

How Can International Law Better Address Illegal Transnational Drug Trades

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Abstract: This paper seeks to analyze how international institutions and treaties can effectively suppress the occurrence of transnational drug trade. Different primary and secondary sources regarding current drug-related global conventions and organizations were analyzed to pinpoint reasons for their inadequacy in combatting the international exchange of drugs. We drew upon previous drug-trade cases and examined United Nations (UN) documents to offer a comprehensive solution to the issue. Research has suggested that the responsibility does not lie alone with drug-specialized international corporations: with corruption and money laundering heavily related to the drugs trade, non-drug specialized institutions must collaborate with the former in order to tackle illegal transnational drug trades both regionally and on a global scale. Although efforts have been made to address this issue with the establishment of various conventions and committees, the lack of enforcement, commitment from different States, as well as collaboration between relevant institutions lead to the drug market being a relevant issue in today's society, threatening the lives of thousands both directly and indirectly. Furthermore, few papers have dedicated attention to international law and illicit drug trafficking.

Keywords: Drug Trade, International Law, Institutional Collaboration

1. Introduction

In June 1971, US President Richard Nixon declared a “war on drugs” – that war is now an international conflict as institutions and treaties are established to combat the transnational drug trade [1]. However, the United Nations drug strategy for the past decade has failed – drug-related deaths have increased by 145% from 2008, with 71,000 overdose deaths in the US alone in 2017 and 27,000 extrajudicial killings in the Philippines [2]. The failed effort is largely a result of ineffective international conventions, flawed institutional mechanisms, and insufficient transnational collaboration. To tackle the problem of illegal international trade of narcotic drugs, specialized international agencies and non-drug-focused international institutions should work together to address the global- and the regional- sides of the matter.

2. Limitations of Current International Treaties and Institutions

Due to a lack of enforced implementation of established conventions, flaws within relevant international institutions, and an inability to promote global cooperation, international law is inadequate at addressing transnational drug trade.

Currently, three multilateral conventions set out the modern drug control framework: the *Single Convention on Narcotic Drugs*, the *Convention on Psychotropic Substances*, and the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* [3]. The *Single Convention on Narcotic Drugs* consolidated the previous system of drug control under the UN; the *Convention on Psychotropic Substances* allows for international control over numerous psychotropic substances; the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* creates a system of international criminal drug control law that punishes acts of drug trafficking [3].

In addition to the conventions, two international institutions are designed to address narcotic dealing. The Commission on Narcotic Drugs (CND) is an institution composed of 53 member States that acts as the “central policy-making body with regard to drug-related matters” whereas the International Narcotics Control Board (INCB) “monitors the implementation of the [aforementioned] conventions” and “makes recommendations to States” [4].

2.1. Limitations of Conventions

Existing international treaties on drug control have proved ineffective because of both inadequate enforcement mechanisms and reservations by state parties. For example, Bolivia participated in the *Single Convention on Narcotic Drugs* of 1961 via accession, which requires States to “do everything in their power to combat the spread of the illicit use of drugs” [5,6]. However, the Bolivian government does not have a system to control ephedrine and pseudoephedrine, and under Bolivian law, unlicensed transport of controlled substances will only result in a fee and a possibility of losing the carried products [7]. This situation demonstrates how international conventions are incapable of ensuring commitment; in fact, States can “depenalize” drug offenses if such an act is appropriate [8]. The lack of enforcement regarding treaty agreements contributes to an inability to ensure the regulation of drug sales internationally.

Furthermore, current treaties allow for States to enter into reservations that indirectly undermine the drug-control regime. In the same case of the *Single Convention on Narcotic Drugs* of 1961, the Plurinational State of Bolivia allows for coca leaf chewing; Nepal permits the use of cannabis for non-medical purposes [5]. Regardless of the intention when reserving from the convention, these choices promoted illicit drug transfer between and from the States mentioned above: Bolivia is one of the largest sources of cocaine production with cocaine reaching Brazil, Argentina, and Paraguay, while Nepal acts as an ending point to the “Hippie Trail,” a route involving Middle Eastern States, Afghanistan, as well as India for transcontinental cannabis commerce [9,10]. Although the right to reserve is not a fault of the three major drug-related conventions, it remains a hurdle unaddressed by international law.

2.2. International Institutional Flaws

International institutions have had limited impact on drug control because they often lack authority or are in conflict with States and other institutions. Firstly, the capabilities of the INCB are restricted. Similar to the General Assembly of the UN, INCB is only capable of making recommendations; the choice to obey rests with individual States [11]. In addition, it does not possess the political authority to add plants containing psychoactive substances to the list of internationally controlled substances [11]. Although plants such as kratom (mitragynine) or iboga (ibogaine) were identified to be including

psychoactive substances by the INCB, they were excluded from the 33rd edition of the Green List, a list of psychotropic substances under international control, updated in December of 2022 [12,13].

The problem is not simply about the inability to add to the Green List: what this entails is the ambiguous authority of the INCB in the drug control regime. As the “war on drugs” continues, increasing numbers of Member States begin to disobey the recommendations of the INCB: in 2013, Uruguay legalized cannabis and continued to neglect the concerns of the INCB [14]. In short, the INCB has lost its footing in ensuring States comply with treaties.

Secondly, although more authoritative than the INCB, the CND often clashes with other institutions and States, hindering the effort to make progress. It appears that the CND would ignore depositions from UN organizations such as the WHO and UN Women, and in an “outcome document,” a list of subjects to be debated in a later session, the CND excluded the term “harm reduction” despite 90 countries including aspects of harm reduction in their domestic policies [15]. What’s concerning about the present situation is that the CND, as demonstrated in the previous examples, does not have to consider the opinions of others when making decisions, hence explaining the hesitance of other States and agencies to oblige.

2.3. Lack of Cooperation Between Specialized Agencies

Lastly, international law and the UN fail to coordinate a combined effort from different specialized agencies. In 1998, the UN General Assembly ambitiously proclaimed that together, they would meet the challenge of the drug problem [16]. However, it paid a blind eye to the increasing violence erupting in Mexico, Colombia, and Guatemala because of its “war on drugs” policies; consequentially, instead of erasing narcotics from those regions, the UN has left the aforementioned States depleted of energy and skeptical of a collective international effort to deliver a drug-free world [15]. Although calling upon all States to implement appropriate strategies, the UN made no mention of anti-money laundering agencies, a subject heavily related to illegal drug trade; the most it mentions is the involvement of “international financial institutions” and the “strengthening of regional or subregional mechanisms” [16].

Feeble attempts are made to address the economic incentives for States to neglect efforts in suppressing narcotics. Aiming to rid Afghanistan of its opium poppy cultivation, the US (under the *Single Convention on Narcotic Drugs*) devoted “full weight of [its] military and purported policy ‘expertise’ backing eradication,” yet financial factors were not considered: opium poppy offered laborers decent wages at a time when decades of imperial conflict and ecological damages rendered irrigation systems ineffective [14]. While providing a financial lifeline for Afghans, this drug economy has encouraged corruption and worsened security due to the scope of the illicit drug market, and in response to rising levels of corruption, foreign governments took back millions of dollars instead of coordinating efforts from anti-corruption agencies [17]. In other words, attempts are made to suppress the illegal drug trade without integrating support from other specialized crime institutions in a world where such problems are connected. By mandating States to remove such an impactful element from the domestic economy without addressing issues of corruption, the UN creates an impossible mission that hardly contributes to the effort to control the buying and selling of illegal pills.

2.4. Conclusion

Although international law does acknowledge the pressing issue of uncontrolled global narcotic exchanges, its efforts prove incapable of restraining such a market. Current drug policies have hindered other socio-economic objectives all while the “war on drugs” continues to endanger the lives of millions [2]. International law has failed to solve the issue of transnational drug trade due to its

inability to enforce the implementation of conventions, the structural flaws of institutions, and the shortage of cooperation between agencies. Global institutions must first recognize that the drug-control regime is insufficient and a new international institution with the authority to determine specific state-to-state cooperation obligations must be implemented.

3. Solutions/Proposals

Given the continuing threat posed by the drug trade, countries must establish a new international program to provide real-time data sharing and coordinated drug trafficking interdiction.

While the drug trade has become a clear international issue, the international community has not been completely silent about it. One of the most representative organizations is the United Nations-founded Office on Drugs and Crime (UNODC). Although UNODC claims to maintain a positive position on documenting sets of data on drug overflow and accelerate international cooperation by using a shared set of data on drugs and crime issues, the information UNODC provides is limited when it comes to urging ongoing drug trafficking crime [18]. The scope of the sharing electronic resources website that the UNODC prompted the SHELOC is limited and only narrows down the database to drug offenses under the 15 crime types [18]. This means under the SHELOC sharing resources, it only comes across multiple legislative conventions and various states' laws on drug control [18]. This may serve as a data share to prevent and control the influx of drugs or to clarify the criteria for the influx of drugs, but it seems a bit unaggressive in the fight against ongoing drug crimes as the biggest international institution. More importantly, UNODC has the effect of merely regulating, collecting and harmonizing data on the types of drugs. When a drug crime does occur at the border, it has no authority to intervene immediately to resolve the matter. Modern drug trafficking-related crimes are not limited to the drug trade. The list of drug trafficking extended to "murder, firearms offenses, racketeering, conspiracy, bribery, tax evasion, banking violations, and money laundering" [18]. As drug traffickers flee through the borders carrying these possible crimes and abilities, organizations such as UNODC are certainly not the answer to the world's need to control the drug trade. Real-time and international police enforcement cooperation becomes crucial under the mission of suppressing drug trafficking-related crime.

3.1. Data Sharing

To accurately combat ongoing drug crime, it is clear that addressing only national drug entry policies, as UNODC does, is not ideal for ongoing drug trafficking crime, and being able to share real-time criminal data on a regulated international platform is significant for better efficiency on communication [19]. Cross-border requests for data normally have different standards and cumbersome processes, where there has not been a platform specifically for cooperating with drug trafficking real-time information. A database on crimes related to the international trade in drugs should contain information similar to a series of real-time detected locations for ongoing crime cases, which enables real-time monitoring and communication between states without any application. Such a platform allows efficient actions with its highly cooperative data communication.

Cases like this happened in October of 2020, the Mexican Navy had notified U.S. officials of a suspicious vessel off the coast of Colima, Mexico. "The Mexican Navy mobilized six vessels to the suspicious vessel, which was then boarded and inspected and found 1.1 metric tons of cocaine" [20]. Information obtained about drug dealers can also be uploaded to a database for research when they can't be located, or aren't able to take a course of action. The focus of this program is to specialize in the drug trade that is taking place and to combat it with precision, and in support of long-term research. Such a shared database not only speeds up the efficiency of capture operations but also makes it possible for drug crimes to be investigated regularly.

3.2. International Policing Force Corporation

To accomplish long-term cooperation between States, this consistent platform should not be limited to data sharing but also be a space for cohesive cooperation between various domestic drug enforcement agencies, which leads to real power in action. To increase the competence of this program and the efficiency of its actions, states could truly grant it more powers by gathering anti-narcotics branches of the national project of each country to work together on forces. For example, the U.S National Guard's counterdrug program contains international action intents that could be deployed to this international program, specifically work on international drug trade [21]. The bringing together of drug enforcement agencies or programs from different countries in such an organized manner ensures its professionalism and viability. When there is a regulated platform that can organize the anti-drug trafficking programs of various countries, regular communication globally on drug trafficking issues can be ensured. This guarantees the interaction of narcotics officers from various countries and would enhance the cooperation quality and frequency, which would be able to achieve the international cohesion needed for counter-drug trafficking.

When some small countries require equipment upgrades and high-level training, those leading powers in the program could contribute to a certain level of help. The cooperation between the United States and Mexico can be a good example of the form of this international cooperation. In the Merida Initiative between the United States and Mexico, under PILLAR ONE – Disrupt Capacity of Organized Crime to Operate, there are cases where Merida Initiative programs have donated "more than 500 canines to Mexican federal, state, and military entities, and sponsored training for canine and handler teams to detect weapons, ammunition, currency, and drugs" [22]. Regardless of the size of the country, if anti-narcotics forces in countries with a high incidence of drugs can be provided with the same training and better equipment as far as possible, and if anti-narcotics forces in various countries are closely linked and cooperate in their operations like a single department, then drug traffickers who are on the move internationally would be given more difficulties, and higher the chance of capturing.

3.3. Unified Framework Regarding Drug Trafficking

Not only is there enhancement on real-time apprehension of drug trafficking crimes, but the emergence of such a program would also provide for the consensus regarding the world's standards on drugs. The new platform, by uniting all countries that are suffering from drug trafficking, would be able to set a unified framework of global anti-drug trafficking by providing guidelines to member states regarding the implementation of their treaty responsibility. There would be a clear statement under the promotion of what kind of drugs should be prohibited domestically, no matter if it is planted or transmitted, to contribute effectively to striking international drug trafficking crime. This means not only drug-planting countries would be included, but "drug transmitting country" states like Bolivia can't get away when they should set limits on ephedrine and pseudoephedrine domestically [9].

In the fight against ongoing drug crimes, a centralized program with a high degree of cooperation among national anti-narcotics forces is well-placed to make transnational suppression of drug trafficking crime with effectiveness. But in the fight against drugs, cutting off the ongoing chain of trade is not the only thing that matters. The logic behind the drug trade permeates deeper political and economic issues that also need to be taken into account. Combining the combat against the ongoing drug trade with a reflection and overhauling of the political and economic structures of individual countries is the ultimate way to truly eliminate the drug trade.

Drugs, while a deadly crime, is also still a business, and drug cartels pursue the same thing from it as a legitimate business - money. The cartels need to launder their dirty money, and they also need

the help of government officials to keep their drug shipments running smoothly. This means that drug cartels have a strong incentive to commit two other crimes: money laundering and corruption.

To combat drug-related crime, existing international laws against money laundering and corruption should cooperate and look beyond the drug problem.

As a business, drug trafficking must be for profit. International cooperation against money laundering will help to reduce the obstacles to tracking drug cartels.

Tracing the flow of money is the easiest way to find a drug cartel. "Criminals are motivated by profit: so let us go after their money," said Mr. Costa [23]. And every transfer faces the risk of being discovered. Surveillance becomes necessary, but investigation organizations often face situations where banks refuse to cooperate with investigations on the grounds of "protecting customer privacy" [23]. Mr. Costa "called for more robust implementation of the... a crackdown on bank secrecy" [23].

3.4. History of Escalating Bank Secrecy

Switzerland, as a country with a well-developed banking sector, often used by transnational criminals to hide assets, until Switzerland ratified the *Convention on Mutual Administrative Assistance in Tax Matters* in 2016 [24]. The convention, besides signaling increased bank transparency, promised to supply account information on bank account holders and assist other states with tax audits. The Automatic Exchange of Information (AEOI) portal, signed in 2017, puts an end to the strict secrecy of Swiss banks, requiring that "tax administrations need to work together to ensure that taxpayers pay the right amount of tax to the right jurisdiction" [25]. Since then, the illicit assets in Swiss banks have been out of protection.

3.5. Problems and the Achievement of Cooperating

But there seems to be a problem. Although the extent of information exchange has increased with the above-mentioned process, the anti-drug does not seem to have a direct connection with money laundering. In many cases, drug trafficking is only regarded as a predicate crime of money laundering. Levi suggested: "Requirements on financial and other risk-prone institutions to report large cash and/or suspicious transactions to specialized police or administrative intelligence units" [26]. Suspicious transaction information shall be shared to facilitate the tracing of drug trafficking. Fortunately, the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* has already been appealing to countries to criminalize money laundering [27]. Moreover, in 1989, 16 countries in Paris formed the Financial Action Task Force (FATF), drawing up the original FATF Forty Recommendations in 1990 as an initiative to combat the misuse of financial systems by persons laundering drug money [28].

Cooperation between international organizations led to the 2016 capture of Joaquin "El Chapo" Guzman, the leader of one of the world's richest and most powerful drug cartels, Mexico's Sinaloa drug cartel. Throughout the manhunt, "a large part of the federal manhunt for El Chapo involved tracking the Sinaloa cartel's financials around the world, in particular all the ways it sought to launder its profits." [29], El Chapo's primary money laundering method was trade-based, and AML agents looked up the shell company's account information to identify suspicious transactions, and evidence of El Chapo's money laundering and drug trafficking has been found. [29]. The extent to which regional financial institutions and law enforcement agencies cooperate is a factor considered by drug traffickers when selecting a region for their activities: "Europe is a popular place for Mexican and Colombian drug traffickers to conduct business now because there is a lack of coordination and communication between countries in the European Union that criminals are exploiting." [29].

In the practice of anti-corruption of the border control department, a committee constituted by the two states to decide on personnel matters reduces drug-caused corruption.

3.6. Mechanisms in Corruption-lead Drug Trafficking

Considerable research has shown that the business of supplying contraband is linked to corruption to some extent. As Laurie Freeman notes, “organized crime cannot survive without corruption, and it looks for opportunities to create and deepen corruption.” [30]

The political situation in the U.S. and Mexico is also responsible for the proliferation of the corruption-led drug problem. A recent report claims that “arrests for corruption of CBP (U.S. Customs and Border Protection) personnel far exceed, on a per capita basis, such arrests at other federal law enforcement agencies” [31]. Drug cartels are willing to pay large sums of money to maintain their contacts with officials to keep their lucrative businesses free from law enforcement "interference". There have even been cases of Mexican cartels sending people to apply for and finally enter CBP positions [32,33]. Border corruption is categorized into six types based on the dimensions of perpetrators and means. Within these six types, informal groups of corruption are groups that engage in illegal actions (drug cartels fall under this category). The informal group is the most important issue to be addressed when discussing drug trafficking. [34]

Trust-building with border officers is the most common and effective method when drug smugglers want their drugs exempt from inspection.

“This is typically a recurring activity, based on some level of trust and strategic conspiracy between the corrupt partners. Here criminal syndicates intentionally develop relationships with officers, often starting with gifts and small favors and expanding into more serious and regular smuggling schemes [35]. The means may be different, but in the end, the goal of the drug cartel will always be "please let my batch of goods cross the border easily". This method has proven to be effective: in 59 drug-related border corruption cases, 49 occurred on the southern border where there is greater contact with drug cartels. [36]

3.7. Solutions

For states like the US and Mexico, cooperation is effective in ending the trust between criminals and corrupt officers. In the United Nations Convention Against Corruption, Article 48 Section 2, “States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them” [37].

Affected states can construct a committee that counts for nominations of personnel while a rotation also takes place within this committee. Enable it to have both stability of institutions and the anti-corruption abilities of the Itinerant model.

But these rules must include

- The chosen place must be confidential to avoid any contact between officer candidates and drug syndicates.

- The process of assignation needs to be done by the third party, in this case, the Committees constituted by the States of the two parties to decide on personnel matters. This restrains the trends of corruption infiltration of upper-level officers.

- Within the international organization, impel rotation positions and the segregation between the drug syndicates and the IO. It is also a means of hindering the process of building trust between drug cartels and law enforcement officials.

- Compose the assignation committee by both countries that share the border. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected. (Article 49 of the United Nations Convention against Corruption) On mutual respect for the sovereignty of States.

4. Conclusion

In conclusion, the transnational drug trade is a major problem under global governance that requires the attention and cooperation of the international community. The present anti-drug regime has not been able to effectively address this problem because of limitations of international law, structural deficiencies in institutions, and the lack of cooperation between agencies.

To address these problems, a new international body with the authority to address the allocation of responsibilities for cooperation between States should be formed. This organization should be able to provide real-time data-sharing and coordinate drug interdiction to effectively combat the drug trade. It should also be possible to implement a system of reporting suspicious transfers to the police by financial and risk-prone institutions. The international community should also be noticed of the role of anti-money-laundering and anti-corruption in counter-narcotics efforts and work to promote global or regional cooperation.

In summary, the international community must take a more coordinated and comprehensive approach to addressing the transnational drug trade. This includes the implementation of new international institutions, requirements for financial institutions, and the involvement of anti-money-laundering and anti-corruption bodies. Failure to do so will continue to cost countless lives and cause permanent social and economic damage.

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