

4-2015

Global Disconnect: Drug Trafficking and the Failure of International Enforcement

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Global Disconnect: Drug Trafficking and the Failure of International Enforcement

by

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Submitted to the LSU Honors College in partial fulfillment of
the Upper Division Honors Program.

April, 2015

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Introduction

Smuggling, distribution and sale of illegal drugs is a constantly occurring cycle. The United Nations defines drug trafficking as “a global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws.”¹ Not only do these drug transactions happen daily, they take place around the world. Globalization connects, for a moment in time, producers in Myanmar to traffickers in Southeast Asia, the Middle East, and the Baltics to consumers in Amsterdam and their tourist guests who heard rumors of a lack of regulation. Around the world, on every economic level of society, people consume substances to alter their consciousness. The illicit nature of drug trafficking has created the notion of a government “war on drugs” taking place on several scales, from individual human lives to international government conventions. Over time, in what historians label the “psychoactive revolution,” “people have acquired progressively more, and more potent, means of altering their ordinary waking consciousness.”² The purpose of this thesis is to explore a brief history of drug policy, how drugs came to be prohibited, the effectiveness of current drug policy, and enforcement mechanisms.

According to the most recent UN World Drug Report in 2014, global levels of illicit drug use and problem drug use— such as addiction or dependence — have stayed “generally stable, with the total global number of drug users increasingly commensurate with the growth of the world population” in recent years.³ The UN estimated there were 183,000 drug-related deaths in

¹ United Nations Office on Drugs and Crime. “Drug Trafficking.”

² David Courtwright. *Forces of Habit: Drugs and the Making of the Modern World* (Cambridge: Harvard University Press, 2001), 2.

³ United Nations Office on Drugs and Crime, *World Drug Report 2014*, Vienna: UN, June 2014, ix.

2012, which is a mortality rate of about 40 people per million.⁴ In 2012, 5.2% of the world population aged 15-64 years old used an illegal drug at least once. Member states define approximately 16-39 million people as problem drug users.⁵ Ranges in estimation occur because of individual countries' lack of reporting or conflicting definitions of what "problem" use means. In the last few years, opiates were the most abused drugs in Asia and Europe, while in the Americas, most people who request treatment do so for cocaine. Also, while the general public seems to regard marijuana as the least harmful prohibited drug, in the last five years there has been a large increase in the number of people seeking help for cannabis use.⁶ The majority of drug use offenses worldwide are associated with cannabis, but "crime related to drug trafficking varies depending on the type of drug and the supply patterns involved in different regions."⁷

Chapter one delves further into histories of how certain drugs were discovered and became popular, but first a definition of what constitutes a "drug" is necessary. According to the Oxford English Dictionary, a drug is defined as "a natural or synthetic substance used in the prevention or treatment of disease, a medicine; also a substance that has a physiological effect on a living organism" or "a substance with intoxicating, stimulant, or narcotic effects used for cultural, recreational, or other non-medicinal purposes, specifically a controlled substance used illegally and often habitually."⁸ Drugs can come directly from plants, or be an alkaloid, semisynthetic or completely synthetic.⁹ An alkaloid is chemically defined as an organic compound with basic properties, but more precisely, alkaloids are a class of compounds that can

⁴ Ibid.

⁵ Ibid.

⁶ Ibid, xii.

⁷ Ibid.

⁸ Oxford English Dictionary. "Drugs." Oxford University Press: 2015.

<<http://www.oed.com.libezp.lib.lsu.edu/view/Entry/57982?redirectedFrom=drug+trafficking#eid129348832>>

⁹ Courtwright, *Forces of Habit*, 85.

have physiological or toxic effects on the human body, including nicotine, caffeine, morphine and cocaine.¹⁰ Chapter one will also cover which plants or compounds produce which drugs.

A common and contemporary discussion regarding drug use often includes the argument that a person should have rights over their own body and what they choose to put into it. Such a viewpoint of ethics and morality seems to beg the question of why drugs are an issue at all. Transnational drug trade and drug trafficking affect millions of people— more than just the consumers. As an example, violence and extortion associated with trafficking implicate the American college student snorting cocaine at a party in the deaths of the family members of producers mixed up with organized crime in Colombia. An “externality” in economics is a consequence or side effect that affects parties outside of the cost of the goods and services involved in a trade, “a social cost or benefit.”¹¹ The death toll arising from both legal and illegal psychoactive substances continues to increase, and the root causes are money and power.¹² The drug “trade” is very much an economic enterprise.

Every government has a responsibility to make policies regarding drug use, whether to protect its people or defend its own self-interest and international reputation. Drug policy expert and medical doctor David F. Musto argues, “[i]t is quite possible to formulate a viable political response to public outcry and at the same time avoid an objective dissemination of the critical issues: the nature of... society; the vulnerability of drug addicts; the psychological and physiological effects of drugs; and the social impact of drug use.”¹³ A solution to the drug

¹⁰ Oxford English Dictionary, “Alkaloids,” Oxford University Press: 2015.
<<http://www.oed.com.libezp.lib.lsu.edu/view/Entry/5131?redirectedFrom=ALKALOIDS#eid>>

¹¹ Oxford English Dictionary, “Externalities,” Oxford University Press: 2015.
<<http://www.oed.com.libezp.lib.lsu.edu/view/Entry/66996?redirectedFrom=externalities#eid>>

¹² Courtwright, *Forces of Habit*, 132.

¹³ Musto, David F. *The American Disease: Origins of Narcotic Control*. (New York: Oxford University Press), 1999, 299.

problem seems to be within the jurisdiction of the nation-state, but laws are nothing more than futile political exercises if they are not enforced.

Chapter one of this analysis focuses on the beginnings of substance abuse and the shift in use patterns and policy in the early twentieth century. In pre-modern eras people used drugs, but substances of choice changed over time, especially as distributors and consumers developed new alkaloids. Slowly, drug trade established itself as a global economic business. At the same time, imperialism and industrialization fueled empires and allowed new discoveries. Suddenly, nation-states began to change their policies in the 1900s and states considered drugs to be problematic for control and order. States collaborated to prohibit certain substances deemed unworthy of use.

Chapter II explains the legal processes that prohibit drug trade. National drug policies of various forms and the UN International Drug Control Conventions govern the system, and nation-states rely on extradition and the International Police to help enforce their laws. The International Court of Justice and the International Criminal Court cover various types of disputes and provide outlets for justice, but neither one has ever heard or investigated a case regarding drug trafficking or policy. The existing policies seem to ignore the quintessential aspects of drug trafficking that allow it to become ingrained in daily lives of global citizens—its transnational scale.

Finally, Chapter III is comprised of case studies that further explain the nature of contemporary drug trade outside of the realms of history and law. It centers on the continuing violence in Mexico between organized and paramilitary drug cartels on a local level, the international struggles of European nations to address the consequences of past prohibitive laws against drugs and their new experiment with decriminalization policies, and on a transnational

level, the money laundering system that makes illegal trade possible and profitable. Together, these chapters are meant to highlight the weakness in the current international regime in relation to drug trafficking and address possible solutions to the issue of impunity that encourages further drug use and trade.

Chapter 1

A Short History of the Psychoactive Revolution

The drug trade is a transnational phenomenon ingrained in daily commerce and monetary flows. Similar to any commercial enterprise, the drug trade is “a system whose purpose is to make money for its participants.”¹⁴ Hundreds of participants and inputs, from farm to market, are necessary for this system to create and transport a final psychoactive product for a consumer. In contrast to many cultures’ stereotypes and prejudices, traffickers distribute illegal psychoactive substances in the majority of existing societies without regard to typical social boundaries such as gender, class or race.¹⁵ Stories of how drug production is links with consumers are essential for devising strategies intended to influence what is produced, who produces it and under what conditions.¹⁶ Understanding the current status of the international trade and how it might be regulated relies on an understanding of each psychoactive substance’s international history.

The development of a borderless trading system is a story of globalization. In many cases, it occurred simultaneously with the spread of technology, ideas and other crops even from the beginnings of early civilization. The psychoactive revolution’s roots reach to the early modern period, as an often-purposeful consequence of transoceanic empire building by merchants, planters and elites.¹⁷ By the late-nineteenth and early-twentieth centuries their ancestors, elites of a new international state system, would eventually choose to restrict and prohibit some, but not all, of these psychoactive substances. Prohibitive drug laws first existed in

¹⁴ David Mares. *Drug Wars and Coffeehouses: The Political Economy of the International Drug Trade*, (Washington, DC: Congressional Quarterly Press), 2006, 13.

¹⁵ Ibid, 91.

¹⁶ Ibid, 62.

¹⁷ Courtwright, *Forces of Habit*, 2.

foreign and economic policy then were integrated into political and prohibitive guidelines as well; the development of an international policy to deal with drugs in the twentieth century was a result of government recognition of psychoactive substances' transnational history and its negative externalities. Therefore, contemporary policies prohibiting psychoactive substances developed from a historical process linked to the rise of the nation-state and international capitalism. A brief discussion of alcohol, caffeine and tobacco is helpful for understanding the basic history of early drug use and the effects of colonialism, but this chapter will primarily focus on cannabis, coca and the opium poppy because they are the sources of prohibited drugs today. Psychoactive substances follow a pattern whereby, once removed from their traditional and ritual origins, made more potent through technological processes, and then marketed in new terrain, they tend to have the potential for abuse, addiction, and culturally destabilizing consequences.

Early Uses of Psychoactive Substances

Alcohol

Alcohol was one of the first widely consumed psychoactive substances. Viticulture originated between 6000-4000 B.C.E. in the region between the Caspian and Black seas.¹⁸ Wine's symbolism in Christianity affected its spread to other cultures with the expansion of the religion, which made its consumption essential in tradition. To the contrary, wine was not popular in early Arab culture though it existed in the Middle East many years.¹⁹ Early Greeks and Romans had basic knowledge of the distilling process for producing alcohol, which was

¹⁸ Courtwright, *Forces of Habit*, 9.

¹⁹ Ibid, 10-11.

preserved and advanced by Arabs in the medieval period.²⁰ Via trade routes, wine moved into India and China, where tea was more popular. Conquistador Hernán Cortés brought wine on his voyage to colonize Mexico, and Catholic missionaries transported the drink south from there. Distilling was revolutionary because it preserved usually perishable crops, making it easier for transport than other liquids, even overseas.²¹ According to historian David Christian, “Distilled drinks were to fermented drinks what guns were to bows and arrows: instruments of a potency unimaginable in most traditional societies.”²² Where these distilled forms of alcohol spread so did problem drinking.

Through a cautionary analogy in which early alcohol consumption plays an instigating role, Courtwright argues, “Wine is to brandy as opium is to morphine, coca is to cocaine, or shag tobacco is to the modern cigarette. The history of psychoactive substances resembles that of the arms race. Technological change continuously raises the human stakes.”²³ Wine, as one of the first forms of alcohol, was only the beginning of people using nature’s gifts to alter their state of mind, often for ritual purpose, and as technology developed and made “improvements” and discoveries possible, these gifts became marketable. The spread and popularity of alcohol exemplifies the roles trade and colonialism played in the dispersion process and how certain cultures accept and use substances differently based on cultural values and tradition.

Caffeine

Caffeinated beverages are another category of internationally popular psychoactive liquids. Today, caffeine is the most-consumed drug, but use is not easily measured because it is

²⁰ Ibid, 11.

²¹ Ibid, 13.

²² Ibid, 14.

²³ Ibid, 14.

legal in most countries. The Chinese used tea as medicine by 350 C.E. and taxed the popular commodity by the late eighth century.²⁴ Tea travelled around the earth in three stages: through the expansion of Chinese trade with the British East India Company, cultivation by European powers in their respective colonies, and to Africa directly from Asia.²⁵ Tea consumption competes with coffee primarily based on culture. For example, in the fledgling United States, patriots equated tea with tyranny, and they bought cheaper coffee instead.²⁶ South Americans grew coffee beans, and merchants would transport them to Europe, where the drink became a staple of intellectual gatherings and source of artificial energy for revolutions. The best explanation is that “when psychoactive drugs are widely available, heavily promoted, and cheap they become extremely popular, particularly if they are habit-forming.”²⁷ Sellers can depend on a demand for caffeine. Although it is habit forming, the scale of tea and coffee trade remains the primary reason the drugs will likely never be prohibited.

Tobacco

Partially because of its addictive properties, tobacco use and production spread rapidly after Columbus discovered Caribbean natives using it in 1492.²⁸ The Spanish planted it with the purpose of its being a cash crop in the Philippines in 1575. The Chinese cultivated it in 1600. Merchants and colonizers ensured tobacco was a global crop by 1620. Much of tobacco’s success was due to its value for maintaining the colonial status quo. David Courtwright elaborates:

²⁴ Ibid, 22.

²⁵ Ibid, 22-23.

²⁶ Ibid, 21.

²⁷ Ibid, 22.

²⁸ Ibid, 14.

“The psychoactive revolution entailed—required— the massive exploitation of labor. In the most naked version of exploitation, plantation owners and foremen drove bound laborers, both indentured servants and African slaves, to the point of death to produce sugar, tobacco, coffee and other drug crops. But labor exploitation assumed many guises, as elites learned to use drugs to control, placate, and fleece their workers.”²⁹

During this period in history, colonizers’ drug policies were to produce as much tobacco as possible. Without slavery and indentured labor, mass cultivation and production would not have been possible in the success of colonial domination. From the beginning, drug production and sale formed and perpetuated systems of inequality and international relationships that have political and economic repercussions today regarding drug policy — especially for opium, coca and cannabis.

Opium and Coca

The most infamous psychoactive substance for complicating international regulatory relationships is opium, which comes from a poppy whose use originated in Central Europe around 1600 B.C.E.³⁰ British physician Sir William Moore, who studied the use of opium in India, conjectured that there were five main reasons for the widespread phenomenon of abuse in the East: proximity to supply and cheap labor, opium’s imperative medical value and Islam’s disapproval of alcohol as a vice, the hot climate that invited temptation to use opium to relax the body, and its affordability because the poor who used it required less food.³¹ Among the most enduring themes in drug history are “distinctions based on intention of use, mode of administration, and social background.”³² In India and China especially, the poppy’s multitude of uses justified its growth. Morphine, opium’s psychoactive alkaloid, was not discovered until

²⁹ Ibid, 30.

³⁰ Ibid, 31.

³¹ Ibid, 32-33.

³² Ibid, 42.

the nineteenth century or injected until 1855.³³ Similarly, though early hunters and gatherers in the Andes Mountains recognized the strength of the coca leaf for combatting hunger and altitude sickness, the leaf was not processed into cocaine until the nineteenth century.³⁴ Opium was addictive before this alkaloid could be separated, a fact that became a European weapon in maintaining the flow of the trade in tea with China.

Cannabis

Cannabis had especially varied and useful functions as well as social backgrounds. It was first cultivated around 4000 B.C.E. in China, but Indians used it for psychoactive purposes from as early as 2000-1400 B.C.E. according to the Vedas.³⁵ They recognized its uses as medicine and as an aphrodisiac. Anthropologist Vera Rubin acknowledges the trend she calls the Ganja Complex: “[r]egular multipurpose use in the folk stream has been generally confined to the lower social classes: peasants, fishermen, rural and urban artisans and manual laborers.”³⁶ European settlers cultivated hemp for rope, and did not use cannabis for other purposes— Rubin suggests Europeans sought release in other ways. Taking the culturally appropriate drug to survive the grind seems inherent in civilization.³⁷ This trend would increasingly imbed itself into cultures further during the early modern period in the midst of the rise of empires.

³³ Ibid, 36.

³⁴ Ibid, 49.

³⁵ Ibid, 39.

³⁶ Ibid, 41.

³⁷ Ibid, 139.

Drug Empires and the Early Modern Period

Drugs became more than just a commodity in the early modern period, especially after they had been displaced for consumption in new regions. The history of expansion, the driving power of which came from technological change and capitalist enterprise, is inseparable from the history of drugs.³⁸ Courtwright argues, “[The Europeans] could not have overspread the world so rapidly, nor brought it so completely under their dominion, without the large-scale production of alcohol and cultivation of drug and sugar crops, the latter commonly used in, or made into, potent drinks.”³⁹ For example, British and French traders would water down rum to sell for fur, a better exchange for them in that they were gaining durable products and Native Americans would negotiate more easily under the influence of alcohol.⁴⁰ Psychoactive products paid bills, corrupted and bribed opponents, calmed soldiers and invited workers to plantations.⁴¹ In short, drugs were good for the business of imperialism in the early modern period.

By the nineteenth century, regions overtaken by emerging capitalism began to rebel against how drugs affected the people and economy. In 1890, the Imperial Tobacco Corporation of Persia made a deal with the Shah, Nasir ed-Din, for rights to a monopoly on purchasing, curing and selling all tobacco.⁴² A mass boycott in 1891 caused the Shah to withdraw the agreement in 1892. “Drugs meant money, and money meant power,” but in a period in which power was already constantly shifting between individuals, countries and companies, drugs became a complicated issue.⁴³

³⁸ Ibid, 65.

³⁹ Ibid, 166.

⁴⁰ Ibid, 147.

⁴¹ Ibid, 166.

⁴² Ibid, 154.

⁴³ Ibid, 167.

The Opium Wars have become classic examples of colonialism revolutionizing trade and early attempts at drug policy. In 1729, the Emperor of China issued his first edict against opium possession in his country.⁴⁴ Public opinion generally supported this decree, especially because Confucian tradition taught that the smoker's body was not his own to demolish.⁴⁵ In the meantime, the British East India Company attempted to find a product that would establish a balance of trade with China, whose self-sufficient economy did not require British input. For the British, "the situation was critical; the solution obvious," and so the British grew poppy in India to sell to the Chinese for tea.⁴⁶ Productivity in colonial Bengal was high because the British made sure the labor was cheap, according to historian J.Y. Wong:

"The labour for poppy cultivation was provided by the peasants (called ryots) to whom interest-free advance poppy payments were made as an inducement to contract to cultivate the poppy... The ryots willingly entered into contracts year after year because one of the true advantages of poppy cultivation lay not in attractive cash profits but in security and protection from price vicissitudes which affected other cash crops not under state monopoly."⁴⁷

Even though further imperial edicts prohibited opium, its use and Chinese addiction skyrocketed over the next thirty years because the British promoted it. Pressure from British "free" trade against Chinese anti-opium public policy culminated in war in 1839 when the Canton local government confiscated opium from a warehouse and naval hostilities sparked further conflict.⁴⁸ At the time as well as in retrospect, British and American commentators suggested that the conflict in 1839 was an "open door" territoriality issue.⁴⁹ While it certainly was an issue of trading rights, of opening up the whole world to the wonders of capitalism and globalization,

⁴⁴ Jack Beeching, *The Chinese Opium Wars*, (New York, Harcourt Brace Javonovich, 1975), 11.

⁴⁵ Ibid, 25.

⁴⁶ Ibid, 24.

⁴⁷ J. Y. Wong, *Deadly Dreams: Opium, Imperialism, and the Arrow War (1856-1860) in China*. (Cambridge: Cambridge University Press, 1998), 392-393.

⁴⁸ Beeching, *The Chinese Opium Wars*, 9.

⁴⁹ Ibid, 106.

from the beginning the British government's policy was coordinated with the needs of opium smugglers. Fighting ceased in 1842, and the two sides ratified a treaty ending the conflict the next year.⁵⁰ Both sides would resent the Treaty of Nanking. The Chinese felt they had been forced to sign the treaty under duress and it was therefore invalid.⁵¹ British merchants were disappointed because, after years of fighting and their own victory, the treaty did not legalize opium. Secondly, although the British gained access to five more Chinese ports, revenue from the expansion of trade did not meet their expectations, and they failed to find products the Chinese would covet as much as the British craved tea.⁵² Previous trade patterns and alarming amounts of opium continued to flow through Chinese ports— revenue from opium tripled in the years between the Opium Wars. However, in 1854, two years before the *Arrow* incident, the trade imbalance between Britain's exports to China was £8 million sterling, about 91% of imports from China.⁵³

The *Arrow* Incident in 1856 sparked the beginning of the Second Opium War, an international conflict that involved Great Britain, China, France, the United States, Russia, and troops from Mauritius, India and Singapore as well.⁵⁴ Imperialism caused this war. It was not necessarily a world war over strictly opium. The war became a culmination of competing empires, liberal economic policy, and the differing ideologies on what constituted “free” trade. The Chinese crew of the merchant ship *Arrow*, whose registry had expired and no longer required British protection, was arrested in Canton; the confusion over transpiring events, especially in translation back to Britain, fueled each side's embers of anger over trade and

⁵⁰ Ibid, 12.

⁵¹ J.Y. Wong, *Deadly Dreams*, 11.

⁵² Ibid, 263.

⁵³ Ibid, 335.

⁵⁴ Ibid, 1.

sparked fighting in 1857.⁵⁵ In June 1858, the Treaty of Tientsin was signed, but the British representative present did not push the legalization of opium.⁵⁶ When the Chinese refused to sign the treaty because of its other provisions, the war continued until 1860. After massively destructive battles with modern weaponry, the Chinese agreed to observe the Treaty of Tientsin at the Beijing Convention. Ironically, throughout both wars, “[t]he British strategy was to create an informal empire in China, which brought economic benefits but involved no acquisition of territory and the burden thereof... Once opium had been legalized as demanded by Britain, the Chinese began cultivating opium locally, and Britain lost an important source of revenue, which might have contributed to some extent to Britain’s decline after 1885.”⁵⁷ The wars themselves have their own rich history, but they exemplify some of the political and forceful attempts to resist colonialism and the often-irresistible vices of money and drugs. Differences in culture and understandings of the value of treaties as law complicated relations between empires already exploiting each other economically. After this period in history, the degree that drugs had been integrated in culture, and the scale of production, distribution and consumption made them immune to prohibition efforts.⁵⁸ Once drugs had spread internationally, they became universal problems for states as they transitioned into the twentieth and twenty-first centuries.

The First International Anti-Drug Policies

Industrialization transformed societies, economies and cultures irrevocably. Concerning the consumption and availability of psychoactive substances, industrial production made drugs common for working-class people in the beginning of the modern era. Factory workers had easy

⁵⁵ Ibid, 70.

⁵⁶ Ibid, 413.

⁵⁷ Ibid, 483.

⁵⁸ Courtwright, *Forces of Habit*, 31.

access to drugs through their communities, and factory production got the product to the masses more quickly. While industrialization made drug abuse more visible, abuse threatened the industrial process. Lack of focus and productivity on the job was dangerous and cost companies money.⁵⁹ Hard work and long hours in fields and factories made escapist drinking common. French journalist Emile Zola commented, “[w]ork requires recreation, and when money is short, and the horizon is closed, one grasps at the pleasure at hand.”⁶⁰ As the world increasingly industrialized, travel became easier and cheaper. Simultaneously, as anti-imperialism sentiment spread, stricter forms of drug regulation became inevitable.⁶¹ After the previously mentioned attempts in the nineteenth century, several states realized that if international treaties could now cover trade, waterways and wars in an industrialized world, “why not drugs?”⁶²

In 1907, Great Britain (as representatives of India) and China agreed to restrict opium trade. Conditions for a successful agreement between India and China had emerged in the previous decades: the British had found several other methods of revenue through India, such as growing tea leaves, another company replaced the British East India Company as leaders of opium trade, Chinese culture enforced the idea that widespread opium use would inhibit industrialization, and the Chinese government considered local military involvement to enforce new anti-opium policies.⁶³ In 1906, there was another Chinese imperial decree to eradicate opium trade and in British Parliament sentiments began to favor supporting opium trade limitation. The next year, the two states signed an agreement to phase out the trade by limiting import volume and frequency by 1917. Incremental, though measurable, success to decrease

⁵⁹ Ibid, 174.

⁶⁰ Ibid, 137.

⁶¹ Ibid, 186.

⁶² Ibid, 184.

⁶³ Janin Hunt. *The India-China Opium Trade in the Nineteenth Century* (Jefferson, NC: McFarland & Company, Inc., 1999), 180.

opium supply by the Indian and Chinese agreement suggested that eliminating non-medicinal production would help eliminate the problem of abuse.⁶⁴ By 1908, opium consumption in China dropped about one-third and production fell 37 percent from 1906.⁶⁵ Concrete provisions and law enforcement made this progress possible. Opium trade between India and China would officially end in 1917.⁶⁶

These changes and resolutions served as a precursor to the Shanghai Opium Commission in 1909. After suggesting a convention, the United States quickly banned opium smoking for the two purposes of presenting itself to the world as a pro-prohibition country and preventing the appearance of racial bias and hypocrisy with the Chinese.⁶⁷ The commission began the United States tradition of enacting strict domestic drug regulations to set an example for other nations.⁶⁸ Although progressive for its time, the thirteen state delegations represented at the commission failed to reach basic consensus on a variety of issues, such as whether or not opium use was immoral and therefore posed a threat to national culture. Also, the resulting resolutions to limit trade and use were only recommendations to nations, rather than legal agreements.⁶⁹

The next international drug trade agreement was the Hague Opium Convention, whose first session opened in December of 1911.⁷⁰ State delegations, of course, arrived with different priorities and goals; for example, the United States was the only delegation that was interested in including cannabis as a threatening drug, so the subject was hardly discussed.⁷¹ From the very

⁶⁴ Courtwright, *Forces of Habit*, 84.

⁶⁵ Hunt. *The India-China Opium Trade in the Nineteenth Century*, 184.

⁶⁶ Ibid, 185.

⁶⁷ Musto. *The American Disease*, 3.

⁶⁸ Ibid, 36.

⁶⁹ Ibid, 37.

⁷⁰ Ibid, 50.

⁷¹ Ibid, 51.

beginning, the convention presented several challenges of legitimacy and legal weight.

According David Musto:

“Chapter 3 of the Hague Opium Convention ... called for control of all phases of the preparation and distribution of medicinal opium, morphine, heroin, cocaine, and any new derivative that could be scientifically shown to offer similar dangers... The contracting powers agreed to ‘endeavor’ to control their own traffic in the above substances. The Convention placed the major burden of narcotic control on domestic legislation, and the apparent failure of this approach led in ten years to the Geneva Opium Conference, which shifted the locus of control to international restraints.”⁷²

Reliance on the passage of domestic legislation tested state reputations at home and abroad as well as challenged the concept of a large-scale, successful international agreement on any subject in the early twentieth century. The failure to develop a coherent international drug policy called into question the very idea and utility of international law. Another challenge to the Hague Opium Convention was that only twelve state delegations were present out of 46 recognized nation-states at that time, and the Germans pointed out that unless there was unanimous and complete international action, there was no purpose in limiting the present states’ agricultural or industrial interests in drugs.⁷³ Therefore, the Second Opium Convention in 1913 reconvened with signatures from 34 states, and the Third Opium Convention concluded shortly before the First World War, in June of 1914, with 44 signatures, excluding only Serbia and Turkey.⁷⁴ However, less than half the signing states ratified the Convention provisions at home, and in the next troubled five years, only seven nations attempted to enforce the new restrictions.

The Great War changed the course of history and foreign policy forever and particularly influenced approaches to drug policy, especially after four years of attempting to placate and heal soldiers in any possible means. After World War I, the new official body of international

⁷² Ibid, 52.

⁷³ Ibid, 51.

⁷⁴ Ibid, 53.

relations and agreements, the League of Nations, created the Opium Advisory Committee in 1920.⁷⁵ The only resolutions discussed by the committee then were rejected by British-controlled India, although a basic resolution was passed in 1923. In the United States, cocaine and nonprescription opiates were banned in 1915, alcohol prohibition began in 1920, and marijuana was legal until 1937.⁷⁶ The wave of strict anti-drug laws, isolationist policy, and attempts to define a specific American culture had begun. With the urges of Mahatma Gandhi in mind, the drafters of India's 1928 constitution included alcohol prohibition, but the policy did not last there either.⁷⁷ The 1925 International Opium Convention and 1931 Limitation Convention finally created a regulatory system designed to limit the heavily taxed and profitable industry.⁷⁸ These conventions were not ratified by all the League member states, and would be superseded under the United Nations, but were the most concrete limitations on specific drugs and consumption at the time. Efforts to limit the drug trade in this period, always limited by commercial and national self-interest, were also limited by the growing pharmaceutical industry and recent availability of ways to cure the sick.

Medicine: The “Positives” of Drugs

Without the medical discoveries that occurred in the nineteenth century, the psychoactive revolution would not have reawakened a century later. It was in the 1800s that particular medicines came to be used for particular diseases. Four specific medical developments in this period revolutionized pharmacology and made future innovations possible: the isolation and production of morphine, cocaine, and other psychoactive plant alkaloids, the development of

⁷⁵ Ibid, 194.

⁷⁶ Mares, *Drug Wars and Coffeehouses*, 2.

⁷⁷ Courtwright, *Forces of Habit*, 187.

⁷⁸ Ibid, 184.

hypodermic medication, the discovery and manufacture of synthetic drugs, and the discovery and manufacture of heroin and other synthetic derivatives.⁷⁹ The capabilities of plants and their simple extracts no longer limited consumers. “The medical profession’s need for something that worked in a world of mysterious mortal diseases and infections cannot be overlooked as a major stimulus for the growth of the opium market.”⁸⁰ To prevent dozens of common diseases and epidemics, especially in the midst of wars in those years, the ability to concentrate the properties of traditional remedies was essential.

Surprisingly, pharmaceutical innovation affected psychoactive commerce in a negative way. Although there were new, safe drugs available, they were also seductive, sometimes addictive drugs.⁸¹ Courtwright explains, “[a]gain and again, promising new drug therapies slipped the bonds of medical discourse and control. They escaped into a larger realm of popular pleasure and mischief, prompting responses by national and international authorities.”⁸² The more a drug was prescribed and promoted by doctors and advertising, the drug would inevitably reach and spread through the general population. Conversely, drugs that were not readily available were not abused.⁸³ While abused and recklessly prescribed drugs were not the only substances that permeated the drug market, the knowledge of how to create potent drugs and the number of them increased exponentially after the nineteenth century. Drug traffickers and producers were repeatedly supplied with possible new entrepreneurial ventures, fueling the psychoactive revolution.

⁷⁹ Ibid, 76-77.

⁸⁰ Musto, *The American Disease*, 1.

⁸¹ Courtwright, *Forces of Habit*, 179.

⁸² Ibid, 69.

⁸³ Ibid, 97.

The Psychoactive Revolution

In the 1960s and 1970s, social and economic conditions transitioned so that people were able to acquire increased quantities of drugs with even more psychoactive properties.⁸⁴

Recreational drug use could no longer be attributed to certain classes; drugs became an official global commodity. The expansion of drug accessibility and use caused attempts at effective national policies, but the revolution's transnational nature, incited by globalization, prompted a more unified global approach as well.

Once stereotypically reserved for certain subgroups of society, drugs became part of national images and stereotypes. Historian Alfred McCoy argues:

“Heroin is a mass-market commodity with salesmen and distributors just like cigarettes, alcohol or aspirin. The rising numbers of younger users can sample drugs like heroin because they are sold at standard prices and are available at hundreds of distribution points in major cities across the globe...without global production and distribution systems, there can be no mass addiction to cocaine or heroin.”⁸⁵

The “mass-market” status became possible for these drugs after World War II, when trade and decolonization were in full swing. Many countries struggled, with the rise of new governments, to establish sovereignty and security as well as take part in the promised benefits of a global economy. In Western states, the 1950s signaled growth and prosperity, leading to overall comfortable and satisfied lifestyles, which included recreation. Demand for different pleasures grew in these states, while desire for stability and modernity elsewhere increased. So began the general pattern of producer and consumer states.

⁸⁴ Ibid, 2.

⁸⁵ Ibid, 39.

Opium Trade and Heroin

In 1966, the U.S. Federal Bureau of Narcotics found that heroin was the most profitable drug in the country, which led to several attempts to prevent the trade by destroying its source.⁸⁶ For example, President Nixon announced Operation Intercept in 1969 when Mexico, which was credited for much of the opium trade into the U.S., refused to spray and destroy cannabis crops.⁸⁷ Therefore, the U.S. closed its border with Mexico and searched everything and everyone that crossed for 17 days, until extraneous economic effects, such as rotting fruits, cost too much to continue. This attempt to cut off trade showed that the U.S. could not economically afford closing off this border, and “four decades later, with far greater trade between the two nations and the volatility of the global markets, such a move is unthinkable.”⁸⁸ Putting a hold on global flows of capital and goods would be catastrophic. The Nixon administration ruled out the isolation policy option. Two years later, in 1971, the U.S. and Mexico collaborated on Operation Cooperation, in which Mexico would cut down on its crops and U.S. agents could search and explore trade south of the border.

The Nixon Administration decided to extend the operation to Turkey, where the government estimated the nation to be the source of 80% of the heroin in the U.S.⁸⁹ Musto argues, “[a]s bad as drug trafficking might appear to Americans, when a decision involves dealing effectively with a drug producing or –exporting nation while maintaining national security interests through friendly relations with that country, national security and good relations nearly always win out over the important but less crucial issue of drugs.”⁹⁰ However, in

⁸⁶ Ibid, 43.

⁸⁷ Ibid, 44.

⁸⁸ Ibid, 45.

⁸⁹ Musto, *The American Disease*, 250.

⁹⁰ Ibid.

this case, drugs were considered an internal threat to the welfare of the nation from an external source. Ironically, but expectedly, Turkey found new ways to produce opium poppies after ruined crops, and Mexican growers took advantage of the opportunity to supply more opium to fill the continually growing U.S. demand.⁹¹ Destroying the supply in one country created opportunity in another, and did not take away incentive for producers to continue.

In India in the 1950s, there was a widespread addiction to opium smoking. When the Indian government created new laws against it, citizens switched to using heroin even though its use carried the death penalty.⁹² The government was not able to stop the flow of opium into the country from Afghanistan and Pakistan, and the unemployment situation in the country made the situation worse. In that case, there were no borders save lines on a map to prevent drugs from entering the country, and not enough incentive to stop using. A large reduction in total foreign production was unlikely and decreased demand began to appear as the best course for improving the drug problem.⁹³

Cocaine Trade

The July 1981 cover of TIME Magazine labeled cocaine as the “All-American” drug, in that any American could access and use it.⁹⁴ Cocaine was no longer used solely by elites in Hollywood: author Michael Demarest lists users everywhere from mechanics to students to politicians. Although use could lead to psychological dependence or addiction, street sales at this time were estimated to be \$30 billion in the U.S. alone. Demarest describes how Americans

⁹¹ Courtwright, *Forces of Habit*, 179.

⁹² Ibid, 96.

⁹³ Musto. *The American Disease*, 251.

⁹⁴ Demarest, Michael. “Cocaine Habit: Drug Use Rises in U.S. Among Middle Class.” *Time Magazine*, July 6, 1981.

would take advantage of the “pass-along” market, making a tax-free profit off of selling some of the cocaine they had just purchased. Judges in some areas were notorious for not giving harsh sentences for possession as well as being involved in the business themselves. At this time, the Colombians, who refined the coca leaf, primarily controlled the trade; the cost of a kilo in Bogotá was around \$4,000 but would shoot to \$60,000 by the time it reached New York. The Miami Branch of the U.S. Federal Reserve Bank of Atlanta, in the city where most cocaine was imported, was the only branch in the whole system to show a cash surplus in 1980. Demarest attributes the surplus to laundered drug cash. His article concludes with the concept that “good times are made, not sniffed.” This comment seems surprising at this point in history, because few people had time or money for any type of good time before the second half of the twentieth century. The psychoactive revolution sped up as drugs became affordable for more people, and wars and foreign policy connected the world in ways that promoted further trade. The past few generations before this point worked or were at war. David Musto explains the phenomenon: “The problem with cocaine, demonstrated in the 1890s and again in the 1980s, is that the most severe effects do not become obvious and eventually notorious until the drug has been used for an extended period of time by many people. Then praise for a tonic changes to fear of a poison, and society desperately seeks ways to repress the substance.”⁹⁵ Between generations, people have a tendency to forget consequences of events in the past.⁹⁶ Similar to this situation, in postwar Japan, amphetamine use skyrocketed, but a 1950s education campaign ended the high rates of abuse.⁹⁷ In the 1970s and 1980s, abuse exploded, as the baby boomers were not aware of their effects. This fluctuation in public opinion contributes to changing arguments in debates

⁹⁵ Musto. *The American Disease*, 259.

⁹⁶ Courtwright, *Forces of Habit*, 51.

⁹⁷ *Ibid*, 82.

about drug policy. Usually, health and public morale seem to follow campaigns against drug consumption, but “two forces continually tempt governments to relapse. These are social costs generated by the black market... and the need to restore revenue from drug taxes.”⁹⁸

Governments have a habit of benefitting from and relying on drug taxes. Such is the situation in many places in the U.S. with cigarettes.

The psychoactive revolution had extensive effects on an indescribable scale around the world. Increased flow of capital and globalization after the World Wars sped up the creation of webs of drug trade rather than just rings. As drug use spiked in the 1960s, the new United Nations felt obliged that the problem somehow affected almost every state with more unified policies than the generally ignored treaties before and through the League of Nations. These policies will be explained in Chapter 2 as their relevance continues today.

The Current Status of Drug Use and Trade

As previously stated, the current status of the world is one of increasing connectedness through the process of globalization, more sophisticated technology and an irrevocably linked world economy. “McWorld” technology, as some scholars describe the corporate jungle which exists today, especially electronics and the Internet, promote information about drugs instantly.⁹⁹ However, national drug possession policies and use differ significantly, based on how they each are experiencing the drug problem. One of the most important contemporary conflicts is the Mexican Drug War, which has left the state in disarray and made daily life dangerous. Drug trade and use breeds in other states that lack the infrastructure to regulate it. Trafficking

⁹⁸ Ibid, 156.

⁹⁹ Ibid, 132.

flourishes in areas with weak governments and endemic conflict.¹⁰⁰ In many ways the United Nations and its affiliated organizations have asserted the role of attacking the drug trade, but in 2004, its annual report on the world drug problem left out prescription drugs, glue, paint and other inhalants, alcohol, and tobacco.¹⁰¹ This inaccuracy may be due to the impossibility of measuring consumption of some of these substances, but the example shows that government response and policy may always be a step behind the rapid and constant changes in the nature of drug trade.

Causes of the Mexican Drug War

Learning from the situation in Mexico for the past century, especially the past two decades and in the recent war, is crucial because of the deaths still occurring and the possibility that the situation could replicate itself in other countries.¹⁰² Ioan Grillo, a British journalist reporting on the events in Mexico for many years, wrote, “In a globalized world, mafia capitalists and criminal insurgents have become the new dictators and new rebels. Welcome to the twenty-first century.”¹⁰³ This argument certainly holds true in nations other than Mexico, complicated by the ease with which money can be laundered and production and sale of arms is global.

Historically, Mexican cocaine trade boomed after the administration under U.S. President Reagan cracked down on enforcing laws in Florida, which inspired Colombian traffickers to spread the risk of trade along the Mexican-U.S. border instead. Of course, enforcing drug

¹⁰⁰ Ibid, 184.

¹⁰¹ Mares. *Drug Wars and Coffeehouses*, 37.

¹⁰² Ioan Grillo, *El Narco: Inside Mexico's Criminal Insurgency* (New York: Bloomsbury Press, 2011), 5.

¹⁰³ Ibid.

policies created a larger problem.¹⁰⁴ Mexico is in a transitioning position. When the PRI, or the Institutional Revolutionary Party, lost power in 2000 with the election of Vicente Fox as president, it confused the drug underworld and the political protection system. However, the governments since then have not built a true democracy. The government misses the social and political stability it needs now and needed at the turn of the century to prevent a war.¹⁰⁵ The war officially began as a turf war in 2004, between the Sinaloan drug cartel and the Zetas, a paramilitary group based in northeastern Mexico.¹⁰⁶ However, while these groups' murderous and vicious actions against each other and citizens would seem illegal, many members of the cartels already had established connections with local police and government officials to make sure that their usual trafficking activities occurred without disruption; these rebels that might ordinarily be at a disadvantage against established governments had intertwined themselves within it.¹⁰⁷ In the autobiographical book *El Sicario*, a reformed cartel member laments, "The government does not try to stop the situation. The government acts in a way that the narcos tell them to act. The government conducts training, and the narcos defend themselves using the same government corporations."¹⁰⁸ The government faces the further issue that triumphantly arresting one trafficker is also a victory for the rival cartel, inflaming the violence further.¹⁰⁹

After taking office in 2006, Mexican President Felipe Calderón declared an official war to "reconquer" territory from the cartels.¹¹⁰ Even though there was a truce and end to the war in 2007, war exploded again in 2008; during this time, deaths from drug-related murders rose from

¹⁰⁴ Ibid, 82.

¹⁰⁵ Ibid, 276.

¹⁰⁶ Ibid, 100.

¹⁰⁷ Mares. *Drug Wars and Coffeehouses*, 73.

¹⁰⁸ Charles Bowden and Molly Molloy, *El Sicario: The Autobiography of a Mexican Assassin*. Nation Books: 2011, 188.

¹⁰⁹ Grillo, *El Narco*, 104.

¹¹⁰ Ibid, 112.

about 200 per month to 500 murders per month.¹¹¹ While the U.S. and Mexican governments attributed the resurgence of war to all the pressure they had put on the cartels, the gangsters, academics and journalists generally agreed that the war began again because of government connections with cartels and corruption.¹¹² The Mexican Drug War transitioned into a third phase after killing the gangster known as “The Beard,” in which there were about a dozen war lords fighting in a dozen states.¹¹³ By 2010, drug-related murders reached 15,000 total that year, more than double the monthly rate of murders two years before.¹¹⁴ Grillo reminds followers of the conflict that there is more to the war than the fighting itself: the war “is about movement of narcotics, pure and simple. Drugs get produced, transported, sold and snorted.”¹¹⁵ He argues that the war itself may not be won because the real conflict is economic, and the state does not have the police infrastructure to deal with it. Many Latin Americans have come to believe that the violence and corruption associated with their countries is, in essence, the consequence of the profitable business of selling drugs in the U.S., not in Latin America.¹¹⁶ The issue is not at all contained and affects many more countries than those in Latin America.

The Relevance of the History of Psychoactive Substances

The preliminary descriptions how some of the most influential psychoactive substances came into global use should serve as background for twentieth century policies and help define drugs as a commodity over any other purpose. Colonialism in the early modern period helped

¹¹¹ Ibid, 113.

¹¹² Ibid, 118.

¹¹³ Ibid, 127.

¹¹⁴ Ibid, 128.

¹¹⁵ Ibid, 135.

¹¹⁶ Mares. *Drug Wars and Coffeehouses*, 113.

solidify this status, ingrain drugs in many cultures, and led to cultural and political discussions of their propriety. The first anti-drug policies were hardly effective due to the weakness of international law at the time, especially in the context of medicine and how quickly scientific discoveries provided new types of drugs to the sick and the curious. These conditions allowed the psychoactive revolution to be truly momentous in how it changed societies, more than the few aforementioned. Contemporarily, drugs are used at all levels of societies, worsening and challenging stability worldwide.

All of these things have occurred, and continue to occur, because a consumer for drugs exists, and “the relationship between producer and consumer is symbiotic and reinforcing” in this case.¹¹⁷ Demand is inelastic in that, rather than dropping in recessions or in unemployment, those things perpetuate it.¹¹⁸ One reason that drugs are such profitable commodities is the brief duration of their effects and value, for “drugs are the opposite of durable goods.”¹¹⁹ Drugs are not the only commodity, especially in the twenty-first century, that relies on exploiting innate human drives, the risks of which individuals are free to ignore.¹²⁰ However, some drugs are still prohibited, and states have a wide variety of policies and approaches to regulating them.

Courtwright argues:

“The movement toward restrictive categorization was fundamentally progressive in nature... but its basic premise was both correct and humane. The drive to maximize profit-individual, corporate, and state- underlay the explosive global increase in drug use. Checking the increase meant restricting commerce and profits, which meant regulatory laws and treaties. The task now is to adjust the system, eliminating its worst concomitants and plugging its most conspicuous gaps.”¹²¹

¹¹⁷ Ibid, 74.

¹¹⁸ Courtwright, *Forces of Habit*, 98.

¹¹⁹ Ibid, 99.

¹²⁰ Ibid, 207.

¹²¹ Ibid, 207.

Lessons on how to write and establish drug policy are already scattered throughout history after many attempts and failures. The challenge is indeed in ensuring the welfare and safety of the individuals that the drug trade affects in a world where it is often, still, individual nation-states making decisions with worldwide impact. But even as the drug trade has exploded as both a transnational commodity, and a transnational scourge, international law and enforcement have failed to develop transnational mechanisms to effectively contain the drug trade.

Chapter 2

Transnational Dilemmas: Creating Drug Policy in an Age of Globalization

Discussion of drug policy must begin with several essential questions: what actors deal with drugs contemporarily?; which institutional body deals with which aspects of trade and why?; and if the drug trade is international, who is in charge of the international legal process? Drug consumers and sellers function on every level of society and laws govern in local, state or province, nation-state and international political realms. Four factors generally determine drug policy: knowledge of the effects of drugs, the current market for drugs, how people relate causes and effects of drugs to human behavior and health, and politics.¹²² Mares argues that the drug phenomenon is “awash in myths, moral inconsistencies, social prejudices, and political rhetoric.”¹²³ He means that cultural understandings of psychoactive substances’ effects have the most direct impact on policy. Further, even if drugs are culturally seen as a problem, security and economic concerns will always take precedence.¹²⁴ If his ideas have truth, how do they affect policy, especially on a global scale in which multiple global imaginaries must be taken into account?

Policy is often more successfully directed at the substances themselves than the people involved in trafficking them; however, a basic explanation of the actors in the drug market is necessary. Roles of distributors of an illegal substance vary, but they all facilitate market transactions between producers and consumers.¹²⁵ Mares distinguishes five categories of people in the multilayered distribution system: freelance, street-level, family business, communal

¹²² Mares. *Drug Wars and Coffeehouses*, 5.

¹²³ Ibid, 4.

¹²⁴ Ibid, 28.

¹²⁵ Ibid, 79.

cultural ties business, and hierarchical corporations.¹²⁶ Although many drug consumers do not discriminate between buying from sellers in different markets, sellers prefer to define their market and repeat customers due to the illegal nature of the product.¹²⁷ Existing customers often must vouch for new ones. In the distribution system, innovators pursue new ways to make their product more enticing by combatting the social stigma, decreasing the cost or reducing the associated health risk.¹²⁸ Even for legal drugs such as cigarettes, whose sales are currently discouraged by the medical community, high taxes in some places, and regulated packaging in others, these innovators use the same tactics. The diversity of markets in the distribution system prevents competition from becoming violent in most situations. One challenge that the illegal drug market faces is that competitors cannot appeal to law enforcement if a party threatens them with force, creating markets with potentially violent competition and often oligopolies where a small group of traffickers holds their products at a high value.¹²⁹ The wealth in this system is not widely distributed, but there certainly is a large amount of money involved.¹³⁰

This system is what policy must combat. These distribution networks stretch across borders and nations. The transnational aspect of the trade has incited many types of national responses as well as inspired international policymakers to endeavor to find a transnational answer to the problem. Policy, however, has limited power if there are no institutional mechanisms that will enforce or apply them.

¹²⁶ Ibid, 83.

¹²⁷ Ibid, 87.

¹²⁸ Ibid.

¹²⁹ Ibid, 86.

¹³⁰ Ibid, 89.

National Drug Policies

The majority of policymakers, especially in the case of psychoactive substances, make their decisions based on self-interest and ideology.¹³¹ Much of the discourse on drugs relates to the ideas of addiction, which is psychological and physical, and dependence, which is simply physical.¹³² The terms apply to a minority of drug consumers, but permeate policy discussion and views of the public regarding the drug phenomenon. Sociologist Patricia Erickson argues on prohibitionist policy aiming at combatting addiction, “the smaller and lower-status the target population, the easier it is to enact such legislation- and easier it is to keep it in place.”¹³³ Addiction is a condition often attributed to low-class or urban drug users, however, it is as prevalent as drug use on every level of society. Erickson observes that such groups, targets of many of these policies, have little ability to voice opinions on the policies or change them. Musto worries that, based on historical waves of drug intolerance in American drug policy — he gives the example of cocaine use attributed to Southern blacks in the twentieth century — fear of drugs is too often translated into the fear of the user, “and will be accompanied by draconian sentences and specious links between certain drugs and distrusted groups within society. Is there some sort of inherent symmetry between excessive praise of drugs in the phase of rising tolerance, and zealous and at times prejudiced denunciation of users in the decline phase?”¹³⁴ Indeed, while public popularity of use of various drugs has risen and fallen in the last century, of course hitting a new high during the psychoactive revolution, and falling back into this “denunciation of users” by the 1990s and early 2000s. Public popularity seems to be increasing again. Prevention of these waves of opinion and enforcement depends on having a stable and fair policy in the future.

¹³¹ Ibid, 9.

¹³² Ibid, 12.

¹³³ Courtwright, *Forces of Habit*, 171.

¹³⁴ Musto. *The American Disease*, 271.

Sociology offers several explanations for how politicians and other powerful actors make decisions about drug policy. Constructivists believe that understanding of medical facts about drugs and accepted, common knowledge about drug use vary by time, place, substance, and characterization — class, national origin, ethnicity, age, gender or race — of those involved.¹³⁵ They suggest that there is no reason drug use should inherently be either legal or deviant and those labels are based on contemporary societal ideology. Legal and societal norms, and categorization of what constitutes legal behavior, “are generated by particular groups in particular societies at particular times.”¹³⁶ While ethics and moral philosophy may be debated, some substances assuredly have harmful effects on the human body regardless of society’s interpretation; the interesting aspect of the constructivist interpretation of the discourse is how facts and cultural assumptions about those facts could influence policy.

A second fascinating aspect of policy creation is the issue of politics and national self-interest. Because the scope of the drug market is international, states’ power differentials determine which policy options governments adopt.¹³⁷ Powerful states often promote and idealize policies that purposefully or consequentially force weaker states to deal with higher costs of the trade. A political realist may suggest that illicit drug distribution is unlikely to ever reach such proportions that harm its international influence and reputation or to threaten the nation’s ability to protect itself from foreign threat.¹³⁸ From this perspective, it would not be worth becoming involved in a debate on drug policy unless the nation’s international reputation were threatened or diversion of resources to quietly solve the problem became too costly.¹³⁹ As a

¹³⁵ Mares. *Drug Wars and Coffeehouses*, 25.

¹³⁶ Ibid.

¹³⁷ Ibid, 28.

¹³⁸ Ibid, 93.

¹³⁹ Ibid, 27.

dominant political outlook, the realist perspective argues that national sovereignty is the most important value to keep in mind in policymaking, and that multilateral cooperation diminishes national power and the ability to accomplish national policy goals. It is significant that the realist view came to dominate the policy debate even as the drug trade developed increasing complexity in an era of globally interconnected markets, both licit and otherwise. The tension between national sovereignty and transnational markets can be seen as a contributing factor in the failure of international institutions to effectively respond to the illegal drug trade.

There are several possible categories of national strategies behind drug policy. Mares separates perspectives and national strategies on drug policy into five categories: demand reduction, supply reduction, crime reduction, harm reduction and civil rights.¹⁴⁰ Behind demand reduction policymaking logic lies the idea that demand for drugs drives the system, and if demand drops, so will instances of all the issues and negative externalities related to drug trade. Supply reduction technique relies on the basic economic concept that if supplies decrease, prices will increase, and demand will fall. A third national strategy option is crime reduction, in which the approach is to focus on crimes other than the ones involved in drug trade and consumption itself, such as related property or violent crime, including crimes committed under the influence. Harm reduction strategies aim to reduce negative effects from drug use on users and society; as these harms are usually health-related, nations rely on education, decriminalization and aid to users. Finally, the civil rights strategy focuses on limiting government power and involvement in drug use or trade, allowing citizens to make their own individual decisions about drug use. Some nations use multiple strategies, depending on the substance and its legality. Also, internationally, bordering countries rarely have the same approaches.

¹⁴⁰ Ibid, 30.

These five national strategies are embodied in the specific regulatory categories nations use to classify psychoactive drugs. Courtwright defines seven regulatory categories. “Pure prohibition” bans manufacture, sale and use of a drug.¹⁴¹ “Prohibitory prescription” of a drug allows health professional administration of the drug and therapeutic use for addiction, but use is banned otherwise. This differs from “regulatory prescription” in which those holding a valid prescription may self-administer the drug, which is prohibited otherwise, as well as “Maintenance” status, where prescription is only allowed for supervised addiction relief. “Restricted adult access” does not require prescription, but availability is legally limited by hours or age. If age is the sole criteria for purchase, the label is “unrestricted adult access.” Finally, “universal access” allows drug use and possession for any individual. Every psychoactive substances falls into one of these regulatory categories, and it is possible that a nation-state has different drugs in each category. The history of each drug and its trade determines the category in which it falls. For example, caffeine is usually in the “universal access” category because tea and coffee have become essential to daily life in different areas of the world for centuries. The political tool of drug policy is the ability to move drugs in-between these categories based on which national strategy the administration wishes to employ.

One of the most common deliberations regarding drug policy and whether they should be considered licit or not is on taxes and how they affect the black market. Taxes can be too high or too low for a legal substance. High taxes discourage consumption and increase revenue but encourage smuggling and bootlegging.¹⁴² If a tax matches tax rates in surrounding or bordering areas, and share similar steepness, then there is less incentive to smuggle.¹⁴³ One example of this

¹⁴¹ Courtwright, *Forces of Habit*, 188.

¹⁴² Ibid, 160.

¹⁴³ Ibid, 162.

truth is how people smuggled cigarettes from the United States to Canada in the 1990s, where a carton cost \$45 in 1991. By 1994, one-third of Ontario cigarettes and two-thirds of Quebec cigarettes were contraband.¹⁴⁴ Canada cut those taxes in February of 1994 to combat the issue. Courtwright says, “The idea that the black market is the result of something called ‘prohibition’ is the central premise of the liberal view of drug history and the basis for the affiliated proposal of controlled legalization.”¹⁴⁵ He suggests that licit, taxed sale of drugs such as cocaine, marijuana, and heroin could end evils of the black market, such as violence, and produce government revenue. However, he continues:

“The catch, apart from increased addiction due to increased exposure, is that retaining taxes (and restrictions like no sales to minors) means retaining, to some degree, the black market. Light taxes and few restrictions would make the black market a minor nuisance, but would increase the amount of compulsive use. Heavy taxes and many restrictions would mean fewer new addicts, but would create incentives for illicit manufacturing, smuggling, diversion, and violence.”¹⁴⁶

Scholars debate whether changes in some of these restrictions would change the number of dependent users, but Courtwright’s argument clearly explains the quintessential points about the inverse relationship of taxes to black market trade. Nations must balance their tax levels on legal drugs with other national economic interests as well as the welfare of the community.

National strategy regarding drug use and trade varies depending on many other factors; scholars, politicians and citizens often debate the merits of prohibition, decriminalization and legalization of different substances. Decriminalization does not punish addicts and saves police time and money, but it does not stop the related organized crime, which can still function in the

¹⁴⁴ Ibid, 164.

¹⁴⁵ Ibid, 165.

¹⁴⁶ Ibid.

background.¹⁴⁷ Also, decriminalization may raise the chance of experimental drug use. Some scholars believe that de-escalation of the war against drugs, including cannabis, is equivalent to surrender.¹⁴⁸ In American society, there exists a perception that drugs endanger the future of the nation through limiting the youth specifically.¹⁴⁹ This view supports prohibition and other limitations. Another attraction of prohibition and deterrent strategies is “greater ease of blaming another country for the drug problem.”¹⁵⁰ Using the American example again, if drugs are most often grown or produced in Colombia or Mexico and trafficked into the U.S., it is easy to say their supply is the issue rather than the American consumption. Mares elaborates, “The United States sees the continuation of the drug trade as a result of a combination of lack of political will, weak state authority, and corruption. The U.S. response, therefore, is to pressure for more political will, build up the police power of governments and sanction corruption; the resulting ill-will with Latin America is perceived to be just a short term cost on the road to victory.”¹⁵¹ However, drug prohibitions have several social costs. The heaviest burdens fall on poor communities, leaving affluent and suburban voters to continue thinking that aggressive enforcement protects their own families from people who should not be using drugs in the first place- while they use different drugs in different social contexts.¹⁵² While these views show the prejudice that exists behind some prohibition policy, depending on the drug, some scholars believe that legalization would “reset the policy clock by more than a hundred years.”¹⁵³ In defense of this statement, current illegal drugs that continue to be banned after the waves of

¹⁴⁷ Grillo, *El Narco*, 283.

¹⁴⁸ Courtwright, *Forces of Habit*, 202.

¹⁴⁹ Ibid, 171.

¹⁵⁰ Mares. *Drug Wars and Coffeehouses*, 113.

¹⁵¹ Ibid, 115.

¹⁵² Courtwright, *Forces of Habit*, 202.

¹⁵³ Ibid, 201.

prohibition and the first international drug agreements in the beginning of the twentieth century are illegal for specific, valid reasons, most of them health and safety related.

Other scholars believe that the argument that legalization of drugs would lead to an explosion in the number of users is not backed by facts.¹⁵⁴ Several decades have passed since the psychoactive revolution, allowing time to examine the success of the policies at that time as another wave of interest in drugs begins. Laws may not be the principal factor in deterring drug use.¹⁵⁵ The United Kingdom has strict drug laws, and much higher use rates than Holland with liberal drug policy. Portugal had even lower rates of drug use following decriminalization of all drugs in 2001 than before, when it already had one of the lowest use-rates in Europe. The states with liberal drug policy also have the advantage of saving money on prisoners. Grillo conjectures that legalizing marijuana in the United States would cause billions of dollars of financial damage to organized crime in Mexico, which would be more financial damage than the Mexican or American governments have achieved against it this decade.¹⁵⁶ Conversely, suddenly legalizing drugs completely would have several negative effects. When the U.S. repealed alcohol prohibition in 1933, it took decades to reduce drunk-driving rates.¹⁵⁷ Regardless of the policy, education on the effects of psychoactive substances seems to be essential to a healthy state.

The question remains in many nations, especially in the context of the interconnectedness drug trade creates and relies on, whether a policy is achievable that will address the fears of the public as well as the psychological, physiological and social impacts of drug use.¹⁵⁸ Is it possible to promote a healthy lifestyle without such excessive reforms that the inevitable backlash

¹⁵⁴ Grillo, *El Narco*, 280.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid, 284.

¹⁵⁷ Musto. *The American Disease*, 300.

¹⁵⁸ Ibid, 299.

destroys progress in public health?¹⁵⁹ The least extreme form of decriminalization policy seems to be harm reduction policies, which stress demand reduction over supply reduction.¹⁶⁰ Harm reduction urges depoliticizing drug abuse and substituting treatment programs for expensive criminal proceedings and punishment. This strategy may not be popular in societies where fear and prejudice against perceived drug users still exist. Mares argues that a nation's ultimate goal is not the outcome of the drug policy, as long as it meets the intermediate goal of making the public believe society will make progress in the "right" direction.¹⁶¹ Drastic changes in drug policy may temporarily appease populations. In reality, a nation will do what is in its own self-interest to retain its sovereignty domestically and internationally, and only in the case that society does not continue to perceive drugs as a somehow threatening issue will changes in drug policy occur.

International Drug Policy and The United Nations Conventions

International drug policy is subject to the whims of the nation-states in the international community. Even if countries have a consensus on goals for policy, these goals may be prioritized differently, and even if priorities are agreed upon, the countries may disagree on processes to pursue them.¹⁶² These truths complicate the complex international decision-making process and have throughout history. It is essential that goals are "complementary, not contradictory."¹⁶³ Also, in the decentralized and globalized market that exists today for illicit drugs, effective policy requires that all countries quickly implement the accepted policies.

¹⁵⁹ Ibid, 300.

¹⁶⁰ Courtwright, *Forces of Habit*, 201.

¹⁶¹ Mares. *Drug Wars and Coffeehouses*, 8.

¹⁶² Ibid, 110.

¹⁶³ Ibid.

The United Nations is currently the primary international forum for drug policy formation and cooperation because of the ability of the organization to collect and evaluate information and the large number of countries involved.¹⁶⁴ Shortly after the U.N.'s establishment, the Economic and Social Council of the U.N. created a branch for the Commission on Narcotic Drugs in 1946.¹⁶⁵ The U.N. International Narcotic Control Board regulates the legal narcotics market and makes recommendations to the U.N. Office on Drugs and Crime (UNODC).¹⁶⁶ The UNODC merged two separate offices in 1997 as an effort to research the drug phenomenon, assist states in implementing treaties, and cooperate with member states to counteract terrorism.¹⁶⁷ From the beginning, drugs were a priority issue for the organization, and the bureaucracy has since evolved to tackle current drugs and issues. Luckily, those with a global imaginary in the 1940s prepared the world to combat the international development.

The UNODC is charged with protection of the existing international laws regarding drugs outside of customary law and treaties: the three International Drug Control Conventions. The 1961 Single Convention on Narcotic Drugs, revised in 1972, the 1971 Convention on Psychotropic Substances, and the 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances function together to establish the international schedule on trafficking of certain drugs. These conventions changed the global approach to drugs and acknowledged that the market for these products, as well as licit ones, had become officially transnational.

¹⁶⁴ Ibid, 115.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid, 69.

¹⁶⁷ "About UNODC." <http://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop>

The 1961 Single Convention on Narcotic Drugs

The initial goal of the first international drug control convention was to replace the existing multinational treaties with one single instrument and reduce the number of organizations involved to prevent overlapping responsibilities.¹⁶⁸ Ninety-seven states and several international organizations were party to the convention.¹⁶⁹ It hoped to limit possession, trade, use, and manufacture of narcotics to scientific purposes. Its first resolution was to welcome the cooperation of the International Criminal Police Organization for enforcement of the laws.¹⁷⁰ Article III gave the World Health Organization as well as signing members the responsibility of notifying the U.N. if they found that a new substance was being regularly abused.¹⁷¹ Drugs were organized into four schedules of limitations. It limited the amounts of poppy that could be produced in a country and the purposes for which the poppy, coca leaf and cannabis plant could be grown.¹⁷² The convention restricted manufacture and trade of these substances further, most importantly in Article XXXI, “Special provisions relating to international trade.”¹⁷³ As far as penal provisions of the treaty, it required that parties formulate national laws in accordance with the treaty, and that any extradition treaties include provisions in line with the convention; countries without extradition treaties between them were instructed to use the treaty as grounds for extradition.¹⁷⁴ Also, Article XXXVIII provided that any dispute relating to interpretation of the treaty that could not be settled with mediation or arbitration could be taken to the International Court of Justice. This combined effort, especially in defining the terms used to

¹⁶⁸ United Nations Office on Drugs and Crime. *The International Drug Control Conventions*. 8.

¹⁶⁹ *Ibid*, 16.

¹⁷⁰ *Ibid*, 13.

¹⁷¹ *Ibid*, 28.

¹⁷² *Ibid*, 46-47.

¹⁷³ *Ibid*, 50.

¹⁷⁴ *Ibid*, 56.

describe the drug trade and establishing the first international laws against it between party states, was a momentous effort. However, in the midst of the expanding global trade in drugs, these laws became outdated.

The Convention on Psychotropic Substances of 1971

According to the opening resolutions of the Convention of Psychotropic Substances of 1971, once amphetamines became widely and publicly available, national governments' concern grew that the populations were becoming immoral, and the World Health Organization reported negative health effects.¹⁷⁵ The second resolution of the convention acknowledged that amphetamines had some therapeutic value, but labeled them "liable to abuse" and "objects of illicit traffic."¹⁷⁶ It included "preparations" of the psychotropic substances in question to be subject to the same levels of control.¹⁷⁷ Overall, this treaty contained the same types of restrictions and penal provisions as the 1961 convention.

The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

The goal of the third U.N. convention was to address the magnitude of trade and demand for narcotic drugs and psychotropic substances.¹⁷⁸ It recognized the connection between international criminal activity, violence and danger, and criminal wealth that undermined legitimate financial institutions and governments. The first resolution reaffirmed the 1961 Convention's provisions for the employment of the International Criminal Police Organization to

¹⁷⁵ Ibid, 76.

¹⁷⁶ Ibid, 82.

¹⁷⁷ Ibid, 90.

¹⁷⁸ Ibid, 123.

combat the drug trade.¹⁷⁹ The third resolution expressed disappointment in the 1980s budget and staffing cuts in the International Narcotics Control Board, which did not come at a convenient time for combatting the rising amounts of drug trafficking.¹⁸⁰ Article II reaffirmed that the purpose of the convention was to promote necessary cooperation between states, but that it must be done with respect to states' sovereign equality and without exercising jurisdiction in another state's territory or replacing the state's responsibility to its domestic law.¹⁸¹ All of these provisions worked to elevate the importance of the U.N.'s role in international law and reestablish state sovereignty.

The 1988 convention focused much more on the role and rights of sovereign states than the preceding ones. Article IV gave parties the duty to establish jurisdiction over crimes committed in its own territory and over its nationals or people of habitual residence in its territory.¹⁸² Article VI expanded the states' responsibility and right to extradition regardless of existing treaties and again grounded it on the document as sufficient legal basis.¹⁸³ The next article provided that states should afford mutual legal assistance to one another in investigations and judicial proceedings, although it could be refused if "the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests."¹⁸⁴ This condition to the law was essential to states in relation to extradition and prosecution of its nationals. Article XVII requested that all parties act in conformity with laws of the sea to control illicit traffic.¹⁸⁵ Finally, Article XXXII reiterated the other treaties,

¹⁷⁹ Ibid, 119.

¹⁸⁰ Ibid, 120.

¹⁸¹ Ibid, 133.

¹⁸² Ibid, 137.

¹⁸³ Ibid, 136.

¹⁸⁴ Ibid, 146.

¹⁸⁵ Ibid, 157.

affirming that any dispute over the treaty that could not be solved through mediation or arbitration could be taken to the International Court of Justice, and added that any organizations involved in trafficking regulation could request an advisory opinion from that court.¹⁸⁶

The U.N. conventions manifested the inherent tension between international law and state sovereignty. Nation-states, in these conventions, were honored as the primary sovereign actor in world politics, and the treaties addressed concerns about sovereignty in the midst of drug policy enforcement. Because drugs constantly cross borders, mounting effective enforcement of drug laws inevitably runs the risk of one state encroaching, even violating, another state's territorial authority. The implicit goal of the U.N. conventions was to mitigate that risk, minimizing the potential for conflict between neighboring states through coordinated drug policy and enforcement. However, the language of the conventions allowed states to make many exceptions for its own self-interest, revealing the de facto dominance of the realist perspective guiding drug policies. While the conventions' influence remains debated, the agreements produced a body of policy stipulations that represented the clearest articulation of an international drug enforcement strategy; as such, these conventions have significant ramifications for international law and the obligations of states as governing bodies and economic powers.

National and International Drug Policy Enforcement

The next step, after creating both national and international policy, is enforcing it. As previously explained, the drug trade is transnational and distribution networks could span multiple continents, which hinders the ability of police systems to make arrests and address the roots of the drug problem. Nation-states work together using extradition and the help of the

¹⁸⁶ Ibid, 165.

International Criminal Police Organization, or Interpol, to combat drug trafficking and many other offenses. Both systems, currently, have limitations that often encumber lasting progress in shrinking the scope of drug trafficking.

Extradition

The extradition process is “the surrender by one nation of an individual convicted of an offense outside of its own territory, and within the territorial jurisdiction of another, which, being competent to try and punish him, demands the surrender.”¹⁸⁷ An alleged criminal is sent to a country that has jurisdiction over the crime charged. This process serves the purposes of protecting national sovereignty of contracting nations and guaranteeing that crimes committed in one country will be addressed with proper judicial proceedings.¹⁸⁸ It has come to be a “phenomenon of international law” and the treaties between states that establish extradition “are products of rational exchanges between states: two states have an interest in preventing or punishing criminal acts, and extradition is one tool in pursuing that interest.”¹⁸⁹ The process requires a formal request. Theoretically, states create these treaties to promote cooperation and ensure implementation of national law. In most cases, states comply with their bilateral and multilateral extradition treaties.¹⁹⁰ Several variables affect the shaping as well as application of extradition treaties, however, including domestic politics and interest groups; these influences are capable of disfiguring the initial formation of treaties and altering interpretation from the

¹⁸⁷ Roberto Iraola, “Second Bites and International Extradition,” 954.

¹⁸⁸ Melinda Lim, “Will Amanda Knox Go Back To Italy? An Examination of Extradition Law and the Necessity of Repurposing Agreements in the Fight Against Transnational Crime,” 213.

¹⁸⁹ William Magnuson, “The Domestic Politics of International Extradition,” 843.

¹⁹⁰ *Ibid*, 845.

original intent.¹⁹¹ Imperfections or bias in these treaties may excuse noncompliance and further obfuscate the issue of how to try drug traffickers and other international criminals.

Steadily, extradition became a legal phenomenon in the nineteenth century as treaties became incorporated into the blossoming international regime.¹⁹² Extradition efforts even before this period did not occur as an informal exchange, which suggests that nation-states wanted to hold each other accountable to their agreement through legal obligations. When extradition first began, it was usually for political crimes, such as deserting troops. Today the treaties focus on common criminal offences rather than political offenses.¹⁹³ In most situations, when a country supplies a request for extradition to a second country within the bounds of their treaty, the latter's executive system will evaluate the case's relevance before its judicial system, and then the government will grant the extradition request. Countries interested in fully deterring crime may write an inclusive and broad treaty, but if interest groups lobby in favor of certain exceptions, or politicians predict some types of extradition could potentially harm the nation-state, negotiators feel pressured to reduce the scope of the treaty or allow exemptions. As the countries have a legal understanding, denial of an extradition request can have serious effects on other foreign policy efforts and may cause international tension.¹⁹⁴ If only for the purpose of making sure the other state in the treaty feels obligated to extradite a criminal, a state is likely to have an interest in complying with the treaty provisions.¹⁹⁵

Scholars have identified several specific provisions contemporary extradition treaties may or may not include that hinder enforcement in practice: those of double criminality,

¹⁹¹ Ibid, 843.

¹⁹² Ibid, 849.

¹⁹³ Ibid, 851.

¹⁹⁴ Ibid 886.

¹⁹⁵ Ibid, 844.

noninquiry, and human rights. One provision in extradition treaties is double criminality, which is typically a prerequisite for signing such an agreement.¹⁹⁶ Double criminality, when a crime is illegal in all states party to the treaty, helps with reciprocity of extradition. This idea is not the same as double jeopardy, and is meant to prevent an individual for being tried twice for the same crime. Double criminality may become a concern for states deciding whether or not to extradite. The rule of noninquiry prevents the judiciary from inquiring into the reliability and fairness of the requesting nation's judiciary.¹⁹⁷ The tradition of noninquiry clauses began as a method of courtesy between governments. The United States takes an especially absolute position on noninquiry in most of its treaties: foreign courts must not examine the future treatment of the individual to be extradited.¹⁹⁸ This concerns many other countries that worry about legality of capital punishment in the U.S. For both European and Islamic countries, "the existence of corporal punishments in drug-related crimes ... makes it problematic to apply extradition practices."¹⁹⁹ However, the motivation of the noninquiry rule is to protect sovereignty.²⁰⁰ If two or more countries are signing an extradition treaty in the first place, they should hypothetically trust one another to have capable judicial systems. Concerns over possible harsh sentences or incompetent systems, as the U.S. has claimed in some cases against Mexico or Colombia, are standard excuses for refusing to extradite individuals. Since the end of World War II and founding of the UN, extradition treaties have included provisions to ensure the integrity of human rights. The majority of today's extradition treaties contain sections exempting citizens of

¹⁹⁶ Lim, "Will Amanda Knox Go Back to Italy? An Examination of Extradition Law and the Necessity of Repurposing Agreements in the Fight Against Transnational Crime," 218.

¹⁹⁷ Magnuson, "The Domestic Politics of International Extradition," 853.

¹⁹⁸ Ibid, 887.

¹⁹⁹ Mansour Ramdel, "International Judicial Criminal Cooperation in Combatting Narcotic Drug Crimes in Iranian Law," 299.

²⁰⁰ Lim, "Will Amanda Knox Go Back to Italy? An Examination of Extradition Law and the Necessity of Repurposing Agreements in the Fight Against Transnational Crime," 216.

the requesting state from extradition.²⁰¹ Protecting one's own citizens, to some states, outweighs the benefits of fostering rule of law in a foreign country.²⁰² International law has grown increasingly interested in the status of individuals, which was once exclusively in the realm of state-to-state relations, causing states to reexamine their extradition treaties or find constant exemptions.²⁰³ States have the option to refuse extradition if they believe the request is of a political nature, in the effort to protect individual and human rights of the accused.²⁰⁴ Sometimes such provisions are helpful, but if such a clause has a broad interpretation, it excuses refusal of many requests in which a possible guilty criminal will never be held accountable for their offenses. Extradition is an essential mechanism for addressing crime that occurs within allied borders, and in the case of transnational drug trade, it is the first solution that many states turn to, assuming they can agree that the request falls within the complicated parameters of the treaty.

International Criminal Police Organization (Interpol)

In 1923, police organizations from 20 states came together to address the issue of transnational crime; they believed that if crime had no borders, neither should law enforcement. Of their own accord, without recommendation from the 20 states they represented, they formed the beginnings of Interpol, making its relationship with the nation-state unique. States have come to rely on Interpol efforts to deal with highly institutionalized and systematic transnational crimes in six general areas: corruption, drugs and organized crime, fugitives, financial and high

²⁰¹ Magnuson, "The Domestic Politics of International Extradition," 879.

²⁰² Ibid, 880.

²⁰³ Matthew Murchison, "Note: Extradition's Paradox: Duty, Discretion, and Rights in the World of Non-inquiry," 295.

²⁰⁴ Ibid, 887.

technology crime, public safety and terrorism, and human trafficking.²⁰⁵ An offense against international law that would involve Interpol would be an offense that occurred between member states, where a criminal flees to another country, or situation where one criminal commits a crime in multiple nations. Interpol's aims of "fighting international crime and exchanging information pertaining to 'common' and 'non-political' criminals has been grounded in the perceived expertise and jurisdiction of the transnational professional police community."²⁰⁶

Interpol's Constitution makes it an abnormal international organization because it relies only on the Universal Declaration of Human Rights and acquiescence of member states for purpose and legitimacy. According to its "About" website page, Interpol's mission is "preventing and fighting crime through enhanced cooperation and innovation on police and security matters."²⁰⁷ Article II of the Constitution states the organization's aims:

"To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the "Universal Declaration of Human Rights,"²⁰⁸

The phrase "mutual assistance" is essential to the idea that Interpol does not make arrests itself; it makes arrangements for national police forces and collects data to arrest offenders. Funding is based on ability of party states to contribute and relies on this money and other donations. Also, it idealistically suggests that states will provide services and data to combat a "mutual" crime problem. Cooperation is restricted, though, to conditions imposed by the involved legal systems.²⁰⁹ Interpol claims legitimacy from the idea that multistate police forces came together

²⁰⁵ Todd Sandler, Daniel G. Arce, and Walter Enders. "An Evaluation Of Interpol's Cooperative-Based Counterterrorism Linkages," 79.

²⁰⁶ Michael Barnett and Liv Coleman, "Designing Police: Interpol And The Study Of Change In International Organizations," 597.

²⁰⁷ International Criminal Police Organization, "Overview: About Interpol."

²⁰⁸ Interpol Office of Legal Affairs, *Constitution of the ICPO-Interpol*, 3.

²⁰⁹ Michael Fooner. *Interpol: Issues in World Crime and International Criminal Justice*, 38.

for a common purpose, and those forces are agents of states and their laws. The third article of Interpol's Constitution forbids the organization from involving itself in "intervention or activities of a political, military, religious or racial character."²¹⁰ This restriction prevents corruption within the organization, or preference for one state's agenda over another. A further implication is that paramilitary groups, corrupt police forces, and violent organizations involved in drug trafficking are not clearly legal targets.

Transnational criminals have several advantages in their realm of the informal economy. They can "exploit the legal tradition of sovereignty of nations, and, as a result, national boundaries frequently provide them with an effective means for avoidance of the law or escape."²¹¹ Global issues such as crime transcend state boundaries and can take advantage of two separate systems' laws, but organizations that also similarly transcend state boundaries, such as Interpol, seem equipped with dealing with truly global issues because of its access to personnel and data within party states. Interpol simplifies the process through which states may share confidential evidence and data on a case. Difficulties for Interpol and efforts to plan an improved and safe international system are complicated by three concepts: "first, the very nature of the modern state; second, the frequently differing outlooks of police and governments on the problems; third, the unresolved question of how to organize appropriate institutions of cooperation."²¹² Varying state traditions, differing levels of economic development and conflicting laws on crime challenge Interpol's effectiveness. Activities illegal in one country may be legal in another. However, while a state and its nationals have the rights to determine

²¹⁰ Interpol Office of Legal Affairs, *Constitution of the ICPO-Interpol*, 3.

²¹¹ Fooner. *Interpol*, 26.

²¹² Malcolm Andersen. *Policing the World: Interpol and the Politics of International Police Cooperation*, 186.

their own criminal law, transnational criminals can operate without any barrier but, possibly, language.²¹³

While it has its limits, Interpol is the only super-regional international enforcement mechanism for international law. It works closely with other international organization actors to further its human rights and anti-crime agenda. Interpol shares a deep history with the United Nations, who first gave Interpol consultative non-governmental organization status in 1949, updated it to an intergovernmental organization in 1971, and granted observer status to it in 1996. Interpol now has a small office in UN headquarters.²¹⁴ Interpol is not part of the United Nations, but the UN Economic and Social Committee, Counter Terrorism Committee, Office of Drugs and Crime and more UN sections rely on Interpol to enforce their laws and regulations, especially because Interpol relies on the same Universal Declaration of Human Rights.²¹⁵ Even with these connections, Interpol relies on extradition treaties once it makes arrests, as the responsibility to try alleged criminals lies with governments and its judicial authorities.²¹⁶ The transnational police efforts are an important step in the legal process that makes many extradition requests possible. Crime is as embedded in the current international system as extradition treaties and Interpol are engrained in international law. The nation-state system provides a puzzling forum for both crime and international laws to function. However challenging, Interpol and member states are bound by a legal obligation to curtail the expanse of crime, assuming it is in the sovereign state's interest. As the nation-state controls the majority of enforcement of crime across borders, conflicting interests produce problems for effective, rapid and legitimate enforcement of transnational drug trade.

²¹³ Ibid, 193.

²¹⁴ Charlie Savage, "Order on Interpol Work Inside Irks U.S. Conservatives."

²¹⁵ International Criminal Police Organization, "Overview: About Interpol."

²¹⁶ Fooner. *Interpol*, 26.

Jurisdiction of International Courts Over Drug Policy

It seems to follow logically that if there is active and constant transnational criminal activity in the world and there is an extensive international law enforcement organization, then permanent international courts would exist to address drug trafficking across borders. Two permanent international courts exist. The International Court of Justice settles disputes between states and the International Criminal Court tries individuals for internationally recognized crimes. Also, the United Nations, similar organizations or states may set up temporary tribunals to deal with specific breaches of international law or regional issues, such as the International Criminal Tribunal for the former Yugoslavia. The UN Drug Control Conventions state in their current form, even since the 1961 convention, that in the event of a dispute on interpretation of the treaties the case could be taken to the ICJ. Also, in the name, someone may assume on first impression of the ICC that it could address a crime such as drug trafficking. However, neither court has ever heard a case directly related to drug trafficking, nor has an international tribunal been ever set up to address drug-related crimes. An examination of the court statutes may explain why this is the case.

The International Court of Justice

As previously mentioned, the ICJ website lists no Advisory Proceedings or Contentious Cases related to drug trade.²¹⁷ The Charter of the United Nations established the ICJ, which replaced the Permanent Court of International Justice.²¹⁸ ICJ Statute, according to Article XXII,

²¹⁷ International Court of Justice. "Cases." www.icj-cij.org/cases.

²¹⁸ International Court of Justice. "Statute of the International Court of Justice." <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>

establishes the court's seat in The Hague, but says the court may sit and exercise its functions wherever the court deems it useful or desirable. This suggests that, while it has a stable residence, if the court members thought it would be prudent or helpful to travel to hear a case and make a more impartial decision, they could. The statute says that states are the only parties allowed in cases before the ICJ in Article XXXIV, which explains that drug trafficking criminals would not be appropriate in this forum unless one state accused another of not complying with the UN Drug Control Convention provisions.²¹⁹ However, Article XXXVI says states party to the court give it jurisdiction over: "the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation; the nature and extent of the reparation to be made for the breach of an international obligation."²²⁰ Therefore, the ICJ could be helpful for a dispute over extradition of an alleged drug trafficker, and has jurisdiction over "any question" of the conventions should a state decide to ask. Article XXXVIII specifically mentions that the ICJ may apply the laws from international conventions.²²¹ While the ICJ is not the correct route for trying specific, individual criminals, the court has some jurisdiction over the issue of drug trafficking itself and states that do not follow the provisions of the UN Drug Control Conventions- including the provision that states that do not have an extradition treaty between them may use the conventions as grounds for extradition.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

The International Criminal Court

The purpose of the ICC is “to help the end impunity for the perpetrators of the most serious crimes of concern for the whole international community.”²²² Like the ICJ, it sits in The Hague, but it is not an official component of the UN. In 1998, 120 states accepted the provisions of the Rome Statute, but only 60 countries had ratified it before the statute came into force in 2002. A state party to the statute, the UN Security Council or an ICC Prosecutor may refer a crime to the court.

The Rome Statute establishes in Article I that the court shall be “complementary to national criminal jurisdictions.”²²³ This provision is known as the principle of complementarity, which is meant to protect national sovereignty and jurisdiction of crimes within its own borders. Jurisdiction, according to Article V, “shall be limited to the most serious crimes of concern as a whole. The court has jurisdiction with respect to the following crimes: The crime of genocide; Crimes against humanity; War crimes; The crime of aggression.”²²⁴ The article requires that all cases fall within these boundaries, which the statute clarifies with specific definitions of each crime. Article VII outlines “Crimes against humanity:”

“For the purpose of this Statute, “crimes against humanity” means any of the following acts when committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Murder; Extermination; Enslavement; Deportation or forcible transfer of population; Imprisonment or other severe deprivation of physical liberty in violation of the fundamental rules of international law; Torture; Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence with comparable gravity; Persecution against any identifiable group or connectivity on political, national, ethnic, cultural, religious, gender...or other grounds...; Enforced disappearance of persons; The crime of apartheid;

²²² International Criminal Court. “About the Court.” [http://www.icc-](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx)

[cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx)

²²³ International Criminal Court. *Rome Statute of the International Criminal Court*, 2.

²²⁴ *Ibid*, 3.

Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or to physical health.”²²⁵

In many ways, this definition overlaps many of the specified definitions of human rights in the Universal Declaration of Human Rights upon which Interpol and the UN rely.²²⁶ Also, this comprehensive list envelops several crimes associated with drug trafficking, such as murder, enforced disappearance of persons, and the listed “other inhumane acts.” In Article VIII, the Rome Statute defines war crimes, a term which “applies to conflicts not of an international character” and “does not apply to situations of internal disturbances and tensions, such as riots, isolated acts of sporadic violence or other acts of a similar nature.”²²⁷ Of these two crimes the Rome Statute addresses that would be most likely to be associated with drug trafficking, the provisions make no mention of drugs, and the war crimes definition rules out a broad interpretation that could include the violence that accompanies some trafficking circles. Finally, Article XVII describes “Issues of Admissibility” and situations in which nations must address a case internally and situations where the ICC, in the case of unwillingness or inability to prosecute, may take control of the investigation under the principle of complementarity.²²⁸

Although the Rome Statute never mentions drug use or drug trafficking, those were two of the original issues that a theoretical ICC was meant to include. In 1989, Trinidad & Tobago, with the support of several other small states, lobbied the UN to discuss having an international narcotics court.²²⁹ States that were “less developed” at the time felt incapable of prosecuting and investigating international drug traffickers and perceived a lack of communication between

²²⁵ Ibid, 3-5.

²²⁶ United Nations. *The Universal Declaration of Human Rights*.

²²⁷ International Criminal Court. *Rome Statute of the International Criminal Court*, 7.

²²⁸ Ibid, 13, 14.

²²⁹ James Windle, “Afghanistan, Narcotics and the International Criminal Court: From Port of Spain to Kabul, via Rome,” 297.

national law enforcement and judicial branches.²³⁰ Their proposal led to the process of creating the ICC. In 2009, Trinidad & Tobago lobbied again for including narcotics based on Articles CXXI and CXXV, which state that every seven years the party states could consider amendments.²³¹ Seemingly, “the system of indirect control over transnational crimes — drug trafficking, terrorism and so forth — is heavily skewed towards the interests of large ‘consumer’ states.”²³² It was not the states that were eager to remove impunity for crimes against humanity or war crimes that fought for a court, but small states.²³³

The technical reason the Rome Statute does not cover drug trafficking is that writers decided it should cover customary international law, and many transnational crimes are treaty-based, so the writers would have had to define transnational crimes such as drug trafficking themselves.²³⁴ While they did debate a definition for drugs, they never were able to come to a consensus for such a broad and multifaceted issue. It is ironic that the court was created without jurisdiction over its original premise.²³⁵ The primary practical reason for choosing not to include drug trafficking cases was that the crimes would be so numerous the court would not be able to prosecute them all.²³⁶ The U.S. was worried the ICC would prevent states from enforcing their own national law, and Kazakhstan was concerned that the complementarity principle would always apply in drug trafficking cases. These reasons were sufficient for the writers to ignore the original purpose of their meeting, but also emphasize very important aspects of current

²³⁰ Ibid.

²³¹ Ibid; International Criminal Court. *Rome Statute of the International Criminal Court*, 72, 73.

²³² Ibid.

²³³ Neill Boister, “International Tribunals for Transnational Crimes: Towards a Transnational Criminal Court,” 295.

²³⁴ Ibid, 298.

²³⁵ Heather Kiefer, “Just Say No: The Case Against Expanding the International Criminal Court’s Jurisdiction to Include Drug Trafficking,” 165.

²³⁶ Boister, “International Tribunals for Transnational Crimes: Towards a Transnational Criminal Court,” 295.

international law. International law is often ambiguous and relies heavily on the sovereignty of the nation-state for legitimacy. These facts are not huge issues assuming that all states party to the treaty have legitimacy in their own borders and have the same amount of power in international politics. However, Trinidad & Tobago seems to disagree that this is the case. There has been extensive scholarly and political debate on whether or not to include drug trafficking and other transnational crimes in the Rome Statute in the future, as well as how such transnational crimes should be addressed in international law at all, considering the role extradition treaties already play in the system.

Examination of the situation in Afghanistan shows how neither the idealistic addition of drug-related crimes to the ICC nor keeping the approach status quo will help countries affected most obviously by the drug trade. Six percent of the Afghan population in 2009 grew poppies, amounting to about 1.5 million people.²³⁷ Insurgency in some areas limits government or military access to those poppies, so destroying the crop is not an option. Even if it were, many impoverished families could be temporarily left without an income, a short-term consequence that may prohibit change. Yielding jurisdiction to the ICC is supposed to fix “impunity from prosecution,” but it could hurt Afghanistan’s interest in its own international reputation or interfere with extradition of criminals to the U.S., the primary country to which Afghan criminals are sent.²³⁸ The ICC could provide an imprisonment location for these criminals to make up for Afghanistan’s troubled prison system, but it may make the state seem incapable rather than seem like its trying to improve impunity issues.²³⁹ Utilizing the ICC prisons could free up prison space for local issues, limit immunity to prosecution, expand intelligence cooperation, provide more

²³⁷ Windle, “Afghanistan, Narcotics and the International Criminal Court: From Port of Spain to Kabul, via Rome,” 305.

²³⁸ Ibid, 307.

²³⁹ Ibid, 308.

accurate sentencing, and even better, the ICC could help prevent money laundering through the United Arab Emirates.²⁴⁰ The most important complication, past self-consciousness in the realm of foreign policy, is that the ICC investigation might work against top Afghan officials, putting the state in a precarious position; or even worse other politically involved traffickers could persuade the court to target its business competitors.²⁴¹ These concerns have prevented Afghanistan from ratifying the Rome Statute.

Arguments against incorporating drug trafficking into the current Rome Statute or under an international court include prosecution being too expensive and complex, drug trafficking not qualifying as crimes against humanity, and differing international definitions of drug crimes. Some scholars say the costs of investigation could be too much for the court alone to incur while trying to untangle the web of trading system.²⁴² Also, the number of drug trafficking cases, if they were solely the responsibility of the ICC, would back up the court and put it behind in making decisions.²⁴³ One scholar suggests that drug trafficking does not meet the definition of crimes against humanity because “most, if not all, governments actively legislate against and attempt to suppress drug use and trafficking. Afghanistan is a prime example. Afghanistan, which supplies 93% of the world’s opium, has implemented various programs to battle the production and distribution of opium.”²⁴⁴ Afghanistan might not be such a prime example in this case because the Afghan government is an allegedly corrupt power and other organizations have political influence there.

²⁴⁰ Ibid, 313.

²⁴¹ Ibid, 314.

²⁴² Kiefer, “Just Say No: The Case Against Expanding the International Criminal Court’s Jurisdiction to Include Drug Trafficking,” 181.

²⁴³ Windle, “Afghanistan, Narcotics and the International Criminal Court: From Port of Spain to Kabul, via Rome,” 300.

²⁴⁴ Kiefer, “Just Say No: The Case Against Expanding the International Criminal Court’s Jurisdiction to Include Drug Trafficking,” 168.

Colombia's situation is somewhat similar to the Afghan government's efforts to control drug production. The Colombian government's tactics to negotiate with the Revolutionary Armed Forces of Colombia (FARC), involved in much of the coca growth and manufacturing there, gives FARC some semblance of being a *de facto* authority, but only the Colombian government is recognized in international law, and it is vigorously combatting drug production efforts.²⁴⁵ Because these governments are involved in preventing and prosecuting crimes themselves, some scholars argue the ICC, under the principle of complementarity, cannot get involved. Traffickers are flexible with markets, and have the advantage of being able to base themselves in states that are not party to the ICC.²⁴⁶ Either way, the Rome Statute is meant to address "unimaginable atrocities that deeply shock the conscience of humanity."²⁴⁷ While the drug trade has a stereotypically violent nature, arguably the violence is not essential to the buying and selling of drugs and is a consequence of the product's prohibition.²⁴⁸ Seemingly, the reasoning behind criminalizing drugs is "teleological" because it is consumption that harms people, not the trade itself.²⁴⁹ Simply deterring trade by making it internationally illegal does not consider the net effects this could have on the market— if prices are made internationally illegal, supply might drop, which would raise prices, which then raises incentive to trade, attracting suppliers, and causing prices drop again.²⁵⁰ The market will just adjust to a new situation even if the ICC gains jurisdiction. Finally, there is the possibility that cultural differences regarding drug use, the continued debate over which drugs should be criminalized, and the large discrepancies in

²⁴⁵ Ibid, 169-170.

²⁴⁶ Michels, "Keeping Dealers off the Docket: The Perils of Prosecuting Serious Drug-Related Offenses at the International Criminal Court," 457.

²⁴⁷ Ibid, 452.

²⁴⁸ Ibid, 453.

²⁴⁹ Ibid, 454.

²⁵⁰ Ibid, 457.

international punishments for drugs will all cause problems for an ostensibly unbiased ICC, which can not risk losing legitimacy with certain nation-states.²⁵¹ Scholars question whether ICC jurisdiction would be at all effective in combatting trade.

Inclusion of narcotics crimes could trivialize the role of the ICC, which is meant to recognize crimes that “are serious crimes of concern to the international community.” However, drug use of many forms is a pervasive issue in every nation. Also, its production in economically troubled areas ensures that profitable production will be valued higher over funding infrastructure or even growing food. The UN argued in 1998, “Drugs are a grave threat to the health and well-being of all mankind, the independence of all states, democracy, the stability of nations, the structure of all societies, and the dignity and hope of millions of people and their families.”²⁵² In Afghanistan’s case, Al Qaeda militants and traffickers are linked to each other and rural production, limiting state control over the situation.²⁵³ Opium revenue there was a fourth of all of Afghanistan’s economic activity in 2009.²⁵⁴ During attempts to prosecute locally based transnational criminals, “national suppression of activities... can become a major difficulty for states with weak internal sovereignty.”²⁵⁵ Scholars cite the vague and differing definitions of drug possession and prohibition in different countries, and how the definition of narcotics-related crimes is too vague.²⁵⁶ However, there are three international drug control conventions that very clearly elaborate on which drugs countries should limit or prohibit nationally. The laws exist—

²⁵¹ Kiefer, “Just Say No: The Case Against Expanding the International Criminal Court’s Jurisdiction to Include Drug Trafficking,” 172.

²⁵² Windle, “Afghanistan, Narcotics and the International Criminal Court: From Port of Spain to Kabul, via Rome,” 299.

²⁵³ Ibid, 305.

²⁵⁴ Ibid.

²⁵⁵ Boister, “International Tribunals for Transnational Crimes: Towards a Transnational Criminal Court,” 300.

²⁵⁶ Windle, “Afghanistan, Narcotics and the International Criminal Court: From Port of Spain to Kabul, via Rome,” 303.

they could change, and may not reflect the realities of the twenty-first century— but they certainly exist. The 1988 Convention provides some evidence of *opinio juris sive necessitatis* by obligating each party to criminalize a list of drug-related offenses domestically.²⁵⁷ Again, these documents give international courts jurisdiction over states that do not comply with the provisions and are grounds for extradition in the case that a treaty does not exist bilaterally or multilaterally between concerned parties. The objection to ICC jurisdiction that narcotics-related crime are better dealt with bilaterally or regionally because of the costs seems to be proven incorrect by the lack of bilateral progress preventing trade for some states.²⁵⁸ States are still afraid to extradite or prosecute, and in theory, the court could help remove those barriers. Nations may be too weak to arrest criminals, sympathetic to criminals and implicated in the cases themselves, or simply do not want their nationals tried elsewhere.²⁵⁹ The complementarity clause is meant to “balance the interests of state sovereignty with the international community’s collective interest in putting an end to impunity for atrocities.”²⁶⁰ It often serves as an excuse for countries to use political rhetoric and national self-interest to avoid interference in judicial matters. However, “closing the various judicial procedures between each other will be an imperative step in halting the drug related offenders and criminals in deciding adequate verdicts.”²⁶¹ The process of prosecuting criminals and in hopes of halting trafficking would be improved through streamlining international laws and procedures for determining jurisdiction,

²⁵⁷ Michels, “Keeping Dealers off the Docket: The Perils of Prosecuting Serious Drug-Related Offenses at the International Criminal Court,” 451.

²⁵⁸ Windle, “Afghanistan, Narcotics and the International Criminal Court: From Port of Spain to Kabul, via Rome,” 300.

²⁵⁹ Boister, “International Tribunals for Transnational Crimes: Towards a Transnational Criminal Court,” 295.

²⁶⁰ Spencer Thomas, “A Complementarity Conundrum: International Criminal Enforcement in the Mexican Drug War,” 602.

²⁶¹ Mansour Ramdel, “International Judicial Criminal Cooperation in Combatting Narcotic Drug Crimes in Iranian Law,” 302.

which the ICC could possibly help. Arguments in favor of giving the ICC jurisdiction over drug-related crimes center on the idea that today, “international collaboration is the main basis of the fight against the activities of drug traffickers.”²⁶² Transnational crimes might be best addressed with transnational solutions.

A Transnational Criminal Court

Law professor Neil Boister, author of “International Tribunals for Transnational Crimes: Towards a Transnational Criminal Court,” outlines several possible solutions for states that are interested in prosecuting transnational crimes instead of using the ICC. First, he suggests transferring judicial proceedings to another state.²⁶³ Transferring could work if two states have similar legal traditions, but a treaty would be required to do this legally. Treaty relations of this nature are not feasible between large and small states and would replicate the issue of extradition and prosecution systems by replacing one justice system with another in an incompatible context. Boister’s next idea is based on the Lockerbie Trials, where alleged Libyan bombers were tried in the Netherlands on a US Air Force base, and a Scottish court exercised national jurisdiction in a third state.²⁶⁴ The US and UK sought extradition from Libya, who refused to hand the bombers over until the UN Security Council sanctioned the extraterritorial trials. The failure of the extradition system prompted the solution. This solution cost 50 million pounds, suggesting that such an ad hoc solution might not be realistic or practical.²⁶⁵ Possibly, a hybrid court could address transnational crimes; the UN or a treaty could establish a special UN chamber of a

²⁶² Ibid.

²⁶³ Boister, “International Tribunals for Transnational Crimes: Towards a Transnational Criminal Court,” 303.

²⁶⁴ Ibid, 304.

²⁶⁵ Ibid.

domestic court.²⁶⁶ Hybrid courts would be beneficial for spreading some of the burdens of prosecution and punishment from states, but does not relieve the tension of having an intra-state trial. A fourth suggestion is based on the 1937 International Criminal Court— an attempt sponsored by the League of Nations Terrorism Convention of that year to establish terrorism as an international crime and to set up a court to address it.²⁶⁷ Any state party to the League of Nations could send a criminal to this court instead of trying him locally or extraditing him somewhere else. It was not an obligation, but a third way of ensuring judicial action. The treaty from the 1937 convention never came into action because of World War II.²⁶⁸ However, a crime-specific option for a court would cut down on the transnational crimes caseload issue and provide a more legally explicit option for states that are too afraid to take advantage of the current international options. The fifth idea is based on the historical precedent of the Slavery Courts of Mixed Commission set up by Great Britain and other powers in the eighteenth and nineteenth centuries to adjudicate on the cargo and captured ships involved in illegal slave trade.²⁶⁹ Colonial officials in Sierra Leone believed that states would be less objectionable to punishing slave trade if ships were condemned by a court solely for that purpose. Although the courts did not have criminal jurisdiction, they could confiscate property. The courts were placed on both ends of slave-trade routes. If debate about the ICC centers on state-sanctioned violence and threats to state sovereignty, a new approach to these grave crimes should focus on terrorism, human trafficking, drug trade by non-state actors, individuals or corporations.²⁷⁰ Non-state actors seem to fall out of the jurisdiction of the UN Declaration of Human Rights and international

²⁶⁶ Ibid, 305.

²⁶⁷ Ibid, 308.

²⁶⁸ Ibid, 309.

²⁶⁹ Ibid, 305.

²⁷⁰ Ibid, 306.

courts, which is binding on states and states' responsibility to investigate their own nationals. An international court similar to the Courts of Mixed Commission and their multiple locations could probably best address postmodern transnational issues. Boister's list shows that there are new options and solutions for the issue of transnational crime impunity.

Any court that addresses drug trafficking must reflect the nature of transnational criminal law, in a non-hierarchical, horizontal power structure, because even states that agree on definitions for transnational crimes may not agree to international jurisdiction.²⁷¹ A long-term solution to the issue of international crime requires a permanent tribunal, meaning it is always available, if not necessarily in the same physical place. The apparent necessity of agreeing on specific crimes and punishment might not be required if the court has review admissibility based on standards such as severity of the crime, transnational consequences and involvement in organized crime. Also, it would work best if the prosecuting states applied their own national law and funded the use of the court themselves. A transnational criminal court would provide for the states that aim to externalize their jurisdiction in a "horizontal" system.²⁷² Hopefully such a court would protect states' autonomy rather than undermine it, as "in a politically unique world order all that developing states have to resist the hegemonic criminal justice policies of the powerful is their sovereignty."²⁷³ This suggestion addresses many of the concerns of ICC critics, but may have its own faults in reality. However, allowing impunity in any state has consequences for the whole international system in the commoditized drug trade.

²⁷¹ Ibid, 313.

²⁷² Ibid, 314.

²⁷³ Ibid, 313.

It is essential that policy makers understand the complex and global drug phenomenon should not be targeted as isolated incidents.²⁷⁴ It is unfeasible in the twenty-first century for “any country that has any contact with the outside world to convert itself into a fortress to keep out drugs.”²⁷⁵ Drug policy and drug law enforcement should aim to increase risks for traffickers, as increased risks lead to increased costs.²⁷⁶ However, the solution depends on a group of improved policies nation by nation and internationally, not one single improved policy in one country.²⁷⁷ In a world where drugs and the money spent on it flow openly, so should the abilities of law enforcement.

²⁷⁴ Mares. *Drug Wars and Coffeehouses*: 17.

²⁷⁵ Ibid, 112.

²⁷⁶ Windle, “Afghanistan, Narcotics and the International Criminal Court: From Port of Spain to Kabul, via Rome,” 308.

²⁷⁷ Grillo, *El Narco*, 275.

Chapter 3

Case Studies: Drugs from the Local to the Global

In 2009, the UN estimated that the illegal drug trafficking business was worth \$300 billion worldwide.²⁷⁸ With a number that large, especially considering it is only a fraction of the other illicit and black market business that happens total, the drug problem may seem unsolvable. However, the argument behind giving up on attempts to change is usually fear.²⁷⁹ Fear of the unknown is not as bad as the fear that if no new drug policies are made or the issue is not approached differently, the situation will never improve.

This chapter focuses on three case studies examining current drug trafficking issues and corresponding reactions on three levels: local, national and international, and transnational. The drug war in Mexico has continued for over eight years; although many people associate the end of Calderón's presidency with the end of the war, the conflict and violence have continued well into his successor's term, despite the victories of a few high-profile arrests.²⁸⁰ The disappearance of 43 college students in Mexico in September 2014 and the event's connection to drug trafficking exemplifies how tragedy continues. Meanwhile, European countries are experimenting with new drug policies that might be good for their own nations, but could arguably conflict with the UN Conventions regulations for nation-states. The continual flow of drugs through the Balkans, the new synthetic drugs gaining popularity in European countries, and the rise of the Internet together give individual nations, the EU and Europol relentless

²⁷⁸ Justin Shapiro, "What are They Smoking?! Mexico's Decriminalization of Small-Scale Drug Possession in the Wake of Law Enforcement Failure," *The University of Miami Inter-American Law Review*, Vol. 42:1, Fall 2010, 117.

²⁷⁹ Barbara Hardinghaus, "Duped by Dope: Reality Trumps Ideals in German Drug War," *Spiegel Online International*, March 21, 2013.

²⁸⁰ Jeremy Bender and Armen Rosen, "Mexico's Drug War is Entering a Dark Phase," *Business Insider*, Oct. 24, 2014.

challenges. On the transnational and global level, money laundering is an essential for drug trafficking organizations to hide their soaring profits. U.S. Senator Elizabeth Warren noted at a banking committee hearing:

“If you as an individual are caught with an ounce of cocaine, the chances are good that you’re going to jail. If it happens repeatedly, you may go to jail for the rest of your life. But evidently, if you launder nearly a billion dollars for drug cartels and violate our international sanctions, your company pays a fine and you go home and sleep soundly in your bed at night.”²⁸¹

There seems to be a fundamental imbalance in this lack of justice that enables drug trafficking organizations to continue their work unhindered. The most recent high-profile money laundering scandals, although not the only ones that happened, center on HSBC. Drug trafficking affects every region in the world and, like most global phenomenon today, is noticeable on personal and ideological levels.

The Ayotzinapa 43 and Continuing Conflict in Mexico

On September 26, 2014, 43 college students were abducted on a road near the town of Ayotzinapa in Guerrero State.²⁸² Allegedly, according to Mexico’s Attorney General, Jesús Murillo Karam, the mayor of the town of Iguala ordered local police to attack the students to keep them from protesting or disrupting a political event his wife planned.²⁸³ The municipal police handed the students over to the criminal gang Guerreros Unidos, who killed and most likely burned the bodies of the students. The whereabouts of the bodies are unknown.²⁸⁴

According to local medical reports, on October 14, 2014, over two dozen of the municipal police

²⁸¹ “Too big to jail?” *CCPA Monitor* 20, no. 1, May 2013, 2.

²⁸² Bender, “Mexico’s Drug War is Entering a Dark Phase.”

²⁸³ Roque Planas. “Mexico Tortured Police for Confessions in 43 Students Case: Report,” *Huffington Post Latino Voices*, February 2, 2015.

²⁸⁴ Leon Krauze. “Mexico’s President Must Not Ignore This Mass Grave of College Kids— or the Corruption It Represents.” *New Republic*. October 10, 2014.

officers from Iguala and the police chief were given electric shocks, beaten and “psychologically tortured” to force out confessions regarding the disappearances.²⁸⁵ The abuse was “systematic,” and many journalists and parents of the disappeared students worry that the method of obtaining confessions will render the police testimonies invalid in court. The result of the Mexican Drug War is a society in which various criminal organizations are paired against the Mexican army, vigilante groups, and each other, at the expense of the civilian population.²⁸⁶ While current Mexican President Enrique Peña Nieto swore to reform the drug war upon taking office and that he would promote rule of law, his approach in practice has been incredibly similar in effect to past efforts. Peña Nieto represents the PRI party, which may have embraced drug policy changes, but has not “dismantled the umbrella of impunity” that tolerates corruption.²⁸⁷ Parents of the 43 students assume that the government just wants to close and ignore the case.²⁸⁸

The “anti-propaganda strategy” the Mexican government is using — avoiding speaking about the truth and hoping it will go away — gives the drug trafficking organizations power.²⁸⁹ The most well known organized crime groups in the state today include The Sinaloa Cartel, The Beltrán Leyva Organization, The Juárez Cartel, The Knights Templar, The Gulf Cartel, Los Zetas and the Tijuana Cartel, although they have varying amounts of power and organizational structures.²⁹⁰ The El Narco phantom makes an estimated \$30 billion annually smuggling

²⁸⁵ Planas, “Mexico Tortured Police for Confessions in 43 Students Case: Report.”

²⁸⁶ Bender, “Mexico’s Drug War is Entering a Dark Phase.”

²⁸⁷ Krauze, “Mexico’s President Must Not Ignore This Mass Grave of College Kids— or the Corruption It Represents.”

²⁸⁸ Planas, “Mexico Tortured Police for Confessions in 43 Students Case: Report.”

²⁸⁹ Krauze, “Mexico’s President Must Not Ignore This Mass Grave of College Kids— or the Corruption It Represents.”

²⁹⁰ Jeremy Bender, “Nearly 8 Years into the Drug War, These are Mexico’s 7 Most Notorious Cartels,” *Business Insider*, October 20, 2014.

marijuana, cocaine and crystal meth in the U.S., where the money vanishes into the economy.²⁹¹

Financial and circumstantial fortunes seem to be on Mexican drug traffickers' sides at this point. These organizations continue to be extremely adaptable and rich enough to buy all of the technology they need to retain power in their regions.²⁹² Easily, the income from U.S. sales enables cartels to outspend the Mexican government and nullify its initiatives. Heavy-duty military equipment allows the cartels to set up “‘states within the state’ and enforce laws of their own set of laws... The government has identified at least 230 of these ‘zones of impunity’.”²⁹³ Domestic and international law treaties and ethical principles guide Mexico’s government, but the cartels are boundless in morals and technological capabilities.²⁹⁴ In the Michoacán region, La Familia extends business beyond growing and transporting drugs and seeks social and political influence, which is unlike some current drug syndicates, but not unique.²⁹⁵ La Familia’s “political influence in Michoacán has less to do with winning office and more with controlling officeholders, to create a buffer of protection that allows their business to proceed unimpeded.”²⁹⁶ The cartel recruits members at drug rehab centers and indoctrinates the people through prayer sessions with an ideology similar to religious fundamentalism; if a recruit does not live by the rules, the punishment is rumored to be death. La Familia can control political candidates and put their own members in the races, which some Mexicans see as “a perversion of democracy itself.”²⁹⁷ Opinion polls show that 80% of Mexico’s population believes the law

²⁹¹ Grillo, *El Narco*, 8.

²⁹² Shapiro, “What are They Smoking?! Mexico’s Decriminalization of Small-Scale Drug Possession in the Wake of Law Enforcement Failure,” 125.

²⁹³ Ibid.

²⁹⁴ Ibid, 126.

²⁹⁵ Tracy Wilkinson. “Mexico Drug Traffickers Corrupt Politics.” *Los Angeles Times*, May 31, 2009.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

enforcement system to be corrupt, and it is estimated that six out of ten crimes in the state involve police complicity.²⁹⁸ Citizens seem to have little faith in the system for a good reason.

The “Zero-Tolerance” drug possession policy fostered the police corruption issues and violence throughout the state, so in August 2009, the Mexican Congress decriminalized small amounts of illegal drugs.²⁹⁹ In 2010, there were an estimated 460,000 drug addicts in Mexico, and under the decriminalization law, people caught with an amount of drugs under the legal limit would be encouraged to seek treatment.³⁰⁰ If a third incident occurs, treatment is required. Mexico has since built more than 310 rehabilitation facilities to help addicts.³⁰¹ Many people are still skeptical that this policy works. The police, even if they are not busy arresting small criminals, still have other issues. Although a witness protection program exists in Mexico, the drug cartels are usually capable of finding the people anyway, which has two consequences: failure to report crime for fear of retaliatory violence, and retaliatory violence itself.”³⁰² Also, Mexico has 370 officers per 100,000 citizens, while the U.S. only has 225 per 100,000, which is still high internationally.³⁰³ Numbers such as these show the disorganization and responsibility overlap in Mexico’s law enforcement, worsened by the amount of military members sent to combat drug cartels and the paramilitary capabilities of the cartels. Some journalists recommend raising police officer recruiting standards— the rules for education standards in police academies are not always enforced, and the majority of the officers have only finished elementary school, or

²⁹⁸ Shapiro, “What are They Smoking?! Mexico’s Decriminalization of Small-Scale Drug Possession in the Wake of Law Enforcement Failure,” 126.

²⁹⁹ Ibid, 116.

³⁰⁰ Ibid, 135.

³⁰¹ Ibid.

³⁰² Ibid, 125.

³⁰³ Ibid, 123.

less.³⁰⁴ While decriminalization could help the police avoid extortion and corruption in those realms, the law enforcement system in Mexico needs a stronger infrastructure. The Mexican government's drug policy reformation is not enough to end the violence that will continue for many years unless something changes in Mexico and the consuming U.S. as well.

European Nations and their Decriminalization Experiment

European nations' approach to the international drug market has changed significantly since the last International Drug Control Convention in 1988. Much of the drug policy in Europe focuses on the general belief that no political policy could absolutely eradicate drug consumption.³⁰⁵ The illegal market continues to be a huge economic challenge for member and nonmember states of the European Union, as UNODC estimates that 70% of criminal proceeds of drug trafficking infiltrate the licit economy and are laundered through the financial system.³⁰⁶ Europe has developed into a drug-producing region as a budding source of cannabis and heroin and an innovating producer of synthetic drugs.³⁰⁷ Understanding the European drug market relies somewhat on state-by-state analysis, but the contemporary market is a result of its global circumstance.³⁰⁸

Where European voters led, politicians followed with policy. In 2001, an EU drug-monitoring report said that 18% of citizens aged 15 to 64 had tried marijuana at least once,

³⁰⁴ Ibid , 141.

³⁰⁵ Wiebke Hollersen, "This is Working: Portugal, Twelve Years after Decriminalizing Drugs," *Spiegel Online International*, March 27, 2013.

³⁰⁶ European Monitoring Center for Drugs and Drug Addiction and Europol, "EU Drug Markets Report: A Strategic Analysis," Luxembourg: Publications Office of the EU: 2013, 7.

³⁰⁷ Ibid, 13.

³⁰⁸ Ibid, 128.

meaning at least 45 million people had at least experimented.³⁰⁹ The range of ages raises the possibility that some of those people had tried it in the 60s or 70s, but the study found that it was today's young people smoking the most often. In the last half of the twentieth century, many Europeans criticized criminal law for restricting too many forms of moderately harmless behavior.³¹⁰ Therefore, major reforms depenalized more common and less serious offenses. Reasoning behind the trend is not similar to Mexico's, which focuses on preventing violence and is not an effort with primarily international consequences in mind. The trend of decriminalization in many European countries does not, by definition, allow drug users or traffickers to go unpunished. Drugs are placed in a category of "administrative proceedings" or "obstacles to order" where "procedures therein are more regulatory in nature with lower standards of evidence and sanctions usually consisting of fines of a noncriminal nature (i.e. punishment will not be noted in a criminal record)." ³¹¹ Policy makers conceded to a new belief that it might not be possible to suppress the drug problem entirely, but it was still important to arrest traffickers.³¹² Drugs are not legal: "The authorities keep marijuana-possession statutes on the books to conform with a 1988 international convention that prohibits outright legalization and to avoid the political controversy of changing the law. But they opt for quite lenient enforcement."³¹³ Countries such as Portugal that follow this policy, rather than legalization, avoid trouble with the UN. In Portugal using drugs is a misdemeanor, but the state does not prosecute users.³¹⁴ Another trend that has spread through Europe is that prosecutorial discretion is common in drug offenses,

³⁰⁹ McAllister, J.F.O., et al. "Europe Goes to Pot." *Time*, August 20, 2001.

³¹⁰ Marianne Wade, "Prosecutors and Drug Policy: A Tale of Six European Systems," *Utah Law Review*, 2009, no. 1: 154.

³¹¹ *Ibid.*

³¹² *Ibid.*, 174.

³¹³ McAllister, "Europe Goes to Pot."

³¹⁴ Hollersen, "This is Working: Portugal, Twelve Years after Decriminalizing Drugs."

displaying a trust in law enforcement and prosecutors to judge the best way to deal with drug offenders in individual cases.³¹⁵ In European states, drug cases are more often dropped or subject to diversionary measures than other criminal offense types.³¹⁶ Also, there is a growing network of harm reduction government policies and NGOs in the region.³¹⁷ There are still many Europeans that do not agree with decriminalization policies. In Holland, 40% of the polled citizens in 2001 wanted soft drugs banned again, and 80% of localities ban coffee shops, the only place marijuana can be publicly, legally smoked without causing a disturbance.³¹⁸ Many of the coffee shop owners argue that there are many benefits from separating the 75% of marijuana users that smoke once a week or less from the dealers, who often also sell harder drugs.³¹⁹

Although many countries in Europe follow similar trends, nations still have their own individual drug policies and success rates. In the early 2000s, England and Wales downgraded the classification of cannabis to the lowest category of narcotics, which depenalized possession of small quantities and consumption so that the police could focus on more serious drugs; however, “the lack of clarity in the law and the debate surrounding change led large portions of the population to believe that cannabis was being legalized” and these initial reforms ended in chaos and confusion.³²⁰ In Germany, the states have drastically different legal limits depending on the region.³²¹ Freiburg, a Germany city bordering France and Switzerland, is therefore a common trafficking center:

³¹⁵ Wade, “Prosecutors and Drug Policy: A Tale of Six European Systems,” 169.

³¹⁶ Ibid, 174.

³¹⁷ European Monitoring Center for Drugs and Drug Addiction, “Drug Use and its Consequences in the Western Balkans 2006-2014,” Luxembourg: Publications Office of the EU: 2015, 22.

³¹⁸ McAllister, “Europe Goes to Pot.”

³¹⁹ Ibid.

³²⁰ Wade, “Prosecutors and Drug Policy: A Tale of Six European Systems,” 156, 157.

³²¹ Ibid, 168.

“Clear categorization of offenders takes place: if they are deemed to be drug addicts, cases against them will tend to be disposed of conditionally and they will be referred to addiction treatment. If they fail to complete the treatment agreed upon, they will be taken to court and serve jail sentences. Prosecutors are adamant that this policy is necessary, citing academic studies that indicate a high degree of pressure must be exerted upon addicts to force them to participate in treatment. Any half-hearted attempt to impose therapy is apparently doomed to failure.”³²²

This “non-punitive and utilitarian” drug policy in Freiburg exemplifies much of Germany and other European states.³²³ Overall, German policy of late aims to control instead of combat the drug phenomenon through tolerance and focus of resources away from users and towards suppliers.³²⁴ Many of these efforts in Germany and elsewhere could be for ideological reasons, but it is just as likely that it is related to a lack of financial resources or strains on prison and judicial systems. While many people around the world associate Holland with liberal drug policy and legalization in Amsterdam, these ideas are not true— marijuana possession of certain amounts is still considered a criminal offense or an offense against order, subject to noncriminal punishment.³²⁵ The Netherlands cannot be labeled as having exceptionally liberal drug policies, as their levels of drug criminalization are on the same level as most other European countries. Portugal faced a dire drug trafficking and use situation and resorted to even more liberal policies. Drugs flooded into Portugal in 1974 during the Carnation Revolution that ended 50 years of military dictatorship. The Portuguese did not know how to handle drugs, so the influx from Afghanistan and Pakistan in the 1980s hit them harder than some other European states. In the mid-1990s, out of a population of less than 10 million people, there were 100,000 severely addicted heroin users, along with an HIV epidemic.³²⁶ Today, Portugal allows citizens to possess

³²² Ibid, 171.

³²³ Ibid.

³²⁴ Ibid, 172.

³²⁵ Ibid, 156.

³²⁶ Hollersen, “This is Working: Portugal, Twelve Years after Decriminalizing Drugs.”

enough of certain substances to last ten days. When police catch someone with drugs, they still seize and destroy the substances, but they first weigh the drugs and consult the official table of ten-day allotments.³²⁷ Anyone with an amount over the limit is charged in court and treated as a dealer, and anyone caught with less than the ten-day limit is required to report to the “warning commission on drug addiction” within 72 hours. This commission closes cases if the perpetrator is not caught again within three months, and if he or she does, the commission can order community service or a fine. As of 2013, police sent about 1,500 people per year to the commission, and 70% of those cases concerned marijuana.³²⁸ The main goal of the project is to invite citizens to rehabilitation centers if they need help. The effects of these policies, doctors are please to say, is that drug use has not risen in Portugal. The number of total people who have experimented is rising, the number of teenagers who have tried illegal drugs is falling, HIV infections have fallen significantly, and the number of addicts who have gone to rehab has increased dramatically.³²⁹ While the aim of this thesis is not to argue in favor of or against a certain drug policy, popular perceptions in the U.S. about drug policy around Europe are not always accurate.

While some states in Europe are proud to share the success of their decriminalization policy, it does not help those who wish the drug phenomenon would end completely; it certainly has not solved the drug trafficking issues in Eastern Europe and the Balkan region. This region is commonly labeled as the “Balkan Route” of organized crime and drug trafficking through Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo,

³²⁷ Ibid.

³²⁸ Ibid.

³²⁹ Ibid.

Montenegro and Serbia.³³⁰ Since the 1990s, the Balkans have experienced rapid social and political transformations, including population movement, intraregional migration and armed conflict; these conditions have created an environment ideal for illicit trafficking and problem drug use and its consequences.³³¹ Most of the countries have shifted towards political reconstruction and free market trade, but they remain in a special geographic corridor to European drug markets from heroin-producers such as Afghanistan, Iran, Pakistan and Turkey. The UNODC estimated this year that the annual market value of products through this route is worth 20 billion dollars.³³²

Overall, “data on the prevalence of drug use in the general population indicate a situation comparable to that in the EU, with cannabis being the most frequently reported drug of use, although at a level that is below the EU average; injecting drug use remains significant, as reflected by the prevalence of drug-related hepatitis C infections.”³³³ The states’ policy from this point on is to focus on prevention services for drugs that are injected and combat organized crime.

The drug market has an evolving and dynamic nature, and as patterns of drug use in Europe change, organized crime groups continue to be interested in new profit opportunities.³³⁴ It is not simple to control and reduce supply in a region so immersed in globalization. The European Monitoring Center for Drugs and Drug Addiction (EMCDDA) and Europol, the EU’s law enforcement agency, put together their first joint comprehensive report in 2013 that

³³⁰ European Monitoring Center for Drugs and Drug Addiction, “Drug Use and its Consequences in the Western Balkans 2006-2014,” 6.

³³¹ Ibid, 10.

³³² Ibid.

³³³ Ibid, 23.

³³⁴ European Monitoring Center for Drugs and Drug Addiction and Europol, “EU Drug Markets Report: A Strategic Analysis,” 127.

concluded, “Any analysis of the global market by noting that the EU is also a drug-producing region for precursor chemicals of synthetic drugs and, increasingly, for cannabis. The importance of the EU in relative terms as an exporter of synthetic drugs seems to be declining as production in other parts of the world becomes more important.”³³⁵ The organizations noticed that trafficking routes are diversifying and often using legitimate commercial transport, and organized crime groups are taking advantage of the fluid markets and investing in multiple commodities.³³⁶ The Internet has, in recent years, emerged as a marketplace for drugs and diffusion of new trends and allows communication and access to logistics. It also facilitates trade of unregulated psychoactive substances. Drug producers are motivated to come up with new forms of stronger drugs, essential for retaining demand in a market where consumers often use multiple substances or substitute substances.³³⁷ One strange example of unregulated substances is the practice of toad-licking to get high off of the secretions: certainly a way to stay a step ahead of lawmakers.³³⁸ However, many of the new drugs are synthetic. The report notes the continually “pervasive and resilient” cannabis market, characterized by diversity of products, sources and consumers, and how domestic production is rising and can be linked to violence and other criminal activity.³³⁹ Drugs are more easily available in Europe than ever before because of the Internet and innovations in production.

Europe must prepare and possibly reconsider some of its policies to keep up with the changing drug trafficking trends. Investigations into transnational organized crime in the future

³³⁵ Ibid, 128.

³³⁶ Ibid, 13.

³³⁷ Ibid.

³³⁸ Hardinghaus, “Duped by Dope: Reality Trumps Ideals in German Drug War.”

³³⁹ European Monitoring Center for Drugs and Drug Addiction and Europol, “EU Drug Markets Report: A Strategic Analysis,” 13.

will require Internet investigations as a common tool.³⁴⁰ Many of the states plan to proactively monitor the Internet to identify new trends quickly, bar websites involved in such activities, and work with online payment providers.³⁴¹ Also, EU Member States may move from generic legislation, or scheduling drugs by their chemical components, to defining drugs by function to include substitute drugs, as Ireland and Poland have done in the last five years.³⁴² As usual, the states plan to focus intelligence work on the major organized crime groups, and work together through coordinated law enforcement and Europol to attack efficiently. While the operating plans for the regional organizations are likely to approach trafficking from an international and pluralist perspective rather than from the argument of nation-state sovereignty, this approach will be the most helpful to combat transnational trafficking as long as it is efficient and can keep up with changes.

To successfully hinder drug trafficking, Europe and the EU must include other regional states in its efforts, as drug producers are skilled at exploiting gaps in existing control.³⁴³ Current analysis of the drug market shows that organized crime groups remain specialized operators, and concede that law enforcement focusing on specific drugs and routes is useful for targeting high-priority areas. However, the “polymorphous” and dynamic contemporary nature of the market requires a multi-commodity perspective.³⁴⁴ European consumers seem to have multiple and insatiable interests, which is not, by any means, untrue for other regions of the world. The EMCDDA and Europol were correct in pointing out that the rapid development of new economic

³⁴⁰ Ibid, 118.

³⁴¹ Ibid, 130.

³⁴² Ibid, 113.

³⁴³ Ibid, 114, 128.

³⁴⁴ Ibid, 126.

channels in addition to old ones are resulting in demographic and social changes, including in the aboveground and underground realms of drugs.

Another Transnational Crime: Money Laundering

According to the U.S. State Department, Mexican drug cartels gross between \$19 and \$29 billion every year from U.S. cocaine, marijuana, methamphetamines and heroin sales.³⁴⁵ The Sinaloa Cartel, assumed to be the wealthiest, gained its success through hiding its earnings throughout the global banking system the same secretive way other drug trafficking organizations do— money laundering. Money laundering is “the process of concealing the origins of money obtained illegally by passing it through a complex sequence of banking transfers or commercial transactions.”³⁴⁶ The U.S. Office of Immigration and Customs Enforcement reported that in 2007 and 2008, the Sinaloa Cartel and a Colombian cartel wire-transferred \$881 million of illegal drug profits into U.S. HSBC accounts.³⁴⁷ These millions were only a fraction of the money that HSBC’s Swiss private banks hid for drug traffickers, celebrities and arms dealers as it aided the world’s wealthiest in dodging taxes and regulation.³⁴⁸ HSBC IT department employee Herve Falciani handed over several clients’ bank accounts to French authorities in 2008, stirring up a whirlwind of government investigation and financial concern.³⁴⁹ Belgium, France, the U.S., Argentina and Switzerland scrutinized one hundred thousand client

³⁴⁵ John Burnett, “Awash in Cash, Drug Cartels Rely on Big Banks to Launder Profits,” *NPR*, March 20, 2014.

³⁴⁶ Oxford English Dictionary, “Money Laundering,” Oxford University Press: 2015.
<<http://www.oed.com.libezp.lib.lsu.edu/view/Entry/121171?redirectedFrom=MONEY+LAUNDERING#eid36244231>>

³⁴⁷ Ibid.

³⁴⁸ Danica Kirka, "Report: HSBC Helped Conceal Millions in Foreign Accounts," *Time Commerce*, February 12, 2015.

³⁴⁹ Lianna Brinded. “By the Numbers: Here’s What You Need to Know About HSBC’s Money Laundering and Tax-Evasion Scandals.” *Business Insider*. February 18, 2015.

accounts, worth £78 billion, for tax evasion and money laundering from 2005 to 2007.³⁵⁰ Only the U.S. and Switzerland have filed reports on their investigations so far. Just in between 2007 and 2008, HSBC's Mexican affiliate conducted \$7 billion into the U.S. banks.³⁵¹ A 2012 U.S. Permanent Subcommittee on Investigations Senate report discovered "HSBC's lax anti-money laundering policies allowed Mexican drug money, Iranian terrorist money, and even suspicious Russian money to enter the U.S. and gain access to U.S. dollar liquidity over the last couple of years."³⁵² Somehow, no one cared to notice.

HSBC dodged several rules and laws intended to block criminal activity. Outside of the drug trafficking issue, HSBC "provided U.S. dollar financing and services to banks in Saudi Arabia and Bangladesh that were tied to terrorist organizations, while also clearing \$290 million in 'obviously suspicious travelers checks' that benefitted Russians 'who claimed to be in the used car business.'"³⁵³ Journalist investigation revealed how the Office of the Comptroller of the Currency, the bank's regulator, has not taken a single enforcement action against HSBC since these violations of the international bank first surfaced. For example, they ignored \$60 trillion of wire transfer account activities, a backed-up 17,000 account alerts regarding possibly suspicious activity, and did not check for money laundering due diligence before opening accounts.³⁵⁴ Cartels are capable of depositing hundreds of thousands dollars of cash a day through tellers' boxes at Mexican HSBC branches.³⁵⁵ The U.S. Senate described the Mexico affiliate as having "a lack of a compliance culture" that allows workers to ignore actions that might attract notice,

³⁵⁰ Ibid.

³⁵¹ Augustino Fontevecchia, "HSBC Helped Terrorists, Iran, Mexican Drug Cartels Launder Money, Senate Report Says," *Forbes*, July 6, 2012.

³⁵² Ibid.

³⁵³ Kevin McCoy. "HSBC to Pay a Record \$1.9 Billion." *USA Today*, December 11, 2012.

³⁵⁴ Augustino Fontevecchia, "HSBC Helped Terrorists, Iran, Mexican Drug Cartels Launder Money, Senate Report Says."

³⁵⁵ John Burnett, "Awash in Cash, Drug Cartels Rely on Big Banks to Launder Profits."

especially because the transfers to U.S. banks earned HSBC money.³⁵⁶ After the investigation, HSBC lamented to the Senate that it would lose at least \$2.6 billion dollars in potential revenue from the accounts it was forced to close in the ordeal.³⁵⁷ Rather than bringing the evidence and allegations of the Senate investigation to state or federal court, the U.S. government fined HSBC \$1.92 billion dollars for illegal transactions with sanctioned countries and the \$881 million of drug sales profits.³⁵⁸ If the bank does not comply with the reforms agreements that accompanied the fine, state and federal prosecutors retain the power to try HSBC. Several U.S. Senators did not feel that the \$1.92 billion made up for the damage that HSBC had done, especially with the externalities of aiding drug trafficking and essentially supporting the violence such organizations produce.³⁵⁹

In the winter of 2015, Swiss prosecutors investigated HSBC for tax avoidance schemes and more money laundering allegations after the International Consortium of Investigative Journalists reported that the bank continued to avoid regulations. In February, Swiss police raided the HSBC Geneva office, shocking the markets.³⁶⁰ The ICIJ report also published information suggesting the bank ignored “illegal activities of arms dealers and blood diamond traders while helping rich people avoid taxes.”³⁶¹ The leaked documents in the report span back to 2007, related to accounts worth \$100 billion held by 100,000 people from 200 different countries.³⁶² In total, academics estimate that there is about \$7.6 trillion held in overseas taxes

³⁵⁶ Ibid.

³⁵⁷ Ibid.

³⁵⁸ McCoy. “HSBC to Pay a Record \$1.9 Billion.”

³⁵⁹ Fontevecchia, “HSBC Helped Terrorists, Iran, Mexican Drug Cartels Launder Money, Senate Report Says.”

³⁶⁰ Lianna Brinded. “By the Numbers: Here’s What You Need to Know About HSBC’s Money Laundering and Tax-Evasion Scandals.”

³⁶¹ Ibid.

³⁶² Kirka, “Report: HSBC Helped Conceal Millions in Foreign Accounts.”

because of banks such as HSBC, which hides about \$200 billion in tax revenue from governments annually.³⁶³ Much of the concern regarding the bank revolves around HSBC's failure to hold individuals and clients accountable, and even worse, the involved governments' failure to prosecute them. In Britain, tax agencies reached out to some of the 3,600 Britons the Geneva HSBC branch identified as tax evaders, and collected \$236 million, but only prosecuted one.³⁶⁴ Tax campaigner Richard Murphy said, "To the wealthiest criminals and their assistants within the financial system go the rewards and the plaudits. To everyone else goes intimidation and persecution."³⁶⁵ The relaxed approach to prosecution suggests "refusal to reckon with the scale of the scandal" from the governments involved and within HSBC.³⁶⁶

HSBC publicizes that they have made several efforts to improve their anti-money laundering and corruption controls, which is not an easy task considering the amount of international offices and affiliates the bank has. Within the office, they created parrot screensavers on computers reminding employees to "ask the right questions," purchased technology upgrades, gave out certificates to promote awareness about compliance with policies, and hired several thousand compliance staff.³⁶⁷ Through years of acquisitions and mergers, technology systems were patched together, and now they will hopefully be current enough to combat the inventive international criminals. These changes cost about \$1.4 billion for the company's operating expenses, and out of 258,000 HSBC employees, 10% work in risk and compliance.³⁶⁸ HSBC told NPR that it has "made progress" in "an ongoing journey" of fixing its

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ "The stench of corruption at HSBC," *New Statesman*, February 13, 2015, 7.

³⁶⁶ Ibid.

³⁶⁷ Rachel Louise Ensign and Max Colchester, "HSBC Struggles in Battle Against Money Laundering," *Wall Street Journal*, January 12, 2015.

³⁶⁸ Ibid.

anti-money laundering compliance issues, and “since 2011, we have implemented reforms and new controls, enhanced our monitoring systems, and strengthened and expanded our global financial crime and compliance organization. For example, the number of full-time employees in financial crime and regulatory compliance is up 54 percent between 2012 and 2013.”³⁶⁹ The company vows to continue its efforts, especially in the light of the 2015 reoccurrence of a scandal.

Money laundering is an issue on a transnational level, as money flows through free trade and bank accounts without any government or bank regulation. The problematic drug trade would not be on such a global scale if money did not cross borders with it at the same speed, if not instantly. To be caught in a crime such as money laundering would be internationally embarrassing, but so far, the HSBC situation shows two important things: first, embarrassment is not enough of a deterrent to prevent crime as long as it is still profitable; second, there are no real consequences for money laundering even on a transnational billion-dollar scale. For HSBC, the \$1.9 billion penalty to their \$2.6 trillion in assets is equivalent to asking an individual for 7 cents when he has 100 dollars in his wallet.³⁷⁰ These observations speak for the drug trade as well—always profitable and always free of international court jurisdiction. Other banks, trying to prevent experiencing any embarrassment on the scale of HSBC’s anyway, have gotten rid of high-risk clients and boosted their anti-money laundering budgets.³⁷¹ However, banks are still vulnerable to the experienced drug trafficking organizations. Because of the various groups of people involved—producers, cartels, traffickers, sellers, and consumers—money becomes

³⁶⁹ Burnett, “Awash in Cash, Drug Cartels Rely on Big Banks to Launder Profits.”

³⁷⁰ Ibid.

³⁷¹ Ibid.

associated with the trade in various ways and overwhelms the legal global financial system.³⁷²

The amount of money involved, being in the billions and trillions, makes it impossible to track individual bills (especially electronically on the Internet) and shows how common and ingrained drug trade is in contemporary society. In Culiacán, the capital of Sinaloa, many people were shocked that such large amounts of narco-money escaped notice. Author and narco-trafficking journalist in the area Javier Valdéz commented, “You see the building, the office, the cars, the papers, the men in suits. Everything looks legal. That's what frightens us.”³⁷³ However, while the cartels seem like sophisticated masterminds, depositing certain amounts of money in specific accounts is routine. Stopping by the bank to deposit \$19 to \$29 billion annually is not a challenge. It should be.

Two themes stand out in the above case studies: the very recent turn to decriminalization policies in some regions to reduce prison sentences and addiction, and governments’ struggle to address drug trafficking on local, national and international, and transnational levels. Jurisdiction over drug policy seems to continue to rely on the nation-state, even with existing U.N. guidelines, because there is no transnational method for addressing transnational crimes, whether drug trade or money laundering. The want of a new twenty-first century approach to the drug trade is apparent in these case studies. The imbalance between crime and punishment in this issue suggests that right now, drugs are still winning the world war waged against them.

³⁷² Ibid.

³⁷³ Ibid.

Conclusion

Transnational drug trade is a thriving business based on the inelastic and predictable demands of consumers for additional and innovative psychoactive substances. It is ingrained in deep cultural histories of different regions depending on when they discovered different plants' capabilities or when and if they were colonized. Drugs were spread with other commodities on the most popular trading routes and became essential parts of civilization and how people with different lifestyles defined their culture. Even though waves of interest in drug use versus prohibition have confused national drug policies since the early twentieth century and the beginning of prohibition efforts, the drug trade is still borderless and global in scale. Governments seem to be a step behind in creating Internet technology to apprehend criminals online and determining which synthetic substances will catch on next. Chapter 3 gave examples of how the lagging justice actually affects drug trade.

Although the drug trade presents endless challenges to law enforcement on any level, governments and international organizations should not be complacent or hopeless. Realistically, it is impossible to eradicate illegal drug use and trafficking, but the regional violence and infection of risky and volatile global markets need to be stopped. The consequences of failing to address drug dependency and corruption in states without the infrastructure to combat it themselves will ruin culturally rich civilizations and destroy immediate hopes for recovery and rule of law. Prevalence of harmful psychoactive substances can be a symptom of further problems— even in consumer countries with the money to afford quality law enforcement.

The underlying issue in addressing trafficking today is impunity. Chapter two explored how extradition treaties are not enough to make sure that an alleged criminal will ever be tried

for his or her crimes. It is not uncommon for states to let a criminal sit in jail until they can decide which state should have jurisdiction, which is not just to the alleged criminal, the lives the criminal affected, or taxpayers. While drug trafficking is not currently included as a crime violating human rights, its externalities often are. If Westphalian nation-states must continue to be the sovereign actor in the international system for a while longer, then they must come to a consensus on how to try criminals. The current international regime has holes through which corruption bleeds and irrevocably stains. Included in Chapter two were several suggestions for a transnational criminal court grounded in precedents international law. Such a court with regional offices might be best able to handle caseloads and define “drug trafficking” as a crime by individual, prosecuting nations’ law or UN prosecutors. While some states worry that it is not in their interest to let one of their nationals be tried in such a court, this concession could solve hundreds of problems and save hundreds of lives. This vision may not be realistic, but inequality and drug trafficking will get worse until something changes. There is no lack of options for new methods of dealing with transnational crime. Our current moment of globalization and economic interconnectedness requires global responses for global crimes.

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