this paragraph is derived from Article 3(1)(a)(iv) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, although the term *precursor* is not used in the text of the convention. As mentioned above, a precursor is a substance used in the conversion of morphine into heroin and in the illicit manufacture of psychotropic substances (listed in tables I and II annexed to the convention and discussed in Article 12). The issues relating to the grounds for criminal liability and jurisdiction, as discussed in the commentary to Article 170, above, also relate to Article 174. Reference should be made to the commentary to Article 170.

**Paragraph 2:** The term *precursor* is not used in the convention. Instead the convention uses the phrase “substances listed in Table I and Table II.” Reference should be made to the tables accompanying the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. A state may wish to add to the list of precursors. Hence the phrase “or in the applicable law” is used in the paragraph.

### *Article 174.2: Penalty*

1. The applicable penalty range for the criminal offense of manufacture, transport, or distribution of precursors is two to ten years' imprisonment.

2. The applicable penalty range for the criminal offense of manufacture, transport, or distribution of precursors is three to fifteen years' imprisonment where a person manufactures, transports, or distributes a large quantity of precursors.

## Commentary

Reference should be made to the commentary to Article 173(2)(4), which discusses the term *large quantity* in the context of drug offenses.

# Article 175: Manufacture, Transport, or Distribution of Equipment or Materials for Use in the Illicit Cultivation, Production, or Manufacture of Narcotic Drugs or Psychotropic Substances

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## *Article 175.1: Definition of Offense*

1. A person commits the criminal offense of manufacture, transport, or distribution of equipment or materials for use in the illicit cultivation, production, or manufacture of narcotic drugs or psychotropic substances when he or she manufactures, transports, or distributes equipment or materials, knowing that they are to be used in or for the illicit cultivation, production, or manufacture of narcotic drugs or psychotropic substances.
2. For the purposes of Article 175:
  - (a) *narcotic drug* has the same meaning as in Article 170.1(2)(a); and
  - (b) *psychotropic substance* has the same meaning as in Article 170.1(2)(b).

## Commentary

**Paragraph 1:** The wording of this paragraph is derived from Article 3(1)(a)(iv) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The terms *equipment* and *materials* are not defined in the convention. The issues relating to the grounds for criminal liability and jurisdiction, as discussed in the commentary to Article 170, above, also relate to Article 175. Reference should be made to the commentary to Article 170.

**Paragraph 2(a):** Reference should be made to the commentary accompanying Article 170.1(2)(a).

**Paragraph 2(b):** Reference should be made to the commentary accompanying Article 170.1(2)(b).

### *Article 175.2: Penalty*

The applicable penalty range for the criminal offense of manufacture, transport, or distribution of equipment or materials for use in the illicit cultivation, production, or manufacture of narcotic drugs or psychotropic substances is two to ten years' imprisonment.

## Article 176: Possession or Purchase of Narcotic Drugs or Psychotropic Substances for Personal Use

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### *Article 176.1: Definition of Offense*

1. A person commits the criminal offense of possession or purchase of narcotic drugs or psychotropic substances for personal use when he or she possesses or purchases a quantity of narcotic drugs or psychotropic substances for his or her personal use.
2. For the purposes of Article 176:
  - (a) *narcotic drug* has the same meaning as in Article 170.1(2)(a); and
  - (b) *psychotropic substance* has the same meaning as in Article 170.1(2)(b).

## Commentary

**Paragraph 1:** Article 3(2) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) requires that states parties criminalize the possession and purchase of narcotic drugs and psychotropic substances for personal use. This requirement is in contrast to Article 171 of the MCC which criminalizes the possession and purchase of narcotic drugs and psychotropic substances for the purpose of trafficking. Those who purchase or possess narcotic drugs or psychotropic substances for the purpose of trafficking are dealt with more severely when it comes to the imposition of penalties; see Article 171.2(2). Ordinarily, domestic legislation on drug offenses contains a schedule or a table that sets out the amounts of narcotic drugs and psychotropic substances that are deemed to be quantities that could reasonably be for personal use. A cutoff point is established that distinguishes quantities of narcotic drugs and psychotropic substances that are deemed to be “trafficable.” If a person purchases or possesses narcotic drugs or psychotropic substances in an amount equal to that set out as a trafficable quantity in domestic legislation, the person is deemed to purchase or possess this quantity for the purpose of trafficking. This person would be dealt with under Article 171, above, rather than under the current article. The drafters of the MCC originally considered creating a schedule that would set out the exact amount of each narcotic drug or psychotropic substance deemed to be for personal use or for trafficking. Instead it was decided that this should be completed by a post-conflict state when implementing legislation on drug offenses, in light of the particular narcotic drugs or psychotropic substances prohibited under its laws and the context of the country.

The question of whether to criminalize the possession of all types and amounts of narcotic drugs and psychotropic substances for personal use is a very sensitive one. It is an issue on which there is considerable divergence of opinion among states. Many experts consulted as part of the process of vetting the MCC supported the inclusion of a provision on possession of narcotic drugs and psychotropic substances of any amount or type. In contrast, others opposed the inclusion of such a provision, both generally and specifically in relation to post-conflict states. The latter group argued that given all the crime problems that need attention in a post-conflict state, it would be best not to include the offense of possession of all amounts and types of narcotic drugs and psychotropic substances for personal use. Instead, they proposed that the MCC focus on more serious drug offenses that relate to trafficking of drugs, typically carried out by organized criminal gangs. In this way, the resources of the domestic police force and the criminal justice system would not be used on minor drug offenses but would be channeled into combating the suppliers and dealers of drugs. It is also relevant to note, in favor of not including an offense relating to possession of narcotic drugs or psychotropic substances for personal use, that there has been international support for the decriminalization of certain genres of drugs and the replacement of a criminalization policy with other strategies that tackle the root causes of drug abuse.

In some states that prosecute persons for possession of narcotic drugs and psychotropic substances for personal use, special drug courts have been established to deal only with drug users. These sorts of drug courts should not be confused with drug courts established to address criminal offenses committed by drug dealers and suppli-

ers, created in post-conflict states where these high-level crimes are widespread. Research on drug courts that deal with personal users of drugs has shown that they work very successfully in tackling the problem of drug abuse. Instead of receiving a penalty of imprisonment, a person convicted of possession or purchase of drugs for personal use undertakes a court-ordered drug treatment program. Whether or not a post-conflict state wishes to implement a provision on possession of narcotic drugs or psychotropic substances for personal use is really a question of national policy and should be decided upon by a state when it is considering the variety of drug-related offenses it wishes to incorporate into domestic criminal legislation. The state may also wish to consider implementing provisions on special drug courts to deal with those subject to prosecution for possession of narcotic drugs and psychotropic substances.

**Paragraph 2(a):** Reference should be made to the commentary accompanying Article 170.1(2)(a).

**Paragraph 2(b):** Reference should be made to the commentary accompanying Article 170.1(2)(b).

## *Article 176.2: Penalty*

The applicable penalty range for the criminal offense of possession of narcotic drugs or psychotropic substances for personal use is one to five years' imprisonment.