

RUNNING HEAD: Drug Trafficking and the ICC

The Most International of International Crimes: Toward the Incorporation of Drug Trafficking into the Subject Matter Jurisdiction of the International Criminal Court

George S. Yacoubian, Jr., Ph.D.¹

¹ George S. Yacoubian, Jr., is a research scientist with the Pacific Institute for Research Evaluation (PIRE) in Calverton, MD. Address correspondence to: Dr. George S. Yacoubian, Jr., PIRE, 11710 Beltsville Drive, Suite 300, Calverton, MD, 20705, (301) 755-2790, (301) 755-2799 – Fax, or by email to gyacoubian@pire.org.

Introduction

At the 2004 annual meeting of the American Society of Criminology, I presented an article on drug trafficking and its implications for the international legal and social science community.² During that presentation, several audience members commented that the analysis would be considerably stronger with international drug data. While there are few reliable sources for this type of information, they do exist. This essay thus represents a current summary of the drug use and abuse prevalence data, both internationally and in the United States. Given the state of the drug problem across the globe, the argument for the incorporation of drug trafficking into the subject matter jurisdiction of the International Criminal Court (ICC) is significantly more persuasive.

The international legal community worked toward the creation of a permanent international criminal court for most of the 20th century.³ The goal of establishing a permanent institution to prosecute the most egregious violations of international criminal

² An earlier version of this manuscript was presented at the 2004 annual meeting of the American Society of Criminology and subsequently published in the *International Journal of Comparative Criminology* 3(2): 175-190.

³ E. Chadwick, *A Tale of Two Courts: The 'Creation' of a Jurisdiction*, 9 J. Conflict & Security L. 71 (2004); G. Yacoubian, *Toward the Prosecution of Terrorists before the International Criminal Court: Resisting the Slippery Slope of Jurisdictional Cacophony*, 12 Critical Criminologist 12 (2003); M.C. Bassiouni, *Policy Perspectives Favoring the Establishment of the International Criminal Court*, 52 J. Intl. Affairs 795 (1999); D.J. Scheffer, *Developments in International Criminal Law: The United States and the International Criminal Court*, 93 Am. J. Intl. L. 12 (1999); J. Fowler, *The Rome Treaty for an International Criminal Court: A Framework of International Justice for Future Generations*, 6 Human Rights Br. 1 (1998); B.F. MacPherson, *Building an International Criminal Court for the 21st Century*, 13 Conn. J. Intl. L. 1 (1998); M.C. Bassiouni, *From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court*, 10 Harv. Human Rights J. 112 (1997); M.C. Bassiouni, *Establishing An International Criminal Court: Historical Survey*, 149 Mil. L. Rev. 49 (1995); M.P. Scharf, *Getting Serious About an International Criminal Court*, 6 Pace Intl. L. Rev. 103 (1994); M.C. Bassiouni & C.L. Blakesley, *The Need for an International Criminal Court in the New International World Order*, 25 Vand. J. Transnatl. L. 151 (1992); B. Ferencz, *An International Criminal Code and Court: Where They Stand and Where They're Going*, 30 Colum. J. Transnatl. L. 375 (1992); W.N. Gianaris, *The New World Order and the Need for an International Criminal Court*, 16 Fordham Intl. L. J. 88 (1992); M.C. Bassiouni, *The Time Has Come for an International Criminal Court*, 1 Ind. Intl. & Comp. L. Rev. 1 (1991); M.C. Bassiouni, *The Penal Characteristics of Conventional International Criminal Law*, 15 Case W. Res. J. Intl. L. 27 (1983); V. Pella, *Towards an International Criminal Court*, 44 Am. J. Intl. L. 37 (1950); G. Schwarzenberger, *The Problem of an International Criminal Law*, 3 Current Problems 263 (1950).

law culminated with the formation of the ICC.⁴ Established during the summer of 2002, the subject matter of the ICC includes four categories of offenses – the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.⁵ These four categories of offenses are eligible for prosecution before the ICC because they violate fundamental humanitarian principles and, arguably, constitute the most serious crimes of international concern.

The Court's subject matter jurisdiction (SMJ) is limited to only these four categories of offenses. One other crime of international significance – drug trafficking – is ineligible for prosecution before the ICC. Given the scourge of drug trafficking across the international community and the financial and personal harms that inevitably result from drug-related offenses, this is a shameful exclusion. Part I of this essay discusses the prevalence, associated harms, and costs of illicit drug use worldwide. Cross-sectional and longitudinal data are presented to illustrate the illimitable nature of the problem. Part II reviews the major narcotics conventions authored during the 20th century and the efforts undertaken by the international community to address the international drug problem. Part III presents a history of the ICC and reviews the work undertaken by the ICC to date. Part IV presents the arguments for and against expanding the SMJ of the ICC to incorporate drug trafficking. Given that modern states are part of an interdependent, international community, it seems evident that drug trafficking is, by any objective standard, the most international of international crimes and should fall under the SMJ of the ICC.

⁴ See <http://www.icc-cpi.int/> (accessed May 22, 2005).

⁵ United Nations, www.un.org/law/icc/index.html (accessed Nov. 18, 2005).

Prevalence and Associated Harms of Illicit Drug Use

The illicit drug trafficking industry generates more than \$500 billion a year.⁶ In addition to the individual health risks associated with illicit drug use and the subsequent impact of those problems on society's health care systems, major consequences include the corruption of government officials, environmental destruction, the destabilization of governments, murder, terrorism, money laundering, and other criminal offenses, the proliferation of human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), and other sexually transmitted diseases, and the burdens imposed on national criminal justice systems.⁷ As the Bureau of International Narcotics and Law Enforcement Affairs recently noted, “. . . the drug trade has long been the mainstay of violent political insurgencies, rogue regimes, international terrorist organizations, and terrorists of every stripe.”⁸

Drug trafficking is, by its very nature, an international problem. Illicit drugs are produced or manufactured in host countries, transported across others, and ultimately consumed across the globe. There are no locations that are “immune from the reach of the traffickers and the harms their illicit activities produce.”⁹ Moreover, the path is not unidirectional. While cocaine and heroin, for example, are typically produced in South America and Asia for ultimate consumption in the United States (US), the US manufactures significant quantities of methamphetamine for international exportation. This multidirectional path is significant because it illustrates that there is no single victim

⁶ R.K. Nayak, *Evolving Global Drug Law for the 21st Century*, in *Global Drugs Law* (D.C. Jayasuriya, A. Wells, & R.K. Nayak eds., Har-Anand Publications 1997).

⁷ *Id.*

⁸ Bureau for Intl. Narcotics & L. Enforcement, *The Nexus Between Drug Trafficking and Terrorism* (U.S. Dept. State 2003).

⁹ M. McConville, *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).

or victimizer. All states, to some degree, contribute to the propagation of illicit drugs and experience the problems associated with their proliferation. This multidirectional path likewise suggests that solutions to drug trafficking require the cooperation of all nations and that the international community, as an aggregate entity of burdened parties, would ultimately reap the rewards of such cooperation. To demonstrate the magnitude of the international drug problem, a summary of the empirical evidence is reviewed below.

International

The UN has estimated that approximately 185 million people worldwide – approximately 3% of the global population or almost 5% of persons between the ages of 15 and 64 – consumed illicit drugs at least once during the past 12 months.¹⁰ This total includes approximately 150 million cannabis users, 30 million people consuming amphetamine-like substances (amphetamines, methamphetamine, and ecstasy), 13 million people using cocaine, and 15 million people abusing opiates, nine million of whom are taking heroin.¹¹ Globally, 0.4% of deaths (200,000 persons) and 0.8% of Disability Adjusted Life Years (11.2 million persons) are attributed to illicit drug use annually.¹² Illicit drugs account for the highest proportion of disease burden among low mortality, industrialized countries in the Americas, Eastern Mediterranean, and European regions.¹³ Economic reliance on the drug trade, combined with addiction to illicit drugs, leaves many persons vulnerable to exploitation by criminals and criminal organizations

¹⁰ United Nations, *2004 World Drug Report* (United Nations 2005).

¹¹ *Id.*

¹² World Health Org., http://www.who.int/substance_abuse/facts/psychoactives/en/ (accessed Nov. 18, 2005).

¹³ *Id.*

and threatens the health of men, women and children, the rule of law, and ultimately, the vitality and strength of the international community.

Marijuana is the most widely produced and distributed illicit drug worldwide. While precise production data are not available, more than two-thirds of the 86 countries that reported marijuana consumption trends to the UN in 2002 reported an increase of abuse from their 2001 rates.¹⁴ The data also indicate that marijuana seizures increased by more than 40 percent between 1998 and 2001.¹⁵ These findings should not be surprising. Because marijuana use laws have become increasingly relaxed in parts of Europe, it is logical that experimentation and/or abuse have increased. In 1976, the Netherlands adopted a formal policy of nonenforcement for violations involving the possession or sale of up to 30 grams (lowered to five grams in 1995) of marijuana. This policy is referred to as depenalization.¹⁶ By the mid-1980s, small retail outlets (coffee shops) were permitted to sell marijuana legally, a policy referred to as *de facto* legalization.¹⁷ While depenalization had virtually no effect on levels of marijuana use, sharp increases of marijuana use were witnessed between 1984 and 1996 when commercial access to marijuana (via the coffee shops) increased. For persons between the ages of 18 and 20, for example, 30-day marijuana use increased from 8.5 percent to 18.5 percent.¹⁸ These findings are consistent with the hypothesis that relaxed enforcement of marijuana sales and possession laws lead to increases in marijuana consumption.

Cocaine production, while having decreased in Bolivia and Peru (two of the three countries that supply the world's illicit cocaine), increased fivefold in Colombia during

¹⁴ United Nations, *Global Illicit Drug Trend 2003* (United Nations 2003).

¹⁵ *Id.*

¹⁶ Robert J. MacCoun & Peter Reuter, *Drug War Heresies* (Cambridge U. Press 2001).

¹⁷ *Id.*

¹⁸ *Id.*

the 1990s.¹⁹ While the prevalence of cocaine use has stabilized in the US, demand for the product has increased in other regions of the world, primarily Western Europe.²⁰ As noted by the UN, “the share of West Europe in global cocaine seizures more than doubled between 1998 and 2001, rising from 8 percent to 17 percent during that period,” while, “the majority of West European countries reported an increase in cocaine abuse for the year 2001.”²¹

No progress has been made with the reduction of opium production. In 2002, 4,500 metric tons of illicit opiates were produced around the world, a slight increase from the 4,400 metric tons produced in 1998.²² In 2002, more than three-quarters (76 percent) of the world’s opium was produced by Afghanistan, followed by Myanmar (18 percent) and other countries (6 percent).²³ The production and use of amphetamines, particularly methamphetamine and ecstasy,²⁴ is increasing. The major distinction between amphetamines and traditional plant-derived drugs, like marijuana, is that production of the latter involves the use of readily available chemicals synthesized in clandestine laboratories. In 2001, more than half of all countries reporting to the UN reported an increase in methamphetamine consumption.²⁵ The ecstasy problem is curious. While the use of ecstasy increased sharply across the world during the 1990s, particularly within specific populations,²⁶ seizures have declined during the past two years, primarily in the

¹⁹ *Supra* note 14.

²⁰ *Id.*

²¹ *Id.* at 8.

²² *Id.*

²³ *Id.*

²⁴ G. Yacoubian, *The Global Proliferation of Ecstasy*, 1 Intl. J. Comp. Criminology 127 (2001).

²⁵ *Supra* note 14.

²⁶ G. Yacoubian, J. Deutsch, & E. Schumacher, *Estimating the Prevalence of Ecstasy use Among Club Rave Attendees*, 31 Contemporary Drug Problems 163 (2004); G. Yacoubian, C.L. Boyle, C.A. Harding, & E.A. Loftus, *It’s a Rave New World: Estimating the Prevalence and Perceived Harm of Ecstasy and Other*

US and Western Europe.²⁷ The production of ecstasy, once concentrated almost exclusively in Western Europe – particularly The Netherlands and Belgium – has now diffused to Southeast Asia, Africa, and the Near and Middle East.²⁸

The illicit drug trade impacts millions of lives, in both developed and developing countries. The most negative impact of the illicit drug enterprise is concentrated within the most vulnerable and marginalized nations across the globe. Regional and country-specific drug-related findings are presented below.

Africa

While the primary problem in Africa is marijuana, the use of cocaine, heroin and amphetamines is increasing in many of the countries in the region.²⁹ In addition, the drug abuse problem, exacerbated by inadequate drug control legislation and weak control measures throughout the continent, has contributed to the severe HIV/AIDS crisis in Africa.³⁰ While the production and trafficking of marijuana impacts the entire region, it constitutes a significant commercial crop in Comoros, Ethiopia, Kenya, Madagascar, Uganda, and the United Republic of Tanzania, where it is ultimately smuggled into Europe.³¹ Unlike marijuana, the presence of cocaine and heroin in Africa is transitory, entering Southern, Western, and Eastern Africa through South America and Asia before

Drugs Among Club Rave Attendees, 33 J. Drug Educ. 187 (2003); A. Arria, G. Yacoubian, E. Fost, & E.D. Wish, *Ecstasy Use among Club Rave Attendees*, 156 Archives Pediatrics & Adolescent Med. 295 (2002).

²⁷ *Supra* note 14.

²⁸ *Id.*

²⁹ United Nations, *Report of the International Narcotics Control Board for 2004* (United Nations 2005).

³⁰ *Id.*

³¹ *Id.*

continuing onto Europe and North America. Record cocaine seizures and increased heroin trafficking were reported in Africa during 2004.³²

Central America and the Caribbean

The drug of choice in Central America and the Caribbean, with respect to both use and trafficking, is cocaine.³³ Law enforcement authorities in the Netherlands Antilles and Aruba, for example, seized almost 5,000 kilograms of cocaine in 2003, a 150 percent increase from the 2,000 kilograms seized in 2002, while in Honduras, cocaine seizures increased from an average of 1,500 kilograms between 1997 and 2002 to more than 5,000 kilograms in 2003.³⁴ Increased cocaine trafficking has also spurred an increase in violent crime among youth gangs. With an estimated 70,000 members, primarily in El Salvador, Guatemala, and Honduras, recent legislation has been enacted criminalizing gang membership.³⁵ Haiti, despite the formation of a new government in early 2004, continues to be an area characterized by ineffective law enforcement. These poor controls have resulted in Haiti “. . . becoming a key drug trafficking hub in Central America and the Caribbean.”³⁶

South America

Marijuana and cocaine are the primary drugs of choice for cultivation and use. It was estimated that a total of 655 tons of cocaine were manufactured in South America in

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 43.

2003.³⁷ Most of the cocaine production takes place in Columbia, although its cultivation takes place across the entire continent, with the exception of Paraguay and Uruguay.³⁸ The transnational quality of drug trafficking is no more evident than with cocaine. Increasing amounts of cocaine from Brazil and Colombia are smuggled through Portugal into Angola and Mozambique with an ultimate destination of South Africa.³⁹ It has also been reported that cocaine from South America is being trans-shipped through Africa to Europe.⁴⁰

Asia

Although the production of opium declined in Southeast Asia between 2003 and 2004, the manufacturing of methamphetamine and ecstasy has increased.⁴¹ That said, in Cambodia, China, Thailand, and Vietnam, abuse of heroin has replaced that of opium. Data from treatment providers indicate that heroin is the primary drug of choice for persons receiving treatment.⁴² Because heroin is the drug of choice for injection drug users, and because rates of needle sharing has been reported as high as 50 percent, there is increased concern in Southeast Asia regarding the transmission of HIV and AIDS.⁴³

In South Asia, marijuana, opium, and narcotic-based pharmaceuticals are most prevalent.⁴⁴ Bangladesh, Nepal, and India, for example, are critical hubs for marijuana trafficking. Additional evidence of the transnational theme is found in this region. The international airports in New Delhi and Mumbai, among others, are used by trafficking

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

groups to ship heroin to countries in Eastern and Western Africa, West Asia, and Europe.⁴⁵

In West Asia, marijuana and opium production are the central problems. In Afghanistan, for example, where the culture is dominated by the illicit drug trade, opium production and related activities reached epidemic proportions in 2004 and threaten its social and economic stability.⁴⁶ In 2003, Afghanistan's crop of 3,600 tons of opium accounted for more than 75 percent of the world's opium production.⁴⁷ The total area in Afghanistan under opium cultivation increased by more than 60 percent, from 80,000 hectares in 2003 to more than 130,000 in 2004.⁴⁸ In Iran, heroin use and problems stemming from its injection (e.g., HIV/AIDS) continue to increase, while Pakistan has one of the highest heroin prevalence rates in the world.⁴⁹

Europe

The use and abuse of marijuana has increased throughout Europe during the past decade.⁵⁰ Nearly 29 million persons in Europe, or slightly more than 5 percent of the population, reported marijuana abuse during the previous 12 months.⁵¹ In addition, the cocaine, heroin, and amphetamine use have increased within the past decade, primarily in Central and Eastern Europe. In 2003, for example, 32 clandestine laboratories, more than 75,000 ecstasy tablets, and 7,300 doses of methamphetamine were seized in the Czech

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

Republic.⁵² Moreover, there are more than one million heroin abusers in the Russian Federation, making that country the largest heroin market in Europe.⁵³

Oceania

In Australia and New Zealand, there have been significant increases in the production and use of methamphetamine, ecstasy, and other “club drugs,” such as Ketamine and gamma hydroxybutyrate (GHB). In addition, marked seizures of precursors for amphetamine-like drugs, such as ephedrine and pseudoephedrine, have also been reported.⁵⁴ Methamphetamine abuse in New Zealand has also been linked to an increase in violent and property crime.⁵⁵

North America

Marijuana is the most abused drug in North America (Mexico, Canada, and the United States). Law enforcement authorities in Canada have reported that the cultivation of marijuana is one of their primary drug-related problems, having reached epidemic proportions in some provinces.⁵⁶ In Mexico, the total amount of cocaine seized by the Government increased by more than 75 percent between 2002 and 2003, from 12,600 kilograms to 21,000 kilograms.⁵⁷ An increase in the manufacturing and use of amphetamine-like drugs, including ecstasy, has also been reported in Canada and Mexico.⁵⁸

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Supra* note 29.

⁵⁷ *Id.*

⁵⁸ *Id.*

Data on the prevalence of illicit drug use in the United States, the world's largest single market for illicit drugs,⁵⁹ come from four major data collection efforts, each of which provides information on a specific population. The National Survey on Drug Use and Health (NSDUH)⁶⁰ generates self-report survey estimates of drug use among household members ages 12 and older.⁶¹ Since the 1970s, Monitoring the Future (MTF) has surveyed more than 50,000 grade school, high school, and college students annually on their drug-using beliefs, attitudes, and behaviors.⁶² The Drug Abuse Warning Network (DAWN) is an annual probability survey of drug-related patients treated in hospital emergency departments (ED)⁶³ and drug-related death data collected from a sample of medical examiners' and coroners' offices.⁶⁴ Finally, the Arrestee Drug Abuse Monitoring (ADAM) Program has collected self-report drug use data and urine specimens from adult and juvenile arrestees nationwide since 1987.⁶⁵ Discontinued at the end of calendar year 2003, the ADAM Program was the only surveillance system in the US to collect both self-report and objective (urine specimens) drug use measures.⁶⁶

In 2002, an estimated 19.5 million Americans aged 12 or older, or 8.3 percent of the population, were current (past 30-day) illicit drug users.⁶⁷ Marijuana is the most

⁵⁹ *Id.*

⁶⁰ Formerly the National Household Survey on Drug Abuse.

⁶¹ Substance Abuse & Mental Health Servs. Administration, *Results from the 2003 National Survey on Drug Use and Health: National Findings* (U.S. Dept. Health & Human Servs. 2004).

⁶² Lloyd D. Johnston, Patrick M. O'Malley, & Jerald G. Bachman, *Monitoring the Future National Survey Results on Drug Use, 1975-2003, Volume I: Secondary School Students* (Natl. Inst. Drug Abuse 2004).

⁶³ Substance Abuse & Mental Health Servs. Administration, *Emergency Department Trends from the Drug Abuse Warning Network, Final Estimates 1995-2002* (U.S. Dept. Health & Human Servs. 2003).

⁶⁴ Substance Abuse & Mental Health Servs. Administration, *Mortality Data from the Drug Abuse Warning Network* (U.S. Dept. Health & Human Servs. 2003).

⁶⁵ G. Yacoubian, *The Sins of ADAM: Toward a New National Criminal Justice Drug Use Surveillance System*, 3 Intl. J. Drug Testing, <http://www.criminology.fsu.edu/journal/volume3.html> (2004); Natl. Inst. Just., *2000 Arrestee Drug Abuse Monitoring Annual Report* (U.S. Dept. Just. 2003); G. Yacoubian, *Assessing ADAM's Domain: Past, Present, & Future*, 27 Contemporary Drug Problems 121 (2000).

⁶⁶ *Id.*

⁶⁷ *Supra* note 61.

prevalent illicit drug within the American household population, with 2,500 tons of the drug produced in the United States annually⁶⁸ and 6.2 percent of persons 12 or older reporting its use during the past 30 days.⁶⁹ Of the 14.6 million Americans who reported using marijuana in the 30 days preceding the interview, about one-third used it at least 20 of those 30 days.⁷⁰ Following marijuana, there were two million current cocaine users, 1.2 million current hallucinogen users [e.g., phencyclidine (PCP)], and 166,000 current heroin users.⁷¹ The rate of illicit drug use within the household population was highest among persons between the ages of 18 and 25, at 20.2 percent.⁷² In 2002, 11 million persons, or 4.7 percent of persons 12 and older, reported driving under the influence of an illicit drug at least one time during the 12 months preceding the interview.⁷³ Finally, the percentage of lifetime marijuana use among persons aged 18 to 25 increased from 53.0 percent in 2001 to 53.8 percent in 2002, while lifetime cocaine use increased from 14.9 percent to 15.4 percent.⁷⁴

In 2002, 21.5 percent of college students, 25.4 percent of 12th graders, 20.8 percent of 10th graders, and 10.4 percent of 8th graders reported the use of at least one illicit drug during the past 30 days.⁷⁵ Not surprisingly, the most prevalent current illicit drug among all four subgroups was marijuana – 19.7 percent for college students, 21.5 percent, for 12th graders, 17.8 percent for 10th graders, and 8.3 percent for 8th graders.⁷⁶

⁶⁸ *Supra* note 29.

⁶⁹ *Supra* note 61.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Supra* note 62.

⁷⁶ *Id.*

The prevalence of all other illicit drugs – including PCP, ecstasy, cocaine, and heroin – was less than three percent across all four subgroups.⁷⁷

In 2002, there were more than 670,000 drug-related ED episodes in the US.⁷⁸ Slightly more than eight out of every 10 (81 percent) ED mentions came from seven categories: alcohol-in-combination, cocaine, heroin, marijuana, benzodiazepines, antidepressants, and analgesics.⁷⁹ In 2002, cocaine was a factor in 30 percent of all ED episodes, followed by marijuana (18 percent), and heroin (14 percent).⁸⁰ Between 2001 and 2002, ED mentions of cocaine, heroin, and methamphetamine were unchanged, while a 17 percent increase was witnessed among amphetamines.⁸¹ In 2001, 33 out of the 42 DAWN metropolitan areas reported at least 30 drug abuse deaths, with significant increases reported in Wilmington, Providence, Buffalo, and Denver between 2000 and 2001.⁸² Heroin and cocaine were the two most frequently mentioned drugs in reported deaths.⁸³

In 2000, 64 percent or more of adult male arrestees, in more than half of the 35 ADAM sites, tested positive by urinalysis for at least one of five drugs: cocaine, marijuana, opiates, methamphetamine, or PCP.⁸⁴ As measured by urinalysis, cocaine and marijuana were the two most prevalent illicit drugs.⁸⁵ Between 25 and 50 percent of all adult male arrestees were found to be at risk for drug dependence, while among those female arrestees who used alcohol or illicit drugs, approximately 50 percent were

⁷⁷ *Id.*

⁷⁸ *Supra* note 63.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Supra* note 64.

⁸³ *Id.*

⁸⁴ *Supra* note 64.

⁸⁵ *Id.*

diagnosed as drug dependent.⁸⁶ Mirroring the results from MTF and the NSDUH, marijuana was the prevalent drug among the juvenile arrestee population.⁸⁷ Among adult and juvenile arrestees, cocaine, marijuana, and heroin use rates have remained fairly constant during the past decade, while the use of methamphetamine, primarily within Western ADAM sites, has increased dramatically.⁸⁸

These four drug surveillance systems are the primary tools used by the United States government to develop national drug control policy. Taken collectively, they provide a comprehensive snapshot of drug use in the US. While natural fluctuations have occurred during the past three decades, within all of the populations served by these surveillance systems, there is only one reasonable conclusion that can be drawn from the body of drug use prevalence data we have at our disposal – that significant drug use problems continue to plague all sectors of American society.

The International Drug Control System

The current international drug control system is voluntary and relies exclusively on state cooperation. While there are international agreements that proscribe the manufacturing and trafficking of illicit drugs, there are currently no mechanisms in place to enforce those prohibitions. That said, the 20th century witnessed the general condemnation of illicit drug trafficking and the development of more than a dozen international instruments addressing the phenomenon.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

The Shanghai Opium Commission of 1909 was convened to address the international problems resulting from Chinese opium.⁸⁹ Though no formal agreements were enacted, the Commission provided the foundation for the 1912 Opium Convention,⁹⁰ which was the first attempt to establish international cooperation in the control of narcotic drugs. Ratification of the Treaty of Versailles⁹¹ after the First World War implied the ratification of the Opium Convention. In addition to these two early attempts at opium control, Article 23 of the League of Nations Covenant provided that members should, “entrust the League with the general supervision over agreements with regard to . . . traffic in opium and other dangerous drugs.”⁹²

The two decades preceding the Second World War yielded three Conventions related to illicit drugs: the International Opium Convention of 1925,⁹³ the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 1931,⁹⁴ and the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs of 1936.⁹⁵ The 1925 Convention required states to submit to the newly created Permanent Central Opium Board data related to the production of opium and other narcotics.⁹⁶ This was the first attempt by the international community to provide empirical evidence regarding the scope of the opium and narcotic problem. The 1931 Convention was designed to restrict the manufacture of narcotics to only those quantities needed for

⁸⁹ M. Cherif Bassiouni, *Intl. Crim. Law, Vol. I* (Transnatl. Publishers 1999).

⁹⁰ Intl. Opium Convention, Jan. 23, 1912, 38 Stat. 1921, 8 L.N.T.S. 187 [hereinafter Opium Convention].

⁹¹ Treaty of Peace Between the Allied and Associated Powers and Germany, June 28, 1919, 11 Martens Nouveau Recueil 323.

⁹² The Covenant of the League of Nations, June 28, 1919, 11 Martens Nouveau Recueil 323, 13 Am. J. Intl. L. 128 (1919).

⁹³ International Opium Convention of 1925, 81 L.N.T.S. 317 [hereinafter the 1925 Convention].

⁹⁴ Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 1931, 139 L.N.T.S. 301 [hereinafter 1931 Convention].

⁹⁵ Convention for the Suppression of the Illicit Traffic in Dangerous Drugs of 1936, 198 L.N.T.S. 229 [hereinafter 1936 Convention].

⁹⁶ *Supra* note 93.

medical and scientific needs.⁹⁷ The 1936 Convention – the final narcotics-related treaty enacted under the League of Nations – enacted measures to facilitate extradition for drug offenses.⁹⁸

There have been six primary agreements related to drug trafficking initiated under the auspices of the UN: the Paris Protocol of 1948,⁹⁹ the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of International and Wholesale Trade in, and Use of Opium of 1953,¹⁰⁰ the 1961 Single Convention on Narcotic Drugs,¹⁰¹ the 1972 Protocol Amending the Single Convention on Narcotic Drugs,¹⁰² the 1971 Convention on Psychotropic Substances,¹⁰³ and the 1988 Drug Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.¹⁰⁴ The 1948 Protocol authorized the World Health Organization (WHO) to control any drug that had addiction propensity,¹⁰⁵ while the 1953 Protocol eliminated legal overproduction of opium through the indirect method of limiting the stock of the drug maintained by individual countries.¹⁰⁶

The 1961 Single Convention is the most significant effort undertaken to date to control narcotics. The objectives of the 1961 Single Convention were threefold: (1) to codify all preexisting drug-related treaties; (2) to create the International Narcotics

⁹⁷ *Supra* note 94.

⁹⁸ *Supra* note 95.

⁹⁹ Paris Protocol of 1948, 44 U.N.T.S. 277 [hereinafter 1948 Protocol].

¹⁰⁰ Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of International and Wholesale Trade in, and Use of Opium of 1953, U.N. Doc. E/N.T. 18 [hereinafter 1953 Protocol].

¹⁰¹ Single Convention on Narcotic Drugs, 18 U.S.T. 1407, Mar. 30, 1961 [hereinafter 1961 Single Convention].

¹⁰² 1972 Protocol Amending the Single Convention on Narcotic Drugs, 976 U.N.T.S. 3 [hereinafter 1972 Protocol].

¹⁰³ Convention on Psychotropic Substances, 1019 U.N.T.S. 175, Feb. 21, 1971 [hereinafter 1971 Convention].

¹⁰⁴ 1988 Drug Convention Against Illicit Traffic in Narcotics and Psychotropic Substances, U.N. Doc. E/CONF.82/15, Dec. 20, 1988 [hereinafter 1988 Convention].

¹⁰⁵ *Supra* note 99.

¹⁰⁶ *Supra* note 100.

Control Board (INCB) as an organ for simplifying international drug control machinery and to generally monitor the international drug trafficking problem; and (3) to extend the existing control systems to include the raw materials that are used to cultivate narcotics.¹⁰⁷ While the 1961 Single Convention instituted a system of drug control at the international level and gave member states the responsibility of enforcing those measures nationally, it was still severely limited because it, first, relied exclusively on the faithful cooperation of the signatories, and second, provided no international enforcement machinery.¹⁰⁸

Under the 1961 Single Convention, only opium, cocaine, and marijuana were subject to regulation. Because the use and abuse of a variety of other substances increased during the 1960s, the 1971 Convention broadened the schedule of controlled substances to all drugs that had psychoactive effects, including amphetamines, sedatives, hypnotics, tranquilizers, and hallucinogens.¹⁰⁹ Specific control mechanisms, however, remained identical to those from the 1961 Single Convention.

By the late 1980s, the global community realized that it was ill-equipped to address the enormity of the drug problem. More importantly, it realized that better international cooperation was needed. The 1988 Convention was designed to address the limitations of the previous Conventions. Officially recognizing drug trafficking as an international crime, the primary objectives of the 1988 Convention were: (1) to standardize the definitions and range of drug-related offenses; (2) to improve cooperation among relevant parties, including customs, police, and the judiciary; and (3) to provide

¹⁰⁷ *Supra* note 101.

¹⁰⁸ *Id.*

¹⁰⁹ *Supra* note 103.

these authorities with the legal means necessary to interdict against drug trafficking.¹¹⁰ In addition, the 1988 Convention articulated a list of eligible offenses, including: (1) the traditional range of drug trafficking offenses (production, distribution, and possession with intent to deliver); (2) trafficking in the equipment, materials, and chemicals used for illicit drug manufacturing and trafficking; (3) money laundering offenses; and, (4) the possession of drugs for personal consumption. Finally, states were required to criminalize all offenses prohibited by the 1988 Convention.¹¹¹

In addition to the major international conventions, the World Health Assembly (WHA) – the supreme decisionmaking body for the WHO – enacted several resolutions related to the illicit drug problem. Passed during the 43rd WHA Assembly, WHA43.11 (Reduction of Demand for Illicit Drugs) recognized that “international cooperation is essential to combat drug use and illicit trafficking” and urged member states to monitor trends in drug abuse,¹¹² develop comprehensive prevention programs,¹¹³ and promote and facilitate access to drug treatment and strengthen the ability of health care systems to respond to drug-related health problems.¹¹⁴

Approximately 150 states participate in at least one of the three major Conventions authored during the 20th century,¹¹⁵ suggesting that there is agreement among the world’s nations that drug-related problems do exist and that the international community is committed, at least on paper, to the resolution of these problems. Unfortunately, while there is international agreement among states regarding what

¹¹⁰ *Supra* note 104.

¹¹¹ *Id.*

¹¹² WHA43.11, §1(2)(a).

¹¹³ WHA43.11, §1(2)(b).

¹¹⁴ WHA43.11, §1(2)(c).

¹¹⁵ *Id.*

activities should be prohibited, there is little cooperation among states with respect to mechanisms of enforcement. Because there is no universal entity to enforce drug trafficking prohibitions, the notion of international drug control is illusory and is, effectively, a system without teeth.

International Criminal Court

The 20th century demonstrated the harsh reality that the global community had failed to create a mechanism to enforce international humanitarian law. Most violations of the established norms of international behavior, such as the crime of genocide, war crimes, and crimes against humanity, are committed with the complicity of the state and its leadership.¹¹⁶ The Hague Conventions of 1899 and 1907 were the first significant codifications of the laws of wars in an international treaty. The Conventions, however, failed to create a permanent international criminal court with jurisdiction that would transcend national boundaries, primarily because sovereign nations were unwilling to be bound by the judgments of an international judicial authority. The United States, for example, persistently claimed that it “reserved the right to resolve any purely American issue.”¹¹⁷

Between 1946 and 1996, the UN led the efforts to codify certain international crimes. Immediately after World War II, the US sponsored Resolution 95(I), which recognized the principles of international law contained in the Nuremberg Charter.¹¹⁸ In 1948, the General Assembly (GA) directed the International Law Commission (ILC) to

¹¹⁶ Benjamin B. Ferencz, *New Legal Foundations for Global Survival: Security Through the Security Council*, at 67 (Oceana Publications 1994).

¹¹⁷ Howard Ball, *Prosecuting War Crimes and Genocide: The Twentieth Century Experience*, at 14 (U. Press Kan. 1999).

¹¹⁸ *Supra* note 89.

formulate the principles of international law in a draft code of offenses, while a special rapporteur was assigned to formulate a Draft Statute for the Establishment of the International Criminal Court.¹¹⁹ While many nations supported the establishment of a permanent international criminal court, its creation was unattainable without the consensus of the world's superpowers.

Various draft reports were produced between the 1950s and 1980s, but it was not until 1989 that the GA was faced again with the question of an international criminal court when Trinidad and Tobago proposed to address international drug trafficking. The ILC persevered in developing the limited 1989 mandate related to illicit drug trafficking, which eventually evolved into the Draft Statute for an International Criminal Court.¹²⁰ It was this draft that served as the basis for the GA's decision to establish the Ad Hoc Committee on the Establishment of an International Criminal Court and then the Preparatory Committee for the Establishment of an International Criminal Court.¹²¹

On July 17, 1998, the Rome Statute was adopted at the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.¹²² Of the 148 nations in attendance, 120 voted in favor of the court, and 7 against, with 21 abstentions.¹²³ Ratification obligates a state to cooperate with the Court and to accept the Courts complementary jurisdiction over crimes committed in its territory. As of May 12, 2005, 99 nations had ratified the treaty.¹²⁴

There are two primary reasons why states have elected not to ratify the ICC

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Rome Statute of the International Criminal Court, www.un.org/law/icc/statute/romefra.htm (accessed Nov. 18, 2005) [hereinafter Rome Statute].

¹²³ United Nations Documents, www.un.org/icc/index.htm (accessed Nov. 18, 2005).

¹²⁴ The International Criminal Court, <http://www.icc-cpi.int/asp/statesparties.html> (accessed June 27, 2005).

Statute. First, countries that do not value democracy and human rights, like China and the Sudan, have little or no incentive to cede criminal jurisdiction to an international entity whose primary offenses address human rights violations.¹²⁵ By ceding jurisdiction to the ICC, they would be turning over their own nationals for prosecution before the international community. For states that purport to value human rights, like the US, the argument against the ICC is that their sovereignty is better protected by attacking the Court than by joining it.¹²⁶ This is a clear paradox, for those states that purport to value human rights have the greatest incentive to promote an institution dedicated to the realization of international peace.

The recent relationship between the US and the ICC has been fractious. President Clinton signed the ICC Statute on December 31, 2000, but on May 6, 2002, the Bush Administration declared that it would no longer consider the US legally bound by that signature – in effect nullifying it.¹²⁷ Moreover, two pieces of legislation were enacted by Congress to specifically hinder the operations of the ICC. First, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act prohibits the US from providing financial assistance to the ICC.¹²⁸ Second, the American Servicemembers' Protection Act of 2002, contained within the Supplemental Defense Appropriations Act of 2002, prohibits US cooperation with the ICC,¹²⁹ restricts military assistance to

¹²⁵ See Yacoubian, *supra* note 3.

¹²⁶ D.M. Amann & M.N.S. Sellers, *The United States of America and the International Criminal Court*, 50 Am. J. Comp. L. 381 (2002); D.J. Scheffer, *Developments in International Criminal Law: The United States and the International Criminal Court*, 93 Am. J. Intl. L. 12 (1999).

¹²⁷ See Letter from John R. Bolton, Under Secretary of State for Arms Control and International Security, to U.N. Secretary General Kofi Annan, May 6, 2002, www.state.gov/r/pa/prs/ps/2002/9968.htm (articulating that the United States does not intend to become a party to the ICC Statute).

¹²⁸ Pub. L. No. 106-113, §§ 705-706 (1999).

¹²⁹ Pub. L. No. 107-206, § 2004 (2002).

countries that have ratified the ICC Statute,¹³⁰ and authorizes the President to use “all means necessary and appropriate” to free from captivity American personnel held by or on behalf of the ICC.¹³¹ This is an untoward position for the US, as these pieces of legislation clearly demonstrate an assault on the ICC mission.

There are four significant jurisdictional components to the Rome Statute. First, the Rome Statute entered into force on July 1, 2002.¹³² This means that only acts perpetrated after July 1, 2002, are eligible for prosecution. Second, all nations that are party to the Rome Statute must accept its jurisdiction.¹³³ This is the cornerstone of a cooperative, international legal community. Third, non-signatory states may, by special declaration, accept the temporary jurisdiction of the ICC for crimes covered by its SMJ.¹³⁴ The US, for example, could temporarily accept the Court’s jurisdiction to prosecute individuals accused of drug trafficking. Finally, the Court can exercise jurisdiction if a referral is made to the prosecutor by the UN Security Council.¹³⁵

The subject matter of the ICC includes four categories of offenses – the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.¹³⁶ These four categories of offenses are eligible for prosecution before the ICC because they violate fundamental humanitarian principles and, arguably, constitute the most serious crimes of international concern. The definition of genocide articulated in the ICC Statute follows that in the Convention on the Prevention and Punishment of the Crime of

¹³⁰ *Id.* at § 2007.

¹³¹ *Id.* at § 2008.

¹³² *Supra* note 122, at Art. 11(1).

¹³³ *Id.* at Art. 12(1).

¹³⁴ *Id.* at Art. 12(3).

¹³⁵ *Id.* at Art. 13(b).

¹³⁶ *Id.* at Art. 5(1).

Genocide.¹³⁷ Crimes against humanity include enslavement,¹³⁸ deportation or forcible transfer of population,¹³⁹ torture,¹⁴⁰ the crime of apartheid,¹⁴¹ and other acts “committed as part of a widespread or systematic attack directed against any civilian population.”¹⁴²

War crimes include any of the following acts against persons or property protected under the Geneva Conventions: torture or inhuman treatment,¹⁴³ taking of hostages,¹⁴⁴ intentionally directing attacks against civilian populations that are not part of the hostilities,¹⁴⁵ killing or wounding a combatant who has surrendered,¹⁴⁶ pillaging,¹⁴⁷ using asphyxiating gases,¹⁴⁸ and sexual slavery and enforced sterilization.¹⁴⁹ The Court will have jurisdiction over the crime of aggression after it is formally defined.¹⁵⁰

It is also important to note that the ICC will not operate on the basis of primary jurisdiction, but will be subject to the principle of complementarity.¹⁵¹ That is, the ICC will be a subsidiary mechanism to handle the prosecution of its crimes. Some states, although supporting the creation of the ICC, were reluctant to create an institution that could potentially impinge on their national sovereignty.¹⁵² The principle of complementarity thus provides that the Court will exercise jurisdiction only when a state

¹³⁷ *Id.* at Art. 6.

¹³⁸ *Id.* at Art. 7(1)(c).

¹³⁹ *Id.* at Art. 7(1)(d).

¹⁴⁰ *Id.* at Art. 7(1)(f).

¹⁴¹ *Id.* at Art. 7(1)(j).

¹⁴² *Id.* at Art. 7(1).

¹⁴³ *Id.* at Art. 8(2)(a)(ii).

¹⁴⁴ *Id.* at Art. 8(2)(a)(viii).

¹⁴⁵ *Id.* at Art. 8(2)(b)(i).

¹⁴⁶ *Id.* at Art. 8(2)(b)(vi).

¹⁴⁷ *Id.* at Art. 8(2)(b)(xvi).

¹⁴⁸ *Id.* at Art. 8(2)(b)(xviii).

¹⁴⁹ *Id.* at Art. 8(2)(e)(vi).

¹⁵⁰ *Id.* at Art. 5(2).

¹⁵¹ *Id.* at Arts. 17 & 18.

¹⁵² John T. Holmes, *The Principle of Complementarity*, in *The International Criminal Court, The Making of the Rome Statute: Issues, Negotiations, Results* (Roy S. Lee ed., 1999).

is unable or unwilling to handle the case in which the crimes within the Court's jurisdiction have been committed.

To date, four situations have been referred to the Office of the Prosecutor. Three situations – in the Republic of Uganda,¹⁵³ the Democratic Republic of Congo (DRC),¹⁵⁴ and the Central African Republic¹⁵⁵ – were referred by the State Parties themselves. These three referrals were made on January 29, 2004, May 19, 2004, and January 6, 2005, respectively. The fourth situation – in Darfur, Sudan – was referred by the UN Security Council on March 30, 2005.¹⁵⁶ Of these four, the Prosecutor initiated investigations into the situations in the DRC¹⁵⁷ on June 23, 2004 and in the Republic of Uganda¹⁵⁸ on July 29, 2004.

Drug Trafficking and the ICC – Pros and Cons

There are four major arguments in favor of broadening the SMJ of the ICC Statute to include drug trafficking. First, sending nationals to an international body for prosecution would be less offensive and less stressful than ceding jurisdiction to a requesting state.¹⁵⁹ Territorial posturing, therefore, could be avoided. Second, including drug trafficking in the ICC Statute would “provide a strong symbolic and legal deterrent and enhance the rule of law by increasing the probability that international narcotics offenders will be brought to justice.”¹⁶⁰ The ICC would thus be an additional mechanism, above and

¹⁵³ See http://www.icc-cpi.int/pressrelease_details&id=16&l=en.html (accessed Nov. 18, 2005).

¹⁵⁴ See http://www.icc-cpi.int/pressrelease_details&id=19.html (accessed Nov. 18, 2005).

¹⁵⁵ See http://www.icc-cpi.int/pressrelease_details&id=87.html (accessed Nov. 18, 2005).

¹⁵⁶ Resolution 1593 (2005).

¹⁵⁷ See http://www.icc-cpi.int/pressrelease_details&id=26&l=en.html (accessed Nov. 18, 2005).

¹⁵⁸ See http://www.icc-cpi.int/pressrelease_details&id=33&l=en.html (accessed Nov. 18, 2005).

¹⁵⁹ F. Patel, *Crime Without Frontiers: A Proposal for an International Narcotics Court*, 22 N.Y.U. J. Intl. L. & Pol. 709 (1990).

¹⁶⁰ *Id.*

beyond national systems, through which drug traffickers could be prosecuted. Third, unlike the four categories of offenses the ICC is permitted to prosecute – the crime of genocide, crimes against humanity, war crimes, and the crime of aggression – drug trafficking is less politicized.¹⁶¹ As such, states should be more willing to accept its inclusion knowing that individuals accused of drug trafficking cannot hide under the guise of politics or governmental immunity. Fourth, shifting the prosecution of major drug traffickers to an international entity should ease the burden on domestic criminal justice systems. Not only will responsibilities at the national levels of government be diminished, but the successful prosecutions of high-level drug traffickers should translate into less production and less consumption of the products. Less consumption would yield less use and fewer associated problems and should thus reduce the encumbrance on local and state criminal justice and public health systems.

There are three major objections to expanding the SMJ of the ICC Statute to include drug trafficking. First, critics argue that the current system is capable of handling drug trafficking.¹⁶² The data presented in Part II indicate that any suggestion that current drug problems are being adequately addressed by the current control regime is disingenuous.

Second, proponents of maintaining the status quo argue that the crime of drug trafficking, unlike genocide, crimes against humanity, and war crimes, do not violate humanitarian principles and is thus beyond the Court's mandate.¹⁶³ This is an unreasonable argument. The ICC has power over persons for the “most serious crimes of

¹⁶¹ *Id.*

¹⁶² W.C. Gilmore, *The Proposed International Criminal Court: Recent Developments*, 5 *Transnatl. & Contemporary Problems* 263 (1995).

¹⁶³ *Id.*

concern to the international community as a whole”¹⁶⁴ Drug trafficking is not a trivial offense. The findings presented in Part II overwhelmingly suggest that drug trafficking is a legitimate humanitarian concern, if for no other reasons than because of its longevity and scope.

Third, proponents of maintaining the status quo argue that the Court has neither the manpower nor resources to prosecute drug trafficking as well as national criminal justice systems.¹⁶⁵ This is an extraneous argument. All countries have overburdened criminal justice systems. Court dockets are full, probation officers have unmanageable caseloads, and correctional facilities and drug treatment centers are at capacity. These burdens, so commonplace in the modern era, are simply part of the system. These burdens will also exist at the international level. It would be unreasonable to think otherwise. There will likely always be more criminals to adjudicate than there are resources to prosecute them. That the ICC should not incorporate drug trafficking into its SMJ because of potential logistical burdens is an argument born of obstinate desperation.

Moreover, the incorporation of drug trafficking into the SMJ of the ICC would not displace the need for prosecuting drug trafficking offenses before national criminal justice systems. As mentioned previously, the ICC is subject to the principle of complementarity.¹⁶⁶ This means that the ICC will assume jurisdiction only when individual states are unable or unwilling to prosecute a particular offense. Given the magnitude of the international drug trafficking problem, it is reasonable to believe that some states (e.g., Trinidad and Tobago) may be unable to prosecute serious and repeated drug trafficking offenses because of pecuniary limitations. The ICC would not supplant

¹⁶⁴ *Supra* note 122, at Art. 5(1).

¹⁶⁵ *Supra* note 162.

¹⁶⁶ *Supra* note 122, at Arts. 17 & 18.

domestic drug trafficking prosecutions, therefore, but would simply complement them and assist those nations who are particularly handcuffed by the prosecution of drug trafficking offenses.

Discussion

As Bassiouni stated, “the dangers of illicit cultivation, manufacture, traffic, and use of narcotic drugs and psychotropic substances affect all geographic areas of the world.”¹⁶⁷

The total societal effect of illicit drugs in the US was approximately \$143 billion in 1998, up from \$102 billion in 1992 and \$126 billion in 1995.¹⁶⁸ Moreover, data from 2002 indicate that approximately 200 million people across the world consume illicit drugs, including 163 million for marijuana, 34 million for amphetamines, 15 million for opiates (10 million of which are for heroin), 14 million for cocaine, and 8 million for ecstasy.¹⁶⁹

While cocaine and heroin remain the most problematic given their penchant for abuse, clear geographic differences are easily discerned.¹⁷⁰ These data overwhelmingly suggest that the global community is plagued by a serious drug problem, one that has only intensified during the past several decades.

There is no question that the US is committed to reducing the prevalence and associated problems of illicit drugs. In recent years, the U.S. Congress has supported the creation of an international court to prosecute drug traffickers.¹⁷¹ The incorporation of drug trafficking into the SMJ of the ICC Statute would be a monumental step in

¹⁶⁷ *Supra* note 89, at 905.

¹⁶⁸ Office Natl. Drug Control Policy, *The Economic Costs of Drug Abuse in the United States, 1992-1998* (Office Natl. Drug Control Policy 2001).

¹⁶⁹ *Supra* note 10.

¹⁷⁰ *Id.*

¹⁷¹ See e.g. International Criminal Court Act of 1993, S. Res. 32, 103rd Cong. (1993); H.R. Res. 66, 101st Cong., 1st Sess. § 2 (1989); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, Title IV, § 4108 (1988).

addressing the international drug problem while simultaneously offering an opportunity to bring the US into the international criminal law fold.¹⁷² Because the ICC Statute precludes reservations,¹⁷³ the US must accept jurisdiction for all of its crimes. If the Court also incorporated drug trafficking into its SMJ, the US government should be able to tolerate the Court's jurisdiction over the four main categories of offenses. Given that the scope of the harm suffered by the US from drug trafficking likely exceeds the damage it could possibly inflict (and thus be held accountable for) via the four current categories of offenses, this is a reasonable and viable solution to their current aversion toward participation. The US can either participate in its development or remain hostile to a progressive, international legal reality. A reasonable first step for the US would be working toward incorporating drug trafficking within the SMJ of the ICC. This would be an indirect recognition of its jurisdiction and, hopefully, propel the US toward future ratification of the ICC Statute.

¹⁷² Art. 123 of the Rome Statute calls for a review of the Statute seven years after it entered into force. Drug trafficking could thus be incorporated into the SMJ of the Statute in 2009.

¹⁷³ *Supra* note 122, at Art. 120.