

BREAKING BAD POLICY: SHIFTING U.S. COUNTER-DRUG POLICY, ELIMINATING SAFE HAVENS, AND FACILITATING INTERNATIONAL COOPERATION

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I. INTRODUCTION

Over a period of several decades, drug trafficking has gradually blossomed into a global problem, and has established itself as one of the world’s largest grossing enterprises.¹ In response to the illicit activities intertwined with drug trafficking, the international community has attempted to keep up with the pace of the industry’s growth through a variety of solutions—with varying success.² Commentators have noted that the effectiveness of international narcotics control measures depends on the “political will and good faith efforts of all nations to confront the drug trade.”³ Incentivizing the international community to effectively pursue and prosecute drug traffickers, as well as to implement measures designed to combat production at the source, is a vital step in ensuring the success of an international drug control effort.⁴

Part II of this Comment provides a brief historical background on the nature of the problem of international drug trafficking, as well as past efforts to remedy the problem both by the international community and U.S. congressional measures,

1. Matthew S. Jenner, Note, *International Drug Trafficking: A Global Problem with a Domestic Solution*, 18 *IND. J. GLOBAL LEGAL STUD.* 901, 902–05 (2011).

2. See *id.* at 901–02 (commenting that governments have established dozens of programs to take down the illegal drug industry with only marginal success).

3. E.g., David P. Stewart, *Internationalizing the War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 18 *DENV. J. INT’L L. & POL’Y* 387, 404 (1990).

4. See 1 BUREAU FOR INT’L NARCOTICS & LAW ENFORCEMENT AFFAIRS, U.S. DEP’T OF STATE, *INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT* 16–17 (2013) [hereinafter 2013 INCSR] (discussing that U.S. assistance to cooperating international governments can help improve these governments’ efforts to reduce illegal drug supplies and improve their own criminal justice systems).

focusing particularly on U.N. treaties and U.S. maritime law. It also addresses the current U.S. policy framework for combating international drug trafficking—a framework which includes incentivizing international cooperation on drug control—and attempts to use portions of this framework both to criticize the flaws of past measures, and to suggest ways in which international cooperation can best be encouraged. Part III briefly discusses the importance of incentivizing international cooperation, and provides a brief overview of extradition and mutual legal assistance as two primary tools for achieving such cooperation. Part IV provides the operational framework for the proposed modification to U.S. policy by way of emphasizing five identified factors that typically serve to inhibit international cooperation, and Part V applies this framework to the examination of barriers to extradition agreements. Part V also includes a brief example of how the proposed approach may operate to enhance cooperation with new states.

II. INTERNATIONAL DRUG TRAFFICKING

A. *Historical Background*

The global market for illicit drugs is pervasive. The U.N. Office on Drugs and Crime (“UNODC”) estimates that approximately 155 to 250 million people worldwide consumed illegal substances at least once in 2008.⁵ Drug trafficking is more globalized now than it has ever been in the past, and is approximately a \$435 billion per year industry.⁶ While the threat posed by drug trafficking to a given consumer in the market may be negligible, trafficking raises concerns on a larger level when political stability is examined.⁷ One major stability concern is the increasing power and influence of drug traffickers in certain countries to a level at which they acquire the ability to

5. U.N. OFFICE ON DRUGS & CRIME, WORLD DRUG REPORT 2010, at 12 (2010) [hereinafter WORLD DRUG REPORT].

6. 2013 INCSR, *supra* note 4, at 16; Holly Ellyatt, *Global Drugs Trade ‘as Strong as Ever’ as Fight Fails*, CNBC (Aug. 13, 2013, 2:20 AM), <http://www.cnbc.com/id/100957882>.

7. See WORLD DRUG REPORT, *supra* note 5, at 26 (examining two ways in which drug trafficking can threaten political stability).

affect political matters through violence and corruption.⁸ Cocaine and heroin account for the majority of illicit substances trafficked internationally, with North America and Europe situated as the largest markets for cocaine, and Western Europe and Russia as the largest markets for heroin.⁹ The profits from illicit drug trafficking activities are substantial, and can be traced from illegitimate to legitimate enterprises throughout the globe.¹⁰

B. The Solutions So Far

Because drug trafficking poses an international threat, a variety of solutions have been proposed by a number of different nations and organizations seeking to curb the problem. The United Nations, through a series of three treaties, established the framework on which today's international drug control efforts are grounded.¹¹ In 1961, the United Nations implemented the Single Convention on Narcotic Drugs ("Single Convention"), covering topics such as: "the definition of controlled substances; the framework for operations of the drug control bodies; reporting obligations of Member States regarding manufacture, trade and consumption of controlled substances; and penal provisions and actions to be taken against illicit trafficking."¹² In order to facilitate the international drug control system, the Single Convention was amended in 1972 with provisions relating to technical and financial assistance, as well as the addition of extradition provisions.¹³

8. *Id.*

9. *Id.* at 16–22.

10. See Ellyatt, *supra* note 6 (indicating that worldwide, organized crime is worth approximately \$870 billion and that drugs account for 50% of international organized crime income); *U.S. Banks Greatly Benefiting Off Colombian Cocaine Trade*, HUFFINGTON POST (July 3, 2012, 1:32 PM), http://www.huffingtonpost.com/2012/07/03/colombian-cocaine-trade-western-banks_n_1646684.html (noting that drug production and trafficking proceeds are often laundered through legitimate U.S. banks).

11. LIANA SUN WYLER, CONG. RESEARCH SERV., RL34543, INTERNATIONAL DRUG CONTROL POLICY: BACKGROUND AND U.S. RESPONSES 10–11 (2013).

12. Single Convention on Narcotic Drugs, Mar. 30, 1961, 520 U.N.T.S. 204; Daniel Heilmann, *The International Control of Illegal Drugs and the U.N. Treaty Regime: Preventing or Causing Human Rights Violations?*, 19 CARDOZO J. INT'L & COMP. L. 237, 244 (2011).

13. Heilmann, *supra* note 12, at 246; Protocol Amending the Single Convention on

One internationally recognized shortcoming of the Single Convention was its failure to address psychotropic substances such as amphetamines and hallucinogens that became more common in the late 1960s as a result of technical breakthroughs in the drug industry.¹⁴ In response to these growing concerns, the United Nations enacted the Convention on Psychotropic Substances in 1971 with the goal of limiting the manufacture, trade, and use of psychotropic substances to “medical and scientific purposes.”¹⁵ Despite the enactment of the Single Convention and the Convention on Psychotropic Substances, the global market for narcotics continued to grow as the supply of substances such as opium and cocaine continued to meet global demand.¹⁶ In 1988, the United Nations addressed these issues in the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (“1988 Convention”), which, perhaps most notably, extended drug control to precursors commonly used in the manufacture of illegal substances.¹⁷ Among the many provisions of the 1988 Convention is the requirement for Member States to make possession, purchase, or cultivation of drugs criminal offenses.¹⁸ The 1988 Convention also includes measures related to money laundering, extradition, and profit-seizing capabilities.¹⁹

Narcotic Drugs arts. 7, 14, Mar. 25, 1972, 976 U.N.T.S. 3; Single Convention on Narcotic Drugs as Amended by the Protocol amending the Single Convention on Narcotic Drugs arts. 14, 36, Aug. 8, 1975, 976 U.N.T.S. 105.

14. Heilmann, *supra* note 12, at 246.

15. Convention on Psychotropic Substances art. 5, ¶ 2, Feb. 21, 1971, 1019 U.N.T.S. 175; Heilmann, *supra* note 12, at 246–47.

16. See Heilmann, *supra* note 12, at 248–49 (explaining that, despite some satisfactory results of the international drug control system, “the situation regarding illicit production did not noticeably improve,” and illegal opium and cocaine production was on the rise by the mid-1980s).

17. *Id.* at 249; U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 19, 1988, 1582 U.N.T.S. 165 [hereinafter 1988 Convention].

18. Heilmann, *supra* note 12, at 249–50; 1988 Convention, *supra* note 17 art. 3, ¶ 2. It should be noted that, while Member States are obligated to criminalize drugs in such a manner under the 1988 Convention, they are also permitted to provide alternatives to typical punishment, such as education or rehabilitation, in cases of minor infractions or arrest for personal consumption. Heilmann, *supra* note 12, at 249–50; 1988 Convention, *supra* note 17 art. 3, ¶ 4(a)–(d).

19. Stewart, *supra* note 3, at 388.

The United States has cultivated its own solutions to the global drug problem, particularly within the area of maritime law. The Marijuana on the High Seas Act (“MHSA”), for example, was passed in 1980, and was implemented as a solution to a drug smuggling strategy by which large, “foreign-flagged”²⁰ ships wait outside U.S. jurisdiction at sea, and send small vessels that are much more difficult to track to shore to deliver the drug cargo.²¹ It became clear by the mid-1980s that the MHSA was somewhat obsolete, in part due to the difficulties in proving that a given vessel was stateless, and in part due to the influx of cocaine into the global drug market.²² In response to these issues, the United States enacted the Maritime Drug Law Enforcement Act (“MDLEA”) in 1986, thereby lowering the burden of proof on the government for making a showing that a vessel is “stateless,” and also expanding the jurisdictional provisions of the MHSA.²³

Technological innovation on the part of drug traffickers soon began to surpass the limitations of the MDLEA in the 1990s, and Congress was once again presented with the issue of ineffective prosecution.²⁴ Consequently, Congress enacted the Drug Trafficking Vessel Interdiction Act (“DTVIA”) in 2008 with an eye toward criminalizing the operation of a vessel without a national registration while attempting to evade detection on the high seas.²⁵

20. Allyson Bennett, Note, *That Sinking Feeling: Stateless Ships, Universal Jurisdiction, and The Drug Trafficking Vessel Interdiction Act*, 37 *YALE J. INT’L L.* 433, 441 (2012). Under the so-called “law of the flag,” a ship is deemed to have the nationality of the country whose flag it is entitled to fly. *Id.* at 438.

21. *Id.* at 441; see *Marijuana on the High Seas Act*, Pub. L. No. 96-350, 94 Stat. 1159 (1980).

22. Bennett, *supra* note 20, at 441–42.

23. *Id.* at 442; see *Maritime Drug Law Enforcement Act*, 46 U.S.C. § 70504 (2006) (“Jurisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense. Jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.”).

24. See Bennett, *supra* note 20, at 445 (noting that traffickers began to use self-propelled semi-submersible vessels—which are able to navigate large distances at high rates of speed, are more difficult to detect than boats previously used by smugglers, and can be easily submersed at the first sign of law enforcement—effectively destroying any evidence that may have been found).

25. Ann Marie Brodarick, Note, *High Seas, High Stakes: Jurisdiction Over*

There is a fair amount of literature examining whether international drug trafficking should be included within the jurisdiction of the International Criminal Court (“ICC”), as it currently is not.²⁶ Those in favor of expanding the jurisdiction of the ICC to include drug trafficking argue, for example, that inclusion would “reduce the international tensions currently generated when a state refuses to turn over an accused [trafficker] for prosecution by another state”—an argument that highlights the additional hurdle of extradition often faced by countries attempting to prosecute traffickers.²⁷ Those opposed to the inclusion of drug trafficking in the ICC’s jurisdiction cite insufficient resources and variations in culture, including cultural attitudes toward drug use, among Member States that would presumably make determining an appropriate punishment difficult.²⁸

The inclusion of drug trafficking in the ICC’s jurisdiction would mean little for the United States, as it has no intention of joining the Court, and has historically refused to support it.²⁹ Other various solutions have been proposed,³⁰ but for purposes

Stateless Vessels and an Excess of Congressional Power Under the Drug Trafficking Vessel Interdiction Act, 67 U. MIAMI L. REV. 255, 257 (2012).

26. Compare Molly McConville, Note, *A Global War on Drugs: Why the United States Should Support the Prosecution of Drug Traffickers in the International Criminal Court*, 37 AM. CRIM. L. REV. 75, 76 (2000) (arguing in favor of prosecuting drug traffickers in the ICC), with Heather L. Kiefer, *Just Say No: The Case Against Expanding the International Criminal Court’s Jurisdiction to Include Drug Trafficking*, 31 LOY. L.A. INT’L & COMP. L. REV. 157, 157 (2009) (arguing against the inclusion of drug trafficking in the ICC’s jurisdiction).

27. McConville, *supra* note 26, at 95.

28. *E.g.*, Kiefer, *supra* note 26, at 172–74, 179 (providing examples of different nations’ attitudes toward drugs and sentences imposed for drug usage).

29. *But see* Marlise Simons, *U.S. Grows More Helpful to International Criminal Court, a Body It First Scorned*, N.Y. TIMES, Apr. 3, 2013, at A10 (explaining that while the United States “initially tried to sink” the Court, and still has no intention of joining it, the United States plans to begin paying for information that leads to the arrests of the Court’s most-wanted fugitives, primarily in an effort to facilitate global criminal justice).

30. *See, e.g.*, Anne H. Geraghty, *Universal Jurisdiction and Drug Trafficking: A Tool for Fighting One of the World’s Most Pervasive Problems*, 16 FLA. J. INT’L L. 371, 372 (2004) (proposing a universal jurisdiction over global drug trafficking); Faiza Patel, *Crime Without Frontiers: A Proposal for an International Narcotics Court*, 22 N.Y.U. J. INT’L L. & POL. 709, 710–11 (1990) (proposing the creation of an International Narcotics Court to facilitate the prosecution of drug traffickers). This Comment will not explore

of this Comment, current U.S. policy approaches will be examined in detail.

C. U.S. Policy and Approaches to Combating International Drug Trafficking

With respect to the international component of drug trafficking, the U.S. Office of National Drug Control Policy (the “ONDCP”) has identified three major goals of its 2013 National Drug Control Strategy: “(1) collaborate with international partners to disrupt the drug trade; (2) support drug control efforts of major drug source and transit countries; and (3) attack key vulnerabilities of drug trafficking organizations.”³¹ Current U.S. counterdrug efforts are centralized around four policy strategies: “(1) combating the production of drugs at the source; (2) combating the flow of drugs in transit; (3) dismantling illicit drug networks; and (4) creating incentives for international cooperation on drug control.”³² A fifth strategy prevalent in U.S. efforts, albeit to a lesser degree, involves reducing and preventing drug demand abroad.³³

Combating the production of drugs at the source typically involves crop eradication or encouraging farmers to cultivate alternative crops.³⁴ While eradication is arguably more efficient than the interception of drugs in transit, as proponents of eradication suggest, opponents of eradication policy tend to assert that the process consumes vast amounts of time and human resources, may not be cost-effective, and can even have

these alternative solutions in detail, but will instead focus on the implementation of a solution consistent with U.S. policy in an effort to incentivize international cooperation with respect to drug control and enforcement.

31. WYLER, *supra* note 11, at 12.

32. *Id.* at 26.

33. *See id.* at 35–36 (noting that international assistance in reducing drug demand has historically been limited, and experts tend to agree that demand reduction policies alone are “unlikely to succeed in combating the global drug problem”).

34. *See* WYLER, *supra* note 11, at 26 (noting that eradication of crops is a major U.S. tool to combat drugs at the source); *see* OFFICE OF NAT’L DRUG CONTROL POL’Y, WHITE HOUSE, NATIONAL DRUG CONTROL STRATEGY 55–56 (2013) [hereinafter NATIONAL DRUG CONTROL STRATEGY] (describing alternative livelihoods for foreign coca and opium farmers).

negative political and socioeconomic consequences.³⁵ As an alternative to drug eradication, the United States also sends foreign aid to cultivators of illicit drugs in an effort to convince them to cease the cultivation of drug crops and switch to an alternative crop.³⁶ The strategy has been implemented with seemingly little success, and is often hindered by a number of factors such as security threats in crop cultivation areas, lack of political will or resources, and local distrust of external influences.³⁷

The capture of drugs in transit is plagued both by the technological advances utilized by drug smugglers and the budgetary limits imposed by the Defense Department.³⁸ Proponents of one unique economic view of combating the flow of drugs in transit suggest that such efforts may actually incentivize drug traffickers to increase their smuggling activities, as consumers are often forced to pay premium prices for drugs when traffickers incur a greater risk in their transportation due to more stringent interdiction efforts.³⁹

With respect to dismantling international drug networks, foreign policy tools typically utilized include extradition agreements, freezing foreign criminal assets within the United States, and building foreign capacity to pursue and prosecute drug traffickers within the United States.⁴⁰ Extradition agreements are often cited as particularly successful,⁴¹ and have been formed with nations historically plagued by drug

35. See WYLER, *supra* note 11, at 27 (comparing the arguments in favor of and in opposition to drug eradication policy). Wyler emphasizes that “negative political, economic, and social consequences” of eradication are especially likely in “conflict or post-conflict environments.” *Id.*

36. *Id.* at 28.

37. *Id.* at 29.

38. *Id.* at 31; see NATIONAL DRUG CONTROL STRATEGY, *supra* note 34, at 58 (discussing the self propelled semi-submersible threat in the Western Caribbean). Because the issue of capturing drugs in transit has already been discussed at some length with respect to U.S. maritime law, this section will focus primarily on the other U.S. approaches toward combating international drug trafficking.

39. WYLER, *supra* note 11, at 31.

40. *Id.*

41. *Id.* at 32.

production and trafficking problems, such as Colombia.⁴² Under current federal law, money laundering, attempts to transform illicit profits into “clean” profits by concealing the origin of the profits, is an offense punishable both by extensive fines and imprisonment.⁴³ In an effort to combat money laundering by international drug traffickers, Congress enacted the Foreign Narcotics Kingpin Designation Act in 1999.⁴⁴ The Act aims to block all property within the United States owned or controlled by a “significant foreign narcotics trafficker,” any person who aids such a person or acts on his behalf, or any person that is determined to play a “significant role” in international drug trafficking.⁴⁵ Skeptics of anti-money laundering efforts cite financial technological advances and difficulties in tracking financial transactions as major hurdles to the effectiveness of such statutes.⁴⁶ One final element of dismantling foreign drug networks involves providing foreign aid to nations in order to boost their infrastructure and facilitate the pursuit and prosecution of drug traffickers.⁴⁷ While anti-corruption efforts strive to help prevent traffickers from “buy[ing] their way into power” over a foreign government, critics often assert that these efforts do little to encourage the development of a culture that supports the rule of law.⁴⁸

Incentivizing international cooperation on drug control measures is a fourth major approach of U.S. foreign policy in combating drug trafficking, and is a process that includes tools

42. *E.g.*, Extradition Treaty with the Republic of Colombia, U.S.-Colom., Sept. 14, 1979, S. TREATY DOC. No. 97-8. *But see* Chris Kraul, *Colombia Rejects U.S. Extradition Bid*, L.A. TIMES, Mar. 19, 2010, at A6, (observing that Colombia, in an effort to bring “justice to victims of decades of violence,” refused to extradite notorious drug trafficker Daniel Rendon Herrera, who had been indicted in a New York federal court on cocaine smuggling charges).

43. 18 U.S.C. § 1956 (2006).

44. *See* 21 U.S.C. §§ 1902, 1904(b) (2006) (stating the purpose of the act is to identify and issue sanctions against foreign drug traffickers who threaten the United States).

45. *Id.* § 1904(b).

46. *See* WYLER, *supra* note 11, at 34 (highlighting the growing volume of financial transactions internationally and the movement of illegal money laundering outside formal banking channels as particularly problematic).

47. *Id.*

48. *Id.* at 35.

such as conditions on foreign aid and eligibility for trade preference programs.⁴⁹ One major legislative effort to combat international drug trafficking began in 1961 with the enactment of the Foreign Assistance Act (“FAA”).⁵⁰ Under the FAA, a “major illicit drug producing country” is defined as any country which, during a given year, cultivates or harvests more than 1,000 hectares of illicit opium poppy or illicit cocoa, or more than 5,000 hectares of illicit cannabis.⁵¹ A “major drug transit country” is defined as a country that is either “a ‘significant direct source’ of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States,” or one through which such drugs or substances are transported.⁵²

Under the FAA, the President is empowered to suspend foreign assistance to countries identified as “drug majors”—a designation indicating that the country is either a major illegal drug producer or a major transit country for illegal drugs.⁵³ After identifying a country as a drug major, the President must then certify the country as not having demonstrably failed to make substantial efforts to adhere to the previous year’s obligations under international narcotics agreements.⁵⁴ Foreign assistance prohibitions may then be imposed on those nations that fail the certification process.⁵⁵

49. *Id.* at 36, 40.

50. *See generally* 22 U.S.C. § 2291–2291k (2006) (showing portions of the FAA relevant to international narcotics control).

51. *Id.* § 2291(e)(2). The definition also provides that a country may elude the designation of a “major illicit drug producing country” if its illicit cannabis production does not significantly affect the United States, as determined by the President. *Id.*

52. *Id.* § 2291(e)(5).

53. WYLER, *supra* note 11, at 36. For the 2013 Fiscal Year, President Obama has identified the following countries as drug majors: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela. *Id.*

54. *Id.*; 22 U.S.C. § 2291j-1(2).

55. WYLER, *supra* note 11, at 37; § 2291j-1(3). The President is entitled to provide foreign assistance to such countries if it is determined that the provision of aid is “vital to the national interests of the United States.” § 2291j-1(3)(A). For 2013, President Obama determined that Bolivia, Burma, and Venezuela had failed the certification process, but also determined that continuing to provide aid to those countries is “vital to

The ability to determine a country's eligibility for certain trade preference programs is a second tool in the arsenal of incentivizing international cooperation.⁵⁶ For example, in 1991, Congress enacted the Andean Trade Preference Act, which was later amended and expanded in 2002 by the Andean Trade Promotion and Drug Eradication Act ("ATPDEA").⁵⁷ Under the ATPDEA, the President is granted the authority to proclaim duty-free treatment for eligible articles from any beneficiary country, provided that those countries meet certain requirements.⁵⁸ When determining whether a country is eligible for preferential treatment, the President must take into account whether it has met the narcotics cooperation certification criteria as established in the FAA.⁵⁹ For this reason, presumably, the ATPDEA is theorized to provide incentives for a select few drug-producing countries in South America to cease drug-producing activities, and switch to economically viable alternative methods of generating income.⁶⁰

In order to evaluate the effectiveness of the measures set forth in the ATPDEA, the U.S. International Trade Commission is required to submit to Congress and the President a biennial report detailing the Act's effectiveness in promoting drug eradication and crop substitution efforts of the beneficiary countries.⁶¹ The most recent report, issued in September 2012, indicates that the countries eligible for preferential treatment now only include Colombia and Ecuador, and that, since the enactment of the ATPA, there has been only a "small and mostly indirect" impact on reducing illicit cocoa cultivation and promoting substitution efforts.⁶² The report also notes that,

the national interests of the United States." 2013 INCSR, *supra* note 4, at 5.

56. WYLER, *supra* note 11, at 36, 40.

57. *Id.* at 40; Andean Trade Preference Act, Pub. L. No. 102-182, 105 Stat. 1236 (1991); Andean Trade Promotion and Drug Eradication Act, Pub. L. No. 107-210, 116 Stat. 1033 (2002) (codified in 19 U.S.C. §§ 3201-3206).

58. 19 U.S.C. §§ 3201, 3202(c) (2012). Only four countries are eligible under the ATPDEA for such treatment: Bolivia, Ecuador, Colombia, and Peru. § 3202(b)(1).

59. § 3202(d)(11); 22 U.S.C. § 2291h(a)(2)(A).

60. WYLER, *supra* note 11, at 40.

61. 19 U.S.C. § 3204(a)(1).

62. Andean Trade Preference Act: Impact on U.S. Industries and Consumers and on Drug Crop Eradication and Crop Substitution, Inv. No. 332-352, USITC Pub. 4352, at i, ix

despite the disqualification of Bolivia and Peru in 2011, U.S. economic assistance continued to provide alternative crop development in all four Andean beneficiary countries.⁶³ The largest drawbacks to this policy tool lay primarily with the sharp decline of eligible countries, with Ecuador, the only remaining eligible participant after 2012, choosing to opt out of the preferential treatment.⁶⁴

III. THE IMPORTANCE OF INCENTIVIZING INTERNATIONAL COOPERATION

Perhaps the most compelling rationale for emphasizing international cooperation concerns the extent to which international criminal organizations engage in their own forms of cooperation, designed to facilitate criminal activities.⁶⁵ Specifically, such organizations have continuously found methods of extending the reach of illicit markets, expanding the ability to infiltrate legitimate businesses, enhancing their own mobility, and using the global banking system as a tool to launder proceeds from illicit activities.⁶⁶ Other identified reasons for incentivizing international cooperation include the inability of any single government to make significant individual progress in hampering the international criminal efforts of a given organization, and the prevention of the spread and growth of future organizations.⁶⁷ With these reasons in mind, there is a strong case that incentivizing international cooperation with

(Sept. 12, 2012) (Final), available at <http://www.usitc.gov/publications/332/pub4352.pdf>.

63. *Id.* at xi–xii.

64. WYLER, *supra* note 11, at 41 (citing Juan Forero, *Ecuador Pulls Out of Trade Deal with U.S.*, WASH. POST, June 28, 2013, at A6.

65. THE UNITED NATIONS AND TRANSNATIONAL ORGANIZED CRIME 81 (Phil Williams & Ernesto U. Savona eds., 1996) [hereinafter Williams].

66. *Id.*

67. *Id.* at 81–82. The editors place emphasis on the preventive capabilities of international cooperation, noting that countries that are not currently adversely affected by the international drug trade could potentially become “transit nations” or host nations for criminal organizations in the future. *Id.* at 82. For example, if one country heavily prosecutes drug traffickers and another does not, and there is no method of international cooperation, the traffickers will merely shift operations to the second country. *Id.*

respect to finding and prosecuting drug traffickers is the most effective solution to the trafficking problem.⁶⁸

In determining the most effective method of incentivizing cooperation, a number of factors that enhance international cooperation should be closely considered. Arguably, the most prevalent measure of the success of any given incentive is the degree to which the method eliminates procedural barriers between nations by way of, for example, extradition, mutual legal assistance, and the recognition and enforcement of foreign judgments.⁶⁹

A prominent method of incentivizing international cooperation involves the creation of a treaty.⁷⁰ Treaties are an internationally recognized facet of law, and represent the notion that the parties to an agreement have an obligation to each other to “faithfully adhere to their commitments.”⁷¹ One particular type of treaty, commonly referred to as a Mutual Legal Assistance Treaty (“MLAT”), is used as a means for

68. See *id.* at 81 (arguing that the rationale for international cooperation is powerful as international cooperation is essential for controlling transnational crime now and as a preventative measure). For the sake of comparison, consider the issue of sex trafficking, a global problem plagued by failures in prosecuting offenders and a lack of legal methods to enter industrialized countries. Amanda Walker-Rodriguez, *The Crime Next Door: An Examination of the Sex Trafficking Epidemic in the United States and How Maryland is Addressing the Problem*, 41 U. BALT. L.F. 43, 66 (2010). Because the creation of an international standard is not seen as a feasible solution, given the variability of the problem from country to country, international communication and cooperation is seen, at least by some, as the most effective method of combating sex-trafficking. *Id.*

69. See, e.g., Williams, *supra* note 65, at 90 (asserting that cooperation is both multifaceted and procedural); Tomer Broude & Doron Teichman, *Outsourcing and Insourcing Crime: The Political Economy of Globalized Criminal Activity*, 62 VAND. L. REV. 795, 842 (2009) (emphasizing the importance of the identified factors, and identifying common aspects of formal international cooperation with respect to criminal matters). Mutual legal assistance is explained briefly in this section. However, due to the extensive nature of the issues surrounding extradition explored in this Comment, general explanatory matters regarding extradition are reserved for Part V below.

70. The Oxford English Dictionary defines a treaty as “[a] contract between two or more states, relating to peace, truce, alliance, commerce, or other international relation,” and also provides that this definition is currently the prevailing sense of the term. OXFORD ENGLISH DICTIONARY 465 (2d ed. 1989).

71. Michael P. Van Alstine, *The Death of Good Faith in Treaty Jurisprudence and a Call for Resurrection*, 93 GEO. L.J. 1885, 1899 (2005).

facilitating the gathering of evidence for criminal matters by U.S. authorities in partner nations.⁷²

With respect to facilitating international cooperation, MLATs are said to be effective in the creation of frameworks for the seizure and forfeiture of criminal assets, such as those acquired by the participants in the international drug trafficking epidemic.⁷³ Additionally, such treaties have the capability to provide predictable and effective methods for obtaining evidence—making the prosecution of international drug traffickers far more feasible.⁷⁴ Before this Comment explores the ways in which extradition and mutual legal assistance can aid in combating the drug trafficking epidemic, the general obstacles to international cooperation are examined and explored in such a way that helps to explain the shortcomings of the current cooperation incentives.

IV. OBSTACLES TO COOPERATION AND THE FAILURES OF THE CURRENT INCENTIVES

The future for international cooperation with respect to drug trafficking is promising. The U.S. Bureau for International Narcotics and Law Enforcement Affairs notes that “more countries than ever before” are now willing to take the steps needed to strengthen their domestic institutions and cooperate with other countries in the fight against international drug crime.⁷⁵ The obstacle is not, of course, those countries that are currently willing to cooperate or are cooperating fully already, but rather the challenges faced in incentivizing those countries that are not cooperating and do not wish to cooperate.⁷⁶ Identifying and finding ways to overcome the factors that may inhibit a country’s willingness to cooperate may be the key

72. See Robert Neale Lyman, Note, *Compulsory Process in a Globalized Era: Defendant Access to Mutual Legal Assistance Treaties*, 47 VA. J. INT’L L. 261, 262 (2006) (explaining the general purpose of MLATs).

73. See Bruce Zagaris, *Uncle Sam Extends Reach for Evidence Worldwide*, 15 CRIM. JUST. 5, 8–9 (2001).

74. *Id.* at 8–9.

75. 2013 INCSR, *supra* note 4, at 16.

76. See *id.* (pointing out that there is “no substitute” for a country’s own commitment to overcome the problems caused by illicit drug crime).

to determining the proper way to incentivize international cooperation, in this case, with respect to drug trafficking.⁷⁷ The current U.S. counter-drug regime for incentivizing cooperation between nations focuses on conditioning the receipt of U.S. foreign assistance on a particular “drug major” country’s efforts to fulfill counter-narcotics obligations.⁷⁸

A. Criminal Law, National Sovereignty, and Political Relations

Commentators have noted that law can be described as a language by which individual countries resolve confrontational problems created by competing legal interests and assert their own interests.⁷⁹ Criminal law in particular can be categorized as “one of the main expressions of national sovereignty,” indicating that nations may be more reluctant to fully cooperate on international criminal matters when their own interests are subverted for the good of the international community.⁸⁰

A focus on the receipt of U.S. foreign assistance funds conditioned on counter-narcotics policy compliance has its merits, but falls short of being an ultimate solution to incentivizing cooperation with respect to drug trafficking problems.⁸¹ Perhaps most importantly, it is extremely difficult to ascertain the effectiveness of the threat of economic sanctions on those countries that refuse or otherwise fail to cooperate fully with the imposed conditions.⁸² Furthermore, if a given country

77. See Williams, *supra* note 65, at 83 (indicating that the agenda for cooperation could become more clear if the obstacles are identified).

78. WYLER, *supra* note 11, at 36.

79. Christopher L. Blakesley & Otto Lagodny, *Finding Harmony Amidst Disagreement Over Extradition, Jurisdiction, the Role of Human Rights, and Issues of Extraterritoriality Under International Criminal Law*, 24 VAND. J. TRANSNAT’L L. 1, 5 (1991).

80. See Williams, *supra* note 65, at 83 (noting that foreign states are often reluctant to extradite its own nationals, despite the fact that another country may have adequate reasons to prosecute those persons).

81. See, e.g., 2013 INCSR, *supra* note 4, at 16 (emphasizing that U.S. assistance should be thought of only as a supplementary aid, and that there is “no substitute” for a host nation’s commitment to overcome the obstacles associated with fighting drug-related crime).

82. Mark A. Chinen, *Presidential Certifications in U.S. Foreign Policy Legislation*, 31 N.Y.U. J. INT’L L. & POL. 217, 265 (1999). The Author further notes that even most supporters of the current U.S. method recognize that economic sanctions are an

tends to place an emphasis on the prosecution of criminal offenders within its borders as a pinnacle of its national sovereignty, it will presumably be difficult to incentivize that country to extradite criminal offenders for prosecution in, for example, the United States, with only the threat of economic sanctions acting as a potential barrier.

Political relations between countries play a role in determining the degree to which those countries are willing to cooperate with one another, particularly when those relations are tense due to differing ideologies or social values.⁸³ While the notion that politically “unfriendly” nations may find it more difficult to find common ground on a particular problem appears to be one of common sense, the current method of withholding foreign assistance to non-compliant countries may arguably disrupt already tense relationships even further.⁸⁴ Most significantly, withholding economic assistance can contribute to the decline of an already depressed economy—an outcome that can push more individuals into the drug trade, thereby undermining the entire purpose of withholding the funds.⁸⁵

B. Differing Legal Systems and Principles

Incentivizing cooperation between countries with vastly differing legal systems and principles can be problematic, particularly when certain conduct is criminalized in one country, but not in another.⁸⁶ This barrier to cooperation can perhaps best be illustrated by considering the process of extradition

“imperfect means” of achieving a country’s foreign policy goals. *Id.* at 267.

83. Williams, *supra* note 65, at 84.

84. *See id.* (noting that “[t]he more difficult the political relationship, the more sensitive [criminal justice and law enforcement] cooperation is likely to be—especially when different ideologies or value systems are in play”); Joe Swanson, Note, *Drug Trafficking in the Americas: Reforming United States Trade Policy*, 38 GEO. WASH. INT’L L. REV. 779, 794 n.126 (citing Kevin Fisher, *Trends in Extraterritorial Narcotics Control: Slamming the Stable Door After the Horse has Bolted*, 16 N.Y.U. J. INT’L L. & POL. 353, 407 (1984)) (detailing the link between the illegal drug trade and insurgency movements in some international nations and noting that “the United States may also be inadvertently aiding these countries for political purposes”).

85. Swanson, *supra* note 84, at 794 (citing Sandi R. Murphy, *Drug Diplomacy and the Supply-Side Strategy: A Survey of United States Practice*, 43 VAND. L. REV. 1259, 1305 (1990)).

86. Williams, *supra* note 65, at 84.

between the United States and other nations.⁸⁷ As a general matter, the U.S. judicial system has developed a doctrine whereby courts hearing extradition cases are prohibited from considering any possible procedures or treatment that the individual facing extradition may encounter upon delivery to the requesting state.⁸⁸ Thus, legally speaking, when U.S. courts become involved in extradition proceedings,⁸⁹ the outcome of a particular hearing will be the same for an individual being extradited to a country with similar constitutional protections for criminal defendants as for an individual facing extradition to a country with little or no protections, all other factors being equal.⁹⁰

Conditioning the receipt of economic assistance on compliance with counter-narcotics agreements appears to be, at best, tangentially related to overcoming the obstacle of differing legal systems and principles.⁹¹ In fact, some have even commented that the certification process essentially creates immense pressure to produce quantifiable data showing success against drug producers and traffickers—an effect that can, in turn, undermine due process guarantees that a country has in place

87. See, e.g., *id.* at 99 (explaining the problems that may arise between the United States and nations of differing legal systems).

88. John T. Parry, *International Extradition, The Rule of Non-Inquiry, and the Problem of Sovereignty*, 90 B.U. L. REV. 1973, 1975 (2010). This so-called “rule of non-inquiry” was first enunciated by the Supreme Court in 1901, and was considered for a second time in 1911, where a unanimous Court affirmed the rule. *Id.* at 1980, 1985.

89. It is important to note that U.S. courts typically view the extradition process as an executive function, rather than a judicial function. *Id.* at 1973.

90. See *id.* at 1975. It is equally illustrative for the purposes of this section to consider the alternative to this example. Consider hypothetical Country X in which a national of that country is committing international drug trafficking crimes within its borders. The United States wishes to prosecute this person within its borders due to the negative impact of the defendant’s actions on the United States by way of contribution to the drug problem, and requests extradition. Country X wishes to “prosecute” the individual in its own country, however, because it feels that a conviction is more likely due to its legal system, which is not as protective for criminal defendants. Country X may be less willing to cooperate by extraditing the individual.

91. See Solimar Santos, Comment, *Unintended Consequences of United States’ Foreign Drug Policy in Bolivia*, 33 U. MIAMI INTER-AM. L. REV. 127, 133 (2002) (explaining that countries must pass anti-drug laws in order to be eligible to receive foreign aid under U.S. anti-narcotic policy).

as a result of officials feeling pressured to make more arrests.⁹² Furthermore, the pressure to comply with the conditions placed on the receipt of economic assistance, and generally to cooperate with the United States on counter-drug efforts, often has an adverse impact on human rights in heavily affected areas such as Colombia and Bolivia.⁹³

C. Sensitivity and the Perceived Nature of the Threat

A third potential obstacle to international cooperation on drug trafficking problems is a given nation's "sensitivity" to the issue—that is, the perception of the nature of the problem in relation to that nation's past experiences.⁹⁴ Essentially, a nation that has been plagued by a particular problem in the past is more likely to have developed comprehensive legislation and some sort of preferred approach to that problem than is a nation that has not encountered that problem, or has encountered it to a lesser extent.⁹⁵ Applying this logic to the problem of drug trafficking, it follows that nations that do not have a strong presence of drug producers or drug traffickers, or are not significant "transit nations," may not be as sensitive to the problem and, consequently, may not have adequate legislation addressing the issue.⁹⁶ The U.S. method of placing conditions on

92. *Id.* at 132–33.

93. See, e.g., John Barry, Note, *From Drug War to Dirty War: Plan Colombia and the U.S. Role in Human Rights Violations in Colombia*, 12 *TRANSNAT'L L. & CONTEMP. PROBS.* 161, 177–78 (2002) (arguing that the U.S. government is "directly and consciously implicated in the Colombian human rights crisis" as a result of counter-drug efforts in the area); Santos, *supra* note 91, at 133 (noting that U.S. pressure on the Bolivian government to meet eradication deadlines has taken focus away from human rights issues); Maria McFarland Sánchez-Moreno & Naomi Roht-Arriaza, *Deadly Aid: How U.S. Foreign Assistance is Helping Human Rights Violators—and How to Stop It*, HUMAN RIGHTS WATCH (Aug. 6, 2012), <http://www.hrw.org/news/2012/08/06/deadly-aid> (commenting that a U.S. agency gave funds to a Colombian cooperative owned by Carlos Mario Jimenez, but that the agency failed to realize the cooperative was associated with human rights violations).

94. Williams, *supra* note 65, at 84–85.

95. *Id.* The Author uses the example of organized crime legislation in the United States and Italy, explaining that both countries have been forced to deal with the problem since the Prohibition Era and the nineteenth century, respectively. *Id.*

96. See Williams, *supra* note 65, at 85 (explaining that where the problem has not materialized to the same extent as "drug majors," the criminal justice system has not been readjusted to respond to the threat from transnational criminal organizations).

the receipt of economic assistance is, by its very nature, ineffective in overcoming this obstacle, because it is exclusively focused on nations identified as “drug majors”—nations which are already major drug producers or transit countries and are likely already sensitive to drug trafficking problems.⁹⁷ Additionally, merely focusing on identified drug majors for a given year, and adjusting economic assistance accordingly, creates both an incentive and a means for criminal organizations to stay one step ahead of targeted counter-drug efforts.⁹⁸ Essentially, if a drug trafficking or drug-producing organization feels that a certain nation is becoming “less hospitable” to its activities, perhaps because of increased pressure to conform to counter-narcotics policies in order to receive U.S. economic assistance, it may simply shift its operations to another nation, or begin focusing on a different nation for transit activity.⁹⁹

D. Effectiveness and Corruption

Criminal justice systems throughout the world have differing levels of effectiveness, depending on a number of factors.¹⁰⁰ Shortages of human and material resources for developing countries tend to reduce the efficacy of the criminal justice system in place, and can contribute to a perceived insufficient reaction to a particular problem, even where that country’s sensitivity to the problem is, in fact, quite high.¹⁰¹ Furthermore, it is safe to assume that drug-trafficking criminal organizations will take advantage of the differing levels of efficacy of criminal justice systems, and locate their bases of

97. WYLER, *supra* note 11, at 36. The nature of this problem is further elaborated upon in Part V of this Comment, which addresses, in part, the need to target and incentivize cooperation with countries that have either a low sensitivity to the drug trafficking problem or have not been adversely affected by the problem at all.

98. See Williams, *supra* note 65, at 81 (explaining how criminal organizations have adapted to different national settings and law enforcement obstacles).

99. See *id.* at 82 (explaining the importance of strengthening countries with weaker criminal justice systems by international cooperation so that it is more difficult for criminal organizations to continue to operate unfettered in certain countries).

100. *Id.* at 85.

101. *Id.*

operations or transit activities in countries that are perceived as less threatening to their activities.¹⁰²

It is with respect to overcoming the obstacle of the low efficacy of other legal systems, in comparison to the other factors examined, where the current U.S. method appears to have the most promise.¹⁰³ In its 2013 report, the U.S. Bureau for International Narcotics and Law Enforcement Affairs indicates that U.S. foreign assistance has the ability to play a crucial role in strengthening criminal justice systems.¹⁰⁴ As the report notes immediately thereafter, however, economic assistance is designed to supplement the domestic efforts by *partner governments* only—that is, those governments that have already agreed to cooperate in counter-narcotics efforts.¹⁰⁵ For those countries with weaker criminal justice systems, the promise of U.S. economic assistance to bolster those systems is undoubtedly an alluring incentive to cooperate.¹⁰⁶ However, this conclusion is premised on the positive operation of the other factors discussed above, and can potentially shift the focus away from finding ways to incentivize less cooperative countries.¹⁰⁷ While conditioning the receipt of economic assistance on compliance with counter-drug efforts does have incentivizing qualities, it falls short of being an ultimate solution to overcoming the obstacle of ineffective legal systems.¹⁰⁸

102. *See id.* (stating that differences in the effectiveness of legal systems tend to be exploited by transnational criminal organizations).

103. *See infra* note 104 and accompanying text.

104. 2013 INCSR, *supra* note 4, at 16.

105. *Id.* (emphasis added).

106. *See id.* (discussing how countries are incentivized by the conditioned economic assistance to strengthen their domestic institutions).

107. For example, a country that is willing to sacrifice some degree of its national sovereignty with respect to the operation of its criminal law, has politically friendly relations with the United States, shares similar legal principles with the United States, and has a high degree of sensitivity to the problem of drug trafficking, will presumably be more willing to comply with counter-narcotics measures, which place conditions on the receipt of U.S. economic assistance to bolster the weak criminal justice system. Where the other factors operate negatively, however (e.g., a vastly differing set of legal principles or indifference to the drug trafficking problem), compliance in order to receive assistance to bolster a weak legal system is arguably less attractive.

108. *See supra* note 104 and accompanying text; Williams, *supra* note 65 at 84 (discussing how the different legal systems make it difficult for States to cooperate).

The obstacle of corruption takes many forms, can occur on many levels, and is often linked with the efficacy of criminal justice operations.¹⁰⁹ At the law enforcement level, the sharing of information between nations may be compromised due to a fear that the information will be passed to criminals operating in the other country.¹¹⁰ At higher levels of government, corruption can have the effect of undermining the motivation to counteract the efforts of global criminal organizations, particularly when international cooperation to counteract the activities of such organizations does not serve the best interests of a particular country due to the influx of corruption.¹¹¹ It is no secret that corruption and the problem of international drug trafficking have become practically inseparable.¹¹²

In nations where corruption is pervasive, government officials may understandably be hesitant to cooperate with counter-narcotics initiatives in order to receive economic assistance.¹¹³ While these countries may desire the economic assistance, and may indeed wish to eradicate drug trafficking

109. See Williams, *supra* note 65, at 85 (discussing the problems related to institutionalized corruption).

110. *Id.*

111. *Id.* at 85–86. This problem can persist despite a high degree of sensitivity to the issue—that is, even where the government acknowledges the threat posed by drug traffickers. *Id.* at 85.

112. See, e.g., Geraghty, *supra* note 30, at 375 (noting the “incredible power” of drugs to corrupt existing governments); Sharon A. Gardner, Comment, *A Global Initiative to Deter Drug Trafficking: Will Internationalizing the Drug War Work?*, 7 TEMP. INT’L & COMP. L.J. 287, 292 (1993) (noting that, in Colombia, government officials, including a minister of justice, an attorney general, and several Supreme Court judges, have been murdered as a result of enforcing Colombia’s narcotics laws); WORLD DRUG REPORT, *supra* note 5, at 232–33 (emphasizing the destabilizing effects of international drug trafficking, particularly institutionalized corruption, on transit nations). Money laundering is one significant aspect of corruption that is particularly pervasive, and is included within the framework of the Foreign Assistance Act. 2013 INCSR, *supra* note 4, at 14. With respect to money laundering as defined in the FAA, corruption is not limited to the typical countries identified as “drug majors,” but includes a broad variety of countries, including the United States itself. *Id.*

113. See Gardner, *supra* note 112, at 292 (noting that the Colombian judicial system “has been repeatedly intimidated by violence”). Again, this assumption can be illustrated by examining the case of Colombia, where, at least in the past, cooperation with anti-narcotics efforts has contributed to the murder of dozens of government officials. *Id.*

problems, conditioning the receipt of economic assistance on the fulfillment of certain counter-narcotics obligations could hinder progress if officials are unwilling to cooperate fully due to a high presence of government corruption.¹¹⁴

E. Advantages of Current Policy

Despite the shortcomings of current policy in overcoming certain barriers to cooperation, it has by no means been a completely ineffective tool in the fight against international drug trafficking. Most notably, current U.S. policy can be partially credited for the decrease in the production of cocaine in Colombia from approximately 700 metric tons in 2001 to less than 200 metric tons in 2012.¹¹⁵ The certification process under the FAA also carries the advantage of emphasizing to other governments that the United States is serious about drug-control efforts, and is serious enough about those efforts that it is willing to withhold economic assistance to those who fail to cooperate.¹¹⁶ Even officials who feel the certification process is flawed have conceded that the policy has demonstrated success in highlighting the importance of narcotics control to the United States to other nations.¹¹⁷

V. ONE STEP AHEAD: OVERCOMING OBSTACLES
AND INCENTIVIZING COOPERATION

The current U.S. method of withholding economic assistance based on the fulfillment of a number of conditions consistent with its counter-narcotics policy is not a complete failure, but is ineffective in itself to make a more substantial impact on

114. See Williams, *supra* note 65, at 85–86 (discussing how corruption at the government level can do much to undermine the will to respond to transnational criminal organizations).

115. 2013 INCSR, *supra* note 4, at 16–17. The report emphasizes that such achievements are the result of “many years of close partnership” between the nations, and that significant progress has been made in the areas of democracy, human rights, and the rule of law in Colombia. *Id.*

116. Chinen, *supra* note 82, at 266–67; see WYLER, *supra* note 11, at 36 (stating that Congress requires the President to certify drug majors’ efforts to adhere to their obligations to receive assistance appropriations).

117. See Chinen, *supra* note 82, at 266–67 (discussing the importance of narcotics control to U.S. business).

international drug trafficking.¹¹⁸ Instead, U.S. policy should focus on attempting to stay ahead of the movements of international criminal organizations, who often flock to “sanctuary states” where they feel they are less vulnerable to capture or prosecution.¹¹⁹ In essence, focusing on providing economic assistance to cooperative countries can indeed have positive effects on that country with respect to reducing the problems associated with drug trafficking, but can also have the effect of pushing those problems to neighboring countries.¹²⁰ In order to counteract those effects, incentivizing cooperation with countries currently viewed as “safe harbors,” as well as those countries that may well become safe harbors in the future, can be approached by the utilization of the two typical tools associated with international cooperation—extradition and mutual legal assistance.¹²¹

In order for any system of incentives to cooperate to be effective, ideally, several goals should be met.¹²² First, a system of incentives should strive to create harmony in criminal justice systems—that is, weaker criminal justice systems should be bolstered so that the problem of “sanctuary states” is reduced or

118. See *supra* note 81 and accompanying text (highlighting that U.S. assistance can only supplement domestic efforts by partner governments).

119. Williams, *supra* note 65, at 82, 88–89.

120. See 2013 INCSR, *supra* note 4, at 17 (indicating that, despite success in Colombia in reducing coca production, Colombia’s coca-growing neighbors, Peru and Bolivia, are now producing more cocaine than Colombia for the first time since 1995); WYLER, *supra* note 11, at 37 (stating that Bolivia and Venezuela, both identified drug majors for 2013, failed to receive certification).

121. See MATTI JOUTSEN, INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL ORGANIZED CRIME: EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS 364 (2001), available at http://www.unafei.or.jp/english/pdf/RS_No59/No59_28VE_Joutsen2.pdf; cf. Caroline A. Greene, Note, *International Securities Law Enforcement: Recent Advances in Assistance and Cooperation*, 27 VAND. J. TRANSNAT’L L. 635, 671–72 (1994) (purporting that the United States “should offer incentives to ‘tax haven’ countries to relax their bank secrecy laws and blocking statutes” in an attempt to ultimately open the door for implementing “uniform securities regulations applicable to all countries”).

122. See, e.g., Williams, *supra* note 65, at 86–90 (discussing various factors enhancing international cooperation). The factors discussed by the Author are examined here briefly, and will be used, in addition to the factors typically associated with inhibiting cooperation, in discussing the best possible approach to incentivizing international cooperation with respect to drug trafficking.

eliminated.¹²³ Second, in order for international cooperation to be effective, exchanges of information between countries must be enhanced, and requests for information or assistance should be met with heightened response.¹²⁴ In order to facilitate this goal, a system of incentives should be designed so as to enhance the likelihood of the speedy exchange of information and assistance among nations.¹²⁵ In the following section, I will identify some common barriers to extradition agreements, as well as provisions common to such agreements that sometimes hinder extradition, and apply the framework set out above in Part IV¹²⁶ to identify why these barriers have the effect of inhibiting international cooperation. Throughout the section, I will suggest ways in which U.S. policy can be modified in order to more adequately overcome the shortcomings currently associated with extradition agreements, and suggest ways in which new policies may foster cooperation with those states currently outside of the extradition treaty regime.

A. *Eliminating Safe Havens: Overcoming Barriers to Extradition Agreements*

In the modern era of criminal law, the idea that a given criminal will flee to a nation where he will not face extradition back to his home country, or the country in which a crime was committed, has become almost commonplace.¹²⁷ In formulating extradition treaties, countries tend to impose one or more of a variety of typical requirements, four of which are examined in

123. *Id.* at 88–89.

124. *Id.* at 89. The Author strongly emphasizes this factor, noting that situations often arise in which criminals are arrested, but are subsequently freed because paperwork from another country does not arrive. *Id.*

125. *See id.* at 94 (stating that efforts should be undertaken “to develop a more coordinated and extensive sharing of information”).

126. From this point on, I will refer to the framework set out in Part IV as “the framework.” The five factors that will be encompassed in the following discussions, and that were discussed in Part IV, consist of the following: criminal law as an expression of national sovereignty, strained political relationships, vastly differing legal systems or principles, the sensitivity and perceived nature of the threat, and the effectiveness of justice systems. *See supra* Part IV.

127. *See* JOUTSEN, *supra* note 121 (discussing that criminals flee to another country to frustrate the work of the legal system).

this section—the dual criminality principle, the rule of specialty, the non-extradition of nationals, and refusal to extradite on grounds of unfair treatment.¹²⁸ The purpose underlying these limitations is generally the protection of the sovereign interests of the state to which a fugitive is extradited, rather than the protection of the fugitive in question.¹²⁹

Put simply, the dual criminality principle requires that the charged offense be considered a criminal offense by both the extraditing state and the requesting state.¹³⁰ Generally, and with specific regard to international drug trafficking, the dual criminality requirement becomes an issue when the statutes of two different states essentially criminalize the same behavior, but do so with comparatively ambiguous language, sometimes leaving it up to the judiciary to decide whether extradition is valid.¹³¹ When attempting to incentivize a state to cooperate, the dual criminality principle may act as an obstacle to overcoming two of the identified factors of the framework.¹³² On the first level, the identified state may either lack a heightened sensitivity to drug trafficking concerns or differ in its legal philosophy regarding the criminalization of such offenses.¹³³ With respect to incentivizing such a state to cooperate with the

128. See generally *id.* at 366–74 (listing common conditions included in extradition agreements).

129. See Christopher L. Blakesley, *Autumn of the Patriarch: The Pinochet Extradition Debacle and Beyond—Human Rights Clauses Compared to Traditional Derivative Protections Such As Double Criminality*, 91 J. CRIM. L. & CRIMINOLOGY 1, 4–5 (2001) (discussing that the fugitive is not the interest that is protected, but rather, it is the sovereignty of the fugitive’s state that is considered).

130. Jonathan O. Hafen, *International Extradition: Issues Arising Under the Dual Criminality Requirement*, 1992 BYU L. REV. 191, 191 (1992).

131. See JOUTSEN, *supra* note 121, at 367 (pointing out the legal and practical difficulties that may arise from the principle of double criminality); see, e.g., David Aronofsky & Jie Qin, *U.S. International Narcotics Extradition Cases: Legal Trends and Developments with Implications for U.S.-China Drug Enforcement Activities*, 19 MICH. ST. J. INT’L L. 279, 283 (noting one U.S. Appellate court case involving the extradition of a drug trafficker from England to the United States which faced an issue regarding the charges against the defendant, as neither the extradition treaty nor U.K. law expressly referenced the “continuing criminal enterprise” offense).

132. See Hafen, *supra* note 130, at 196 (noting that certain acts may constitute a treaty offense under the law of a requesting state, but not under the law of a requested state); *supra* text accompanying note 95.

133. See *supra* Part IV.B–C.

United States on such matters, counteracting a vastly different legal philosophy is a more daunting task than merely increasing awareness of the drug trafficking problem.¹³⁴ An effective U.S. counter-narcotics policy should, in accordance with fostering harmony between criminal justice systems, seek to satisfy the dual criminality requirement in enhancing those extradition agreements already in place and in creating new extradition agreements.¹³⁵

The precise method by which U.S. policy should focus on incentivizing other states to conform to the dual criminality requirement is somewhat unclear, but a potential approach involves the use of mutual legal assistance.¹³⁶ In short, offering such assistance to other states in prosecuting drug trafficking offenders may incentivize those states to adjust their laws to conform to the language of the laws of other states, including the United States, with whom they can then more effectively participate in extradition proceedings.¹³⁷ Providing such assistance can allow a foreign state to maintain its own sovereignty over criminal offenders it wishes to prosecute, while increasing the effectiveness of its criminal justice system.¹³⁸

134. See Chinen, *supra* note 82, at 266–67 (suggesting ideas to increase states' cooperation with the United States and surveying the difficulties presented by each solution).

135. This is quite possibly the most important goal toward which such a policy should strive to reach, as the dual criminality requirement has essentially become a settled part of customary international law. Hafen, *supra* note 130, at 194. Any extradition treaty that does not satisfy the dual criminality principle would make little sense, and certainly would not serve the goal of fostering harmony between justice systems.

136. This approach has been suggested in the area of U.S. securities law, and can be analogized to the international drug trafficking epidemic, particularly in consideration of identified problems with drug traffickers fleeing to “safe harbor” states. Greene, *supra* note 121. Greene argues that the United States should offer incentives to so-called “tax haven” countries, such as the Cayman Islands, to relax their bank secrecy laws, and offers mutual legal assistance as a potential means to that end. *Id.*

137. See 2013 INCSR, *supra* note 4, at 16–17 (stating that U.S. assistance can play an important role in strengthening criminal justice systems, and emphasizing that more countries than ever before are now willing to take steps in accordance with such assistance). Alternatively, if total conformity to new substantive law is not feasible, perhaps enough cooperation may take place to allow for a less stringent dual criminality standard for drug trafficking offenses.

138. See *id.* at 17 (stating that, in part due to assistance provided by the United

Finally, the greater the degree of harmony between justice systems throughout the world, in terms of statutory similarity with respect to drug trafficking offenses, the fewer opportunities a given trafficker will have to simply transfer operations to a comparatively tolerant state in the hopes of avoiding extradition and prosecution.¹³⁹

As with the dual criminality principle, the so-called rule of specialty is a universally accepted component of extradition agreements, and is therefore unlikely to present a great deal of problems with respect to incentivizing cooperation.¹⁴⁰ The specialty principle essentially dictates that requesting states are only entitled to prosecute the extradited individual for the offenses for which that individual was extradited.¹⁴¹ The principle of specialty is important to note due to its prevalence in extradition treaties and near-universal acceptance, but because this Comment focuses merely on incentivizing cooperation with respect to a particular type of offense, the problems associated with specialty will not be addressed in depth.

A more controversial provision included in some states' extradition treaties is the prohibition on the extradition of a particular state's own citizens—a provision often referred to as the non-extradition of nationals.¹⁴² The United States takes the general approach of extraditing its own nationals when the offense with which the national is charged is punishable in the requesting state, but this approach favoring the extradition of nationals is by no means the international norm.¹⁴³ With respect

States, Mexico, through sustainable practices, has been able to achieve substantial progress in “dismantling and disrupting some of North America’s largest and most dangerous drug cartels” and strengthening and reforming its law enforcement and criminal justice organizations).

139. See John Pak, *Canadian Extradition and the Death Penalty: Seeking a Constitutional Assurance of Life*, 26 CORNELL INT’L L.J. 239, 242 (1993) (noting that extradition provides countries “a means to avoid becoming a safe haven for dangerous malefactors” and using the United States and Canada as an example of two countries that have a mutual interest in entering to extradition arrangements).

140. See JOUTSEN, *supra* note 121, at 369 (stating that the rule of specialty is universally accepted).

141. Kenneth E. Levitt, *International Extradition, the Principle of Specialty, and Effective Treaty Enforcement*, 76 MINN. L. REV. 1017, 1022–24 (1992).

142. *E.g.*, JOUTSEN, *supra* note 121, at 369.

143. See Blakesley & Lagodny, *supra* note 79, at 25–29 (explaining the four

to the framework identified in Part IV, it should come as no surprise that many states are hesitant, or even unwilling, to extradite their own nationals to other requesting states.¹⁴⁴ Almost every factor identified under the framework poses an actual or potential barrier to incentivizing international cooperation via extradition of nationals. If a given state believes criminal prosecution to be a pinnacle of its expression of its own national sovereignty, has strained political relationships with a requesting state, has a vastly different set of legal principles as compared with the requesting state, or views the requesting state's justice system as relatively inferior or ineffective, the state will naturally hesitate to extradite its own citizens to the requesting state.¹⁴⁵

Further complicating the problem is the fact that the refusal by some states to extradite their own nationals is not always motivated by a distrust for the international community or for the requesting state, but can indeed be motivated simply by the violence incurred in the state as a result of the dangers associated with international drug trafficking offenders.¹⁴⁶ Thus, in some cases, the rationale for a state's refusal to extradite its own nationals may be motivated by political reasons or concern for the exercise of its own sovereignty, as contemplated by the

approaches taken by the United States with respect to extraditing its own nationals); Michael Plachta, *(Non-)Extradition of Nationals: A Neverending Story?*, 13 EMORY INT'L L. REV. 77, 80 (1999) (stating that "the traditional stance against the extradition of nationals has prevailed").

144. See Plachta, *supra* note 143, at 77 (stating "the problems surrounding the non-extradition of nationals are as old as extradition itself," and that the practice "has been maintained by many countries for centuries").

145. See *id.* at 79 (noting that, when countries have been called upon to reevaluate their justifications for the rule against extraditing their own nationals, those demands "have been almost completely ignored by the governments for reasons relating to their domestic policy, political considerations, and sovereignty"). Plachta emphasizes that these countries view their national interests as clearly outweighing any international interests, a view which clearly hinders international cooperation. *Id.*

146. See *id.* at 79 n.9 (citing a number of sources discussing violence in Colombia as a reason for rejecting the extradition of their nationals). This Colombian violence, which was briefly mentioned in Part IV as part of the corruption discussion, involved the murder of a number of Colombian Supreme Court judges by Colombian drug traffickers who feared extradition to the United States. See Gardner, *supra* note 112. As a result of this violence, Colombia adopted a new constitution in 1991 that prohibited the extradition of its nationals. Plachta, *supra* note 143, at 79 n.9.

framework outlined in Part IV.¹⁴⁷ Yet in other cases, the fear of internal backlash against that state's own citizens may prevent it from extraditing drug trafficking offenders who are citizens of that state.¹⁴⁸ Even where states would otherwise be willing to cooperate with requesting states, in these cases, the perils associated with drug trafficking offenses may serve to inhibit international cooperation.¹⁴⁹

Finally, a refusal to extradite on the basis of the possibility of an unfair prosecution or punishment has become a central theme in many extradition treaties, and can further serve as a potential barrier to extradition.¹⁵⁰ The U.N. Model Treaty on Extradition addresses this concern, and has a similar provision included within Article 3.¹⁵¹ The provision specifically states that extradition is not to be granted if the person whose extradition is requested would be subjected to torture or cruel, inhuman, or degrading treatment or punishment.¹⁵² While the Model Treaty condemns such persecution, it is silent on the issue of fair trial and treatment in the requesting state.¹⁵³ The 2000 U.N. Convention Against Transnational Organized Crime, often referred to as the Palermo Convention, however, stipulates that any person whose extradition is requested is entitled to the rights and guarantees provided by the domestic law of the state in which that person is present.¹⁵⁴

147. *See supra* Part IV.A.

148. *See supra* note 146 and accompanying text.

149. *See, e.g.*, Luz E. Nagle, *The Rule of Law or the Rule of Fear: Some Thoughts on Colombian Extradition*, 13 *LOY. L.A. INT'L & COMP. L. REV.* 851, 867–68 (1991) (noting that, after the 1985 violence against the Colombian Supreme Court, the new Supreme Court, in 1986, declared null and void Law 27 of 1980, which had permitted the extradition of Colombian nationals).

150. *See* JOUTSEN, *supra* note 121, at 373 (“[M]any of the more recently concluded treaties pay particular attention to the nature of the proceedings or the expected treatment in the requesting State.”).

151. *Id.*

152. Model Treaty on Extradition, G.A. Res. 45/116, art. 3(f), U.N. Doc. A/RES/45/116 (Dec. 14, 1990).

153. JOUTSEN, *supra* note 121, at 373.

154. United Nations Convention Against Transnational Organized Crime art. 16, ¶ 13, Dec. 17, 2000, 2225 U.N.T.S. 209 [hereinafter “Palermo Convention”]. More focus will be given to this Convention in the following section.

Fear by the extraditing state of the potentially adverse treatment of the extradited individual, particularly where it is perceived that the individual will receive comparatively inferior due process in the requesting state, interacts with all five obstacles to cooperation identified by the framework.¹⁵⁵ If an extraditing state highly regards its own criminal justice system as a pinnacle of its national sovereignty, it will naturally be reluctant to surrender an individual to a requesting state when it perceives that state to possess inferior due process guarantees.¹⁵⁶ Similarly, it is not difficult to imagine a scenario in which a requesting state's demand for a fugitive creates a strained relationship between that state and the extraditing state as a result of the perceived notion that the fugitive will not be entitled to equivalent guarantees of due process in the requesting state.¹⁵⁷ A refusal to extradite in these situations heavily interplays with two of the identified obstacles to cooperation—vastly different legal systems or principles, and the perceived effectiveness of other criminal justice systems.¹⁵⁸ Essentially, one major hurdle to incentivizing cooperation via the extradition pathway is the perception that a requesting state has such a vastly different legal system that due process cannot be guaranteed for the extradited individual, or, alternatively, that the requesting state's justice system is in fact not effective enough, and will result in a prosecution that is perceived to be too lenient by the extraditing state.¹⁵⁹ In order to illustrate the

155. See generally Part IV (outlining the framework of obstacles to international cooperation in the extradition proceedings).

156. See, e.g., Theresa M. Beiner, *Due Process for All? Due Process, the Eighth Amendment and Nazi War Criminals*, 80 J. CRIM. L. & CRIMINOLOGY 293, 320 (1989) (providing the viewpoints of U.S. Supreme Court Justices Holmes and Rehnquist, who asserted that the United States is bound by the existence of an extradition treaty to assume that the trial will be fair, and that such treaties are not negotiated with countries which do not have due process guarantees, respectively).

157. See JOUTSEN, *supra* note 121, at 374 (noting that European countries are reluctant to extradite suspects to states where the death penalty may be imposed). The Palermo Convention has largely addressed this concern, and the common outcome in such scenarios involves a waiver of the death penalty by the requesting state. *Id.*

158. See *supra* note 156 and accompanying text.

159. See Beiner, *supra* note 156 (citing *Hearings Before the Subcomm. on the Genocide Convention on the Ratification of the International Convention on the Prevention of the Crime of Genocide of the Senate Comm. on Foreign Relations*, 91st

interplay of the identified obstacles to international cooperation with the need to enhance the cooperative tools of extradition and mutual legal assistance, the following section provides an example using the relationship between the United States and Afghanistan—a major producer of the world’s supply of heroin.

B. A Brief Example of the Operation of the Proposed Framework: Heroin and Afghanistan

Heroin, the “most widely consumed illicit opiate in the world,” is derived from the opium poppy, and 89% of the world’s supply is cultivated in the country of Afghanistan.¹⁶⁰ Currently, heroin use in the United States remains relatively rare,¹⁶¹ in comparison with other illicit substances such as marijuana, and the most highly affected areas globally, as of 2010, are Western Europe and the Russian Federation.¹⁶² However, in part due to recent nationwide pressures to limit the accessibility of prescription painkillers in an effort to curb the abuse of such drugs, the use of heroin in the United States is steadily increasing.¹⁶³ Because heroin comes to the United States from

Cong. 149 (1970)) (“[E]xtradition treaties are not negotiated with those countries which do not have either our form of due process or something we regard as the equivalent of it.”); U.N. OFF. ON DRUGS & CRIME, HANDBOOK ON CRIMINAL JUSTICE RESPONSES TO TERRORISM 7, 15 (2009), available at http://www.unodc.org/documents/terrorism/Handbook_on_Criminal_Justice_Responses_to_Terrorism_en.pdf [hereinafter RESPONSES TO TERRORISM] (emphasizing the importance of international cooperation and extradition in bringing international terrorists to justice, and underscoring the notion that an effective criminal justice system is part of the “fundamental basis of the common fight against terrorism”).

160. WORLD DRUG REPORT, *supra* note 5, at 19–20.

161. *But see, e.g.*, Michael Schwirtz, *Hoffman Killed by Toxic Mix of Drugs, Official Concludes*, N.Y. TIMES, Mar. 1, 2014, at A15 (reporting that heroin played a part in the late actor Phillip Seymour Hoffman’s death). Although heroin use remains relatively rare in the United States, it can be thrust into the spotlight and the minds of the public in high-profile situations such as this.

162. Evan Perez, Tory Dunnan, & Dana Ford, *Ready Access, Low Cost, Pill-Like High: Heroin’s Rise and Fatal Draw*, CNN (Feb. 4, 2014, 7:45 AM), <http://www.cnn.com/2014/02/02/us/heroin-use-rising>; WORLD DRUG REPORT, *supra* note 5, at 20, 22.

163. Perez et al., *supra* note 162 (stating that heroin use in the United States is on the rise in part due to the “nationwide crackdown on prescription pill abuse”); *see generally* SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., U.S. DEPT’ HEALTH & HUMAN SERVS., RESULTS FROM THE 2012 NATIONAL SURVEY ON DRUG USE AND HEALTH: SUMMARY OF NATIONAL FINDINGS (2012), available at <http://www.samhsa.gov/>

other drug-producing countries, including Afghanistan, finding a way to decrease trafficking activities between the United States and those countries is a critical element in curbing the heroin problem.¹⁶⁴

The previously mentioned Palermo Convention has been referred to as the first legally binding U.N. instrument in the field of crime, and requires parties to the Convention to pass domestic laws criminalizing four specific offenses—(1) participation in a criminal group, (2) money laundering, (3) corruption, and (4) obstruction of justice.¹⁶⁵ One of the primary goals of the Convention is to enhance the exchange of information between states regarding patterns and trends in transnational organized crime.¹⁶⁶ It is hoped that the Convention becomes the primary tool for fighting international crime.¹⁶⁷ While both the United States and Afghanistan are signatories to and have ratified the Palermo Convention, there is currently no extradition treaty in force between the United States and Afghanistan.¹⁶⁸

data/nsduh/2012summnatfinddetables/nationalfindings/nsduhresults2012.htm (providing statistics that show heroin use among Americans has increased over the course of the early 2000s). Essentially, because prescription painkillers are becoming more difficult and expensive to obtain, individuals afflicted with an addiction to those medications are likely to resort to switching to heroin as the drug of choice. *Id.* In short, heroin is cheaper than prescription painkillers, easier to obtain, and produces the same physical and psychological effects as painkillers.

164. See RENNELAER LEE & RAPHAEL PERL, CONG. RESEARCH SERV., DRUG CONTROL: INTERNATIONAL POLICY AND OPTIONS 2 (2010) (listing “[e]xpansion of interdiction and enforcement activities to disrupt supply lines” as a method of drug control); OFF. NAT’L DRUG CONTROL POL’Y, WHITE HOUSE, THE INTERNATIONAL HEROIN MARKET, <http://www.whitehouse.gov/ondcp/global-heroin-market> (last visited Oct. 9, 2014) [hereinafter INTERNATIONAL HEROIN MARKET] (stating that in 2010, Afghanistan, the largest opium supplier in the world, supplied nearly 90% of the globe’s opium). While this section and Comment deal primarily with the effects of drug trafficking and potential solutions on the United States, it is of course important to note that the negative consequences associated with drug trafficking activities affect production, transit, and consumption countries alike. Likewise, finding an effective way to lower heroin production and trafficking activities through international cooperation is likely to have positive effects on countries other than the United States and Afghanistan.

165. Joseph Bruce Alonso, *International Law and the United States Constitution in Conflict: A Case Study on the Second Amendment*, 26 HOUS. J. INT’L L. 1, 50 (2003).

166. *Id.* at 51.

167. *Id.* at 50–51.

168. Palermo Convention, *supra* note 154; MICHAEL JOHN GARCIA & CHARLES

If an individual or a group is seeking to avoid prosecution in the United States, turning to a country that does not have an extradition treaty with the United States in effect, such as Afghanistan, is almost certainly an appealing course of action.¹⁶⁹ By finding a way to effectively facilitate cooperation between the United States and Afghanistan, either through more rigorous extradition proceedings or the provision of mutual legal assistance to aid in prosecution, the supply of heroin may be diminished, and the trafficking of heroin will by definition follow suit.¹⁷⁰

I propose that an extradition framework between the United States and Afghanistan should, in order to effectively counteract the typical obstacles to cooperation identified by the framework in Part IV, strive to achieve a balance between the international interests of prosecuting drug traffickers and the domestic interests of Afghanistan in exercising its national sovereignty through the operation of its criminal justice system.¹⁷¹ Furthermore, the provision of mutual legal assistance to Afghanistan should follow the same framework and balancing approach. In determining whether to emphasize improving extradition relations with or providing additional mutual legal assistance to Afghanistan, U.S. policymakers should consider the identified obstacles to cooperation in light of the mechanisms of action of both the extradition process and the process of providing legal assistance.¹⁷² For instance, if

DOYLE, CONG. RESEARCH SERV., 98–958, EXTRADITION TO AND FROM THE UNITED STATES: OVERVIEW OF THE LAW AND RECENT TREATIES 43 app. B (2010).

169. See RESPONSES TO TERRORISM, *supra* note 159, at 15 (noting that international cooperation is an important step toward eliminating situations in which national borders “serve as insulation from investigation and prosecution”).

170. See OFF. OF NAT’L DRUG CONTROL POL’Y, *A Comprehensive Approach: Reducing the Supply of Illegal Drugs*, in NATIONAL DRUG CONTROL STRATEGY I, IV.7 (1999), <http://www.ncjrs.gov/ondcpubs/publications/policy/99ndcs/iv-g.html> [hereinafter *Reducing the Supply of Illegal Drugs*] (stressing supply reduction as an essential element of drug control); see generally RESPONSES TO TERRORISM, *supra* note 159, at 75–81 (emphasizing the importance of extradition and mutual legal assistance in international cooperation matters).

171. See RESPONSES TO TERRORISM, *supra* note 159, at 81–82 (suggesting actions to enhance a system’s ability to support international cooperation).

172. Compare *supra* Part IV (laying out general obstacles to cooperation), with RESPONSES TO TERRORISM, *supra* note 159, at 81 (stressing that states should actively

Afghanistan places special emphasis on its criminal law as a pinnacle of the exercise of its national sovereignty, or views the U.S. justice system as inept in prosecuting drug traffickers, the choice between extradition and mutual legal assistance should likely be more heavily weighted in favor of mutual legal assistance as a way to facilitate cooperation.¹⁷³ If Afghanistan perceives the nature of the drug trafficking threat to be minimal, however, U.S. policymakers should focus on facilitating an extradition framework so that criminal prosecutions can occur in a place where the nature of the problem is well understood.¹⁷⁴

With respect to Afghanistan, the Palermo Convention presents a great starting point for facilitating cooperation between two states lacking a bilateral extradition agreement. A number of the provisions in the Convention address some of the particular obstacles discussed in this Comment in an effort to facilitate international cooperation by way of extradition.¹⁷⁵ Furthermore, the Convention includes an obligation by the parties to “seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.”¹⁷⁶

In accordance with the Convention, U.S. policymakers could work with officials in Afghanistan to negotiate an extradition treaty that is acceptable to both parties.¹⁷⁷ Where extradition would not be deemed acceptable, perhaps U.S. officials could encourage officials in Afghanistan to accept forms of mutual

find ways to enhance extradition agreements and engagement in mutual legal assistance with other states).

173. This proposed balancing approach of course applies to all countries with which cooperation can arguably be improved with respect to drug trafficking. Afghanistan is merely used as an example for illustrative purposes.

174. The drug trafficking problem, with specific reference to heroin, is undoubtedly understood by officials in the United States. *See* INTERNATIONAL HEROIN MARKET, *supra* note 164 (detailing U.S. involvement in curtailing heroin production and trafficking).

175. *See, e.g.*, Palermo Convention, *supra* note 154, art. 16, ¶¶ 7, 10, 13 (recognizing conditions provided for by the domestic law of the requesting party; addressing the rule against extraditing nationals and providing for a potential cooperative structure for such situations; and requiring the guarantees of “fair treatment at all stages” of the extradition proceedings).

176. *Id.* art. 16, ¶ 17.

177. *See id.* (noting that states can enter into agreements with one another to carry out extradition).

legal assistance in an effort to aid in the prosecution of drug producers and traffickers.

VI. CONCLUSION

The drug problem is a national pandemic, but is also a global one by operation of illicit international drug trafficking activities and networks. Because the prevalence of drug abuse is so high in the United States, it comes as no surprise that a significant number of U.S. policy measures are aimed at combating international drug trafficking in a variety of methods.¹⁷⁸ Currently, U.S. policy encompasses a number of approaches and goals, including reducing drug production at the source, combating drugs in transit, dismantling illicit drug networks, reducing and preventing drug demand abroad, and creating incentives for international cooperation on drug control.¹⁷⁹

Although the current U.S. drug trafficking policies have certain advantages,¹⁸⁰ there are a number of factors that can potentially inhibit incentives for cooperation. Without achieving some degree of international cooperation, it is difficult to imagine any system of incentives that could comprehensively tackle the evils associated with drug trafficking on a significant level.¹⁸¹ Extradition and mutual legal assistance are two international cooperation tools that, when effectively used, can help overcome the obstacles to cooperation and lead to results that benefit the international community as a whole.¹⁸² The

178. WYLER, *supra* note 11, at Summary.

179. *E.g., id.*

180. *See supra* Part IV.E.

181. *See Reducing the Supply of Illegal Drugs, supra* note 170 (noting that decreasing international drug supply requires bilateral, regional, and global agreements); *RESPONSES TO TERRORISM, supra* note 159, at 75–81 (emphasizing the importance of extradition and international cooperation); *WORLD DRUG REPORT, supra* note 5, at 32 (highlighting the struggle for international drug supply and demand reduction).

182. *See Broude & Teichman, supra* note 69, at 842 (highlighting extradition and mutual legal assistance as examples of international cooperation); Greene, *supra* note 121, at 671–72 (emphasizing that legal assistance would promote international cooperation); 2013 *INCSR, supra* note 4, at 16 (outlining some of the United States' efforts in strengthening international criminal justice systems).

process of creating and maintaining extradition agreements with other states has barriers of its own, but compromises can be reached through negotiation, and perhaps through a willingness to provide mutual legal assistance where extradition is not an option.¹⁸³

It is highly unlikely that the international drug problem will ever be completely eradicated. However, because of the plethora of negative collateral effects embedded within the operation of international criminal networks facilitating drug trafficking, it is in the interests of both the United States and the international community as a whole to concentrate efforts on limiting the effectiveness of international drug trafficking organizations and efforts.¹⁸⁴ While current U.S. policy in the area includes facilitating international cooperation as one method of counteracting the drug problem, more emphasis should be placed on finding ways to encourage international cooperation, particularly with those countries that may not currently view the drug problem as a significant danger.¹⁸⁵ Finally, by providing for an effective extradition framework, or, at the very least, increased mutual legal assistance, U.S. policymakers can ensure that drug traffickers will be unable to find a safe haven from which to base their operations.¹⁸⁶ Eradicating safe havens is a vital tool in the arsenal of those fighting to make a strong impact on the international drug trade.¹⁸⁷

183. See *supra* notes 168–70 and accompanying text (illustrating the difficulties faced when no extradition treaty exists between two countries); *RESPONSES TO TERRORISM*, *supra* note 159, at 75–81 (underlining the importance of extradition and mutual legal assistance in combatting international cooperation obstacles)

184. See Geraghty, *supra* note 30, at 374–76 (illustrating the international dangers caused by global drug trafficking).

185. See *supra* Part IV.C (generally outlining countries' different perspectives on the significance of drug trafficking within their own countries and the obstacles this imposes on developing international cooperation).

186. See *supra* notes 101–02 and accompanying text (outlining why criminals flock to safe havens); *RESPONSES TO TERRORISM*, *supra* note 159, at 71–81 (explaining how extradition and mutual legal assistance can promote international cooperation).

187. See *supra* notes 119–20 and accompanying text (explaining how and why criminal offenders flock to safe havens).