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International Drug Trafficking: A Global Problem with a Domestic Solution

MATTHEW S. JENNER*

ABSTRACT

Forty years ago, the world declared war on drugs. Today, after decades of failing to adequately control drug consumption, an even graver problem has emerged: violent drug traffickers have taken the industry hostage and will stop at nothing to preserve their power. Governments have instituted dozens of programs to dismantle the illicit drug industry, but they have seen only marginal success. One strategy, however, has yet to be fully tested: universal legalization. Universal legalization of all drugs would attack the illicit drug market head-on, destroying the profit incentive for drug traffickers and placing control of the industry in the hands of national governments. This Note first surveys the history of the illegal drug industry, focusing on the particular problem of violent drug traffickers. Second, this Note examines past attempts to control the drug industry and assesses their strengths and weaknesses. Third, this Note proposes a new scheme to end the violence associated with global drug trafficking—universal legalization—and assesses its potential efficacy and feasibility. Last, this Note posits a regulatory framework through which national governments can control their own domestic drug problems if drugs became legal, focusing particularly on the United States.

INTRODUCTION

Globalization has transformed the world economy over the past forty years. The spread of ideas and technology across borders has facilitated new avenues of trade, creating new markets and expanding others. In this world of free trade, countries can access goods from around the world. Lines of communication and flows of trade have

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opened among the rich, the poor, and everyone in between. We are all connected; we all affect one another.

However, beneath this sanguine exterior lies a dark, bloody underground. The somber side of globalization is a complicated network of illicit markets ranging from drugs and arms trafficking to the smuggling of humans into slavery and prostitution.¹ These illicit industries, or black markets, are the product of globalization. They represent some of the gravest problems in all societies spanning the globe, jeopardizing international safety and security.

One of the largest and most profitable of these industries is the market for illicit drugs.² Estimated at over \$500 billion a year,³ the illegal drug trade is an international business that has sustained itself for over forty years. The global market for drugs is comprised of several interconnected stages—from cultivation to consumption—that attempt to satisfy the insatiable demand of the industry. The most troublesome of these stages is drug trafficking.

Drug trafficking is the most crucial and most dangerous phase of the illicit drug market. Thousands of kilograms of illegal drugs cross international borders daily, leaving the hands of violent traffickers and entering the lives of drug dealers and addicts. Every week, hundreds of people are murdered in incidents directly related to trafficking.⁴ While several global efforts to end the drug trafficking problem have occurred, they have yielded only marginal success. Still, forty years later, one strategy has yet to be fully tested: universal legalization. Although counterintuitive at first glance, legalization could provide a successful framework for destabilizing the global market and solving the drug trafficking problem.

1. See generally TRANSNATIONAL THREATS: SMUGGLING AND TRAFFICKING IN ARMS, DRUGS, AND HUMAN LIFE (Kimberley L. Thachuk ed., 2007) (discussing the various illicit industries that threaten our society).

2. In this Note, I interchangeably use the phrases illicit drugs, narcotics, narcotic drugs, illegal drugs, recreational drugs, or simply, drugs. Unless otherwise specified, these phrases all refer to the drugs that are currently illegal in the United States and have global markets (e.g. marijuana, cocaine, and heroin). They do not refer to prescription drugs.

3. ROBERT J. KELLY ET AL., ILLICIT TRAFFICKING: A REFERENCE HANDBOOK 55 (2005). Because of the illicit nature of the market, it is difficult to generate an accurate estimate. Other reports place the market at closer to one trillion dollars a year. Moisés Naím, *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy*, Address Before the Inter-American Development Bank 4 (Dec. 6, 2005), available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1774471>.

4. In 2010, 15,273 drug-related murders occurred in Mexico alone, an average of almost 300 deaths per week. Q&A: *Mexico's Drug-related Violence*, B.B.C. NEWS (May 4, 2011, 10:25 ET), <http://www.bbc.co.uk/news/world-latin-america-10681249>.

Legalizing drugs in the United States is far from an innovative idea. Politicians and scholars have articulated arguments to legalize or decriminalize drugs for decades. However, this Note takes two critical steps beyond the conventional discourse. First, the initial focus of this Note is not a solution to the domestic drug problem. Rather, the key concern is a remedy for the global epidemic of violence associated with drug trafficking. Once drug trafficking is adequately addressed, this Note will posit a government regulatory regime to confront the domestic problem. Second, this Note proposes universal legalization, not merely legalization in the United States. Without cooperation from every nation, drug trafficking will continue to flourish in other regions. Legalization in the United States, however, is the perfect catalyst for a universal movement.

Section I of this Note discusses the global market for illicit drugs and its origins. Section II addresses the problem of drug trafficking and the violence it triggers. Section III discusses the various efforts to curtail drug trafficking by the United Nations, the United States, Colombia, and Mexico and assesses their successes and failures. Section IV proposes universal legalization as a prospective policy that effectively accounts for the weaknesses of past plans and could potentially solve the trafficking problem. Section V examines how government regulation is the next necessary step to combat the drug problem.

Two important nuances of this analysis must be noted. First, it will concentrate exclusively on the illicit drug trade throughout North, South, and Central America, using the infamous experiences of Mexico and Colombia to pave the way. These regions comprise the largest drug trade in the world. However, the analysis could apply equally to all regions and countries of the world because the discussion of the drug trade through the Americas simply provides a lens through which to view the global drug market. Second, while the research will highlight cocaine and marijuana, the world's two most popular drugs, the analysis could be applied to other illicit drugs with similar global markets (e.g., opium, heroin, amphetamines).

I. THE GLOBAL MARKET FOR DRUGS⁵

Every market begins with the demand for a good or service. The demand for drugs has existed for thousands of years,⁶ but the industry

5. For a more extensive history of the global drug industry and its growth over the past century, see generally PAUL B. STARES, *GLOBAL HABIT: THE DRUG PROBLEM IN A BORDERLESS WORLD* 15-46 (1996).

did not fully take flight until the 1960s. During the countercultural movements in the United States in the late 1960s, the previous social stigmatizations of drugs began to recede as the use of recreational drugs became more fashionable and representative of social rebellion.⁷ This change was also felt in Western Europe where demand spread and then continued to steadily rise around the world.⁸ International “entrepreneurs” seized the opportunity to meet the demand of this growing market, and worldwide drug production skyrocketed.⁹ Over the next forty years, the illicit drug market embraced economic globalization in the same way legitimate business did.¹⁰ The significant reduction in transportation costs and reduced trade barriers enabled the industry to flourish into one of the largest in the world.¹¹

However, one important characteristic of the drug trade distinguishes it from other industries: drugs are illegal. Although this is fairly obvious, it is critical to highlight this aspect because it plays a vital role in the success of the industry. Virtually every country in the world criminalizes the consumption, production, and distribution of drugs like marijuana and cocaine.¹² In the United States, cocaine and marijuana were made illegal in 1914 and 1937, respectively.¹³

The prohibition of drugs causes an underground black market to form. The inherent risk of incarceration from producing drugs effectively increases production costs because producers must take steps to avoid detection.¹⁴ This leads to fewer market suppliers than a normal, free market would dictate, creating a monopolistic industry.¹⁵ Because drugs are illicit and monopolistic conditions exist, producers can substantially markup the market price of drugs (profit margins are

6. Over 5,000 years ago, ancient Mesopotamians discovered the effects of opium. Drugs continued to be prevalent in ancient Chinese and Greek cultures. See JIM MCGUIGAN, *THE DRUG TRADE* 6-7 (2005).

7. PBS, *Thirty Years of America's Drug War: A Chronology*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/> (last visited Apr. 5, 2011).

8. MATHEA FALCO, COUNCIL ON FOREIGN RELATIONS, *RETHINKING INTERNATIONAL DRUG CONTROL: NEW DIRECTIONS FOR U.S. POLICY* 12 (1997).

9. *Id.*

10. CHRISTINE JOJARTH, *CRIME, WAR, AND GLOBAL TRAFFICKING: DESIGNING INTERNATIONAL COOPERATION* 7 (2009).

11. *Id.*

12. *Id.* at 93.

13. Jeffrey A. Miron & Jeffrey Zwiebel, *The Economic Case Against Drug Prohibition*, 9 J. ECON. PERSP. 175, 184 (1995).

14. Jeffrey A. Miron, *The Economics of Drug Prohibition and Drug Legalization*, 68 SOC. RES. 835, 838 (2001).

15. *See id.*

estimated at 300%),¹⁶ creating an extremely lucrative industry.¹⁷ In turn, the prospect of exorbitant profits in illegal industries attracts criminals,¹⁸ who are often violent and dangerous. This aspect is discussed further in section II.

Today, the global market for illicit drugs nets over \$500 billion annually¹⁹—roughly the size of Switzerland's economy.²⁰ It is one of the top five largest industries in the world after the arms trade,²¹ accounting for at least one percent of the global economy.²² There are over 200 million drug users worldwide, representing three percent of the world population.²³ These statistics are astounding, but they do not necessarily imply that globalization had anything to do with the growth of the industry.

According to the United Nations annual World Drug Report, however, the United States consumes about twenty-five times more cocaine than Colombia, even though Colombia produces about fifty percent of the world's cocaine.²⁴ It should come as no surprise, then, that the area between North and South America is one of the most heavily trafficked in the world. Ninety percent of all the cocaine that is imported into the United States passes through Mexico.²⁵ One-third of all the marijuana in the United States comes from Mexico.²⁶ It is estimated that anywhere from \$8 to \$24 billion of illicitly generated cash crosses the border from the United States to Mexico every year as a result of trafficking.²⁷ Nevertheless, at least 104 separate countries are involved in some aspect of the process globally, whether it is production,

16. *Drug Trafficking & Interdiction*, DRUG POLICY ALLIANCE, <http://www.drugpolicy.org/global/drugtraffick/> (last visited Apr. 5, 2011).

17. JOJARTH, *supra* note 10, at 97.

18. *Id.*

19. KELLY ET AL., *supra* note 3, at 55.

20. WORLD BANK, GROSS DOMESTIC PRODUCT 2009 1 (2010), available at <http://siteresources.worldbank.org/DATASTATISTICS/Resources/GDP.pdf>.

21. See Sue Williams & Carlos Milani, *The Globalization of the Drug Trade*, SOURCES, Apr. 1999 at 4, 4 (1999).

22. The World Bank estimated the World GDP to be about \$58 trillion in 2009. WORLD BANK, *supra* note 20, at 4.

23. Williams & Milani, *supra* note 21, at 4.

24. In 2008, the UNODC estimated that Colombia cultivates 48% of all coca bush worldwide. U.N. OFFICE ON DRUGS & CRIME [UNODC], WORLD DRUG REPORT 2009, at 68, U.N. Sales No. E.09.XI.12 (2009), available at <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2009.html>.

25. Jesse Bogan et al., *The Drug War*, FORBES, Dec. 22, 2008, at 73.

26. *Id.*

27. *Id.*

distribution, or laundering profits.²⁸ The illicit drug market is truly a global industry.

II. DRUG TRAFFICKING AND VIOLENCE

The most integral part of the illicit drug trade is trafficking.²⁹ Without traffickers, the industry would consist of remote suppliers with no means to deliver goods to the consumer; traffickers facilitate the globalization of the drug trade. Each year, over 60 million people enter the United States by air on more than 675,000 flights, 370 million people enter by land in 116 million vehicles, and 6 million people enter by sea on over 90,000 ships, carrying over 400 million tons of cargo.³⁰ Amid this enormous movement of people and products, drug traffickers transport their drugs.

The trafficking process generally consists of three locations: the production state,³¹ one or more states that serve as transshipment centers, and the consumption state.³² The mission of the traffickers is to get the drugs from the suppliers to the consumer as efficiently as possible without being detected. Their place in the chain is the most important and, therefore, the most lucrative. The implied value added of trafficking is estimated at more than 2,000%.³³

Up to this point, the depiction of the illicit drug market has been much like any other: suppliers, consumers, and a means of distribution. Yet, the illegality of the drug business is strongly linked to one serious externality:³⁴ violence. In every market, disputes arise between the seller and the buyer. Courts and other legal mechanisms are in place to help resolve these disputes. However, when an underground black market is created, sellers and distributors do not have legal recourse because a court will not enforce contracts for illegal goods. Accordingly,

28. RON CHEPESIUK, *THE WAR ON DRUGS: AN INTERNATIONAL ENCYCLOPEDIA* xix (1999).

29. Trafficking refers to “the international movement of goods and services that is deemed illicit for any of three reasons:” the goods are illicit, the trade of the good is illicit, or the goods are being trading for illicit purposes (e.g., terrorism). JOJARTH, *supra* note 10, at 7-8. All three reasons seem to be present with respect to the drug trade.

30. U.S. Drug Enforcement Agency, *Drug Trafficking in the United States*, ALMANAC OF POL’Y ISSUES, http://www.policyalmanac.org/crime/archive/drug_trafficking.shtml (last visited Apr. 5, 2011).

31. As this Note discusses global trafficking, “state” refers to countries, not members of the United States.

32. JOJARTH, *supra* note 10, at 8.

33. *Id.* at 97 n. 15.

34. “Externality” is defined as “a side effect or consequence of an industrial or commercial activity that affects other parties without this being reflected in the cost of the goods or services involved.” NEW OXFORD AMERICAN DICTIONARY 597 (2d ed. 2005).

the market participants—many of them seeking profits to support criminal organizations—resort to violence.³⁵ Historical examples of this phenomenon have occurred in the gambling, alcohol, and prostitution industries.³⁶

Violence related to the industry has spiraled out of control over the past forty years. The most famous examples are the Colombian cartels and the Revolutionary Armed Forces of Colombia (FARC).³⁷ In the 1970s, cocaine traffickers in Colombia began combining forces to form loosely associated cartels, such as the Medellin Cartel and the Cali Cartel.³⁸ The cartels were run as efficient business models, which revolutionized the distribution of cocaine in the Americas.³⁹ Violent criminals, like Pablo Escobar, headed these operations, and they would stop at nothing to eliminate threats to their businesses.⁴⁰ The cartels would kidnap prominent figures, assassinate candidates that vowed to terminate their cartels, and randomly bomb public places.⁴¹

The FARC is a Marxist guerilla organization that was founded in Colombia in 1966.⁴² The FARC paired with Colombian cartels in the 1970s and 1980s as a form of protection for the illegal industry, making profits by taxing drug farmers.⁴³ The organization perpetrates violence in furtherance of its activities similar to the cartels and is still prevalent in Colombia today, having outlasted many of the cartels.⁴⁴ Since the dismantling of the cartels, the FARC has focused its attention on producing its own cocaine and has engaged in more criminal activities, such as kidnappings.⁴⁵

In today's drug market, Mexico makes the most headlines with respect to violent trafficking. Mexican drug lords have formed their own infamous cartels and, like their Colombian predecessors, will do anything it takes to make money. In 2008, an estimated 6,290 drug trafficking-related murders were committed in Mexico.⁴⁶ For a

35. Miron, *supra* note 14, at 840.

36. Jeffrey A. Miron, *Commentary: Legalize Drugs to Stop Violence*, CNN, Mar. 24, 2009, <http://www.cnn.com/2009/POLITICS/03/24/miron.legalization.drugs/index.html>.

37. FARC is an acronym for "Las Fuerzas Armadas Revolucionarias de Colombia," which translates from Spanish to "The Revolutionary Armed Forces of Colombia." CHEPESIU, *supra* note 28, at 203; JOJARTH, *supra* note 10, at 95.

38. CHEPESIU, *supra* note 28, at 24, 31, 133.

39. *Id.* at 134.

40. *Id.* at 133.

41. *Id.* at 134.

42. *Id.* at 203.

43. JOJARTH, *supra* note 10, at 95; KELLY ET AL., *supra* note 3, at 122.

44. CHEPESIU, *supra* note 28, at 203.

45. JOJARTH, *supra* note 10, at 95.

46. Debra J. Saunders, *A Failed Drug War's Rising Body Count*, S.F. CHRON., Mar. 15, 2009, at H6.

comparison, that is roughly forty-one percent more deaths than the total number of United States military casualties from the War in Iraq since it began in 2003.⁴⁷ Between 2006 and 2009, over 13,000 people were murdered in drug-related killings in Mexico.⁴⁸ Over 800 of those deaths were innocent Mexican police officers.⁴⁹ In 2009 alone, the drug-related killings in Ciudad Juarez, boasted as Mexico's third safest city, were upward of 1,800.⁵⁰ Ciudad Juarez is located directly across the Mexican border from El Paso, Texas,⁵¹ a mere 200-foot jump across the Rio Grande.⁵²

Mexico is not the only victim in the illicit drug trade. Stories like Mexico's are told across the globe: from the Golden Triangle and the Golden Crescent in Asia to the newly emerging markets in West Africa.⁵³ Figure 1 below shows the most popular drug trafficking routes. Frighteningly, the drug trade is, more often than not, closely tied to other illicit markets and crises, namely arms dealing, human trafficking, and even terrorism.⁵⁴

This violence all stems from the illegality of drugs. Even the United Nations concedes that prohibition has caused violence: "The strongest case against drug control is the violence and corruption associated with the black markets."⁵⁵ Something must be done to eradicate this problem.

47. As of April 4, 2011, there have been a total of 4,446 United States military casualties in the War in Iraq since 2003. *iCasualties: Operation Iraqi Freedom and Operation Enduring Freedom Casualties*, IRAQ COALITION CASUALTY COUNT, <http://icasualties.org/> (last visited Apr. 5, 2011).

48. *Legalization of Drugs Spreads in Latin America. Will the US Follow?*, CHRISTIAN SCI. MONITOR, Sept. 23, 2009, at 6 [hereinafter *Legalization of Drugs*].

49. Saunders, *supra* note 46.

50. John MacCormack, *Drug War Under Fire at Policy Summit*, SAN ANTONIO EXPRESS-NEWS, Sept. 28, 2009, at 01A.

51. Gilbert Bailon, *Former Mexican President Fox Wants to Debate*, ST. LOUIS POST-DISPATCH, Sept. 17, 2009, at A14.

52. See MacCormack, *supra* note 50.

53. See Audra K. Grant, *Smuggling and Trafficking in Africa*, in TRANSNATIONAL THREATS: SMUGGLING AND TRAFFICKING IN ARMS, DRUGS, AND HUMAN LIFE, *supra* note 1, at 113, 117-19; Rolie Lal, *South Asian Organized Crime and Linkages to Terrorist Networks*, TRANSNATIONAL THREATS: SMUGGLING AND TRAFFICKING IN ARMS, DRUGS, AND HUMAN LIFE, *supra* note 1, at 150, 157.

54. See generally André D. Hollis, *Narcoterrorism: A Definitional and Operational Transitional Challenge*, in TRANSNATIONAL THREATS: SMUGGLING AND TRAFFICKING IN ARMS, DRUGS, AND HUMAN LIFE, *supra* note 1, at 23; Francis T. Miko, *International Human Trafficking*, in TRANSNATIONAL THREATS: SMUGGLING AND TRAFFICKING IN ARMS, DRUGS, AND HUMAN LIFE, *supra* note 1, at 36.

55. UNODC, *supra* note 24, at 163.

Figure 1. Major Narcotics Trafficking Routes and Crop Areas⁵⁶

III. PAST STRATEGIES TO COMBAT TRAFFICKING

On June 17, 1971, President Richard Nixon declared war on drugs.⁵⁷ Although initially targeting domestic drug abuse in the United States, over the next forty years, this “war” would also focus heavily on drug trafficking. In 1982, President Ronald Reagan vowed to establish a foreign policy that “vigorously [sought] to interdict and eradicate illegal drugs, wherever cultivated, processed, and transported.”⁵⁸ This notion began to spread across the globe, and other countries joined in the global effort to fight drugs.

Today, almost forty years after the war on drugs began, the drug industry is as extensive as ever.⁵⁹ Many scholars and government officials regard the war on drugs as an epic failure.⁶⁰ However, when creating policies for the future, it is often helpful to look at the efforts of the past. The remainder of this section examines some of the “failed” drug policies and assesses their effectiveness.

56. PBS, *Major Narco Trafficking Routes and Crop Areas*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/business/map.html> (last visited Apr. 5, 2011).

57. PBS, *supra* note 7.

58. CHEPESIUK, *supra* note 28, at 261.

59. Over the past decade, the war on drugs has lost a lot of its luster to the war on terror. However, it is important to remember how closely knit these two wars really are.

60. See MacCormack, *supra* note 50.

A. *The United Nations*

In 1946, the United Nations established the Commission on Narcotic Drugs (CND) as its central policymaking body in drug-related matters.⁶¹ The member states to the CND analyze the global drug situation and advise the U.N. General Assembly on the appropriate measures that should be taken.⁶² The CND also monitors the implementation of the three international drug control conventions: the Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971), and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (U.N. Convention Against Illicit Trafficking).⁶³

Whereas the first two conventions consider drugs from a health perspective, the U.N. Convention Against Illicit Trafficking deals explicitly with the drug market and distribution.⁶⁴ Furthermore, this Convention marks the first time that the international community accepted that “illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all levels.”⁶⁵ The Convention created a framework for member states⁶⁶ to combat trafficking by improving and strengthening international cooperation among various authorities.⁶⁷ Provisions of the Convention target the profits of the industry and the legal substances used to manufacture drugs.⁶⁸

The U.N. Convention Against Illicit Trafficking provides tremendous insight into how to combat drug trafficking. However, the Convention has one inherent downfall: it is merely a framework. It may have shaped much of the antitrafficking efforts in the past two decades, but it is only a set of guidelines; it is only words. While member states

61. *The Commission on Drug Narcotics*, U.N. OFF. DRUGS & CRIME, <http://www.unodc.org/unodc/en/commissions/CND/index.html> (last visited Apr. 6, 2011).

62. In any given year, the CND has fifty-three member states with four-year terms. *Id.*

63. *The Commission on Narcotic Drugs: Its Mandate and Functions*, U.N. OFF. DRUGS & CRIME, <http://www.unodc.org/unodc/commissions/CND/01-its-mandate-and-functions.html> (last visited Apr. 6, 2011).

64. See JOJARTH, *supra* note 10, at 100.

65. Cindy Fazey, *International Policy on Illicit Drug Trafficking: The Formal and Informal Mechanisms*, 37 J. DRUG ISSUES 755, 760 (2007).

66. As of January 4, 2011, there are 185 states that have ratified the Convention, including the United States, Colombia, and Mexico. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *opened for signature* Dec. 20, 1988, 1582 U.N.T.S. 95 (entered into force Nov. 11, 1990).

67. JOJARTH, *supra* note 10, at 100.

68. *Id.* at 101.

are obligated to follow the provisions of the Convention,⁶⁹ ensuring strict compliance is not a simple matter, especially when there are no true, practical enforcement mechanisms.

Some states have more to lose than gain by contributing to the antidrug cause. The cost of compliance is substantially higher for narcotic-producing states.⁷⁰ For example, in the 1980s, the various stages of the drug industry created profits equal to seven percent of Colombia's gross domestic product.⁷¹ By complying with the norms of the Convention, some states jeopardize their economy and political stability.⁷²

Other nations, like the United States, have much more to gain from strict compliance with the antidrug framework. As the pioneer of the war on drugs, the United States considers drugs to be enemy number one. However, with over 31,000 U.S. deaths from drug-related causes in 2007—about twice the U.S. murder rate—the United States is fueled more by its own domestic problems than the international crisis.⁷³ As the United States has less to lose economically from a dwindling drug business,⁷⁴ it is not surprising that the United States has spent more money than any other country on antidrug-related efforts.⁷⁵ If every country spent as much of its resources on the war on drugs as the United States, the war could be more successful. However, because the U.N. Convention Against Illicit Trafficking is only a framework, strict compliance, like that of the United States, has not been prevalent.

69. Members, however, were able to opt out of certain provisions by making reservations and declarations to the Convention. For example, the United States declared, pursuant to a provision, that it would not be bound by Article 32(2), which provides that unresolved issues between parties will be brought before the International Court of Justice. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *supra* note 66, art. 32(2).

70. See JOJARTH, *supra* note 10, at 103.

71. *Id.* at 104.

72. See *id.*

73. United Nations Office of Drugs and Crime (UNODC), WORLD DRUG REPORT 2010, at 81, U.N. Sales No. E.10.XI.13 (2010), available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

74. See JOJARTH, *supra* note 10, at 103 (explaining that, unlike the United States, drug-producing countries must also consider the effect antidrug measures will have on their economic and political stability, as “the illicit drug sector provides an indispensable source of income and employment which would be lost if effective anti-narcotic policies were implemented”).

75. The United States spent about \$50 billion on the war on drugs in 2009. For up-to-the-second yearly estimates, see *Drug War Clock*, DRUG SENSE, <http://www.drugsense.org/wodclock.htm> (last visited Apr. 6, 2011).

B. *The United States: Interdiction*

The United States focuses its international antidrug efforts on two aspects of the war on drugs: interdiction and international funding. Interdiction refers to the interception of illegal drugs before they reach local dealers and consumers. This technique attacks trafficking head-on, which is a step in the right direction because it correctly identifies the trafficker as the fundamental problem and facilitator of the drug industry. From a policy perspective, interdiction will limit the supply of drugs, causing the price to substantially increase, which will, in theory, ultimately decrease consumption.⁷⁶

In 1969, the United States started its curtailment efforts with a small-scale project called Operation Intercept. Customs officials subjected every car crossing the U.S. border from Mexico to a three-minute inspection in an attempt to reduce marijuana smuggling.⁷⁷ The operation only lasted two weeks because of the massive complications it caused, but thereafter Mexico agreed to more aggressively attack marijuana trade.⁷⁸

Figure 2. Global Cocaine Seizures, 1987-2007⁷⁹

76. CHEPESIUK, *supra* note 28, at 102.

77. PBS, *supra* note 7 (providing an overview of Operation Intercept in 1969).

78. *Id.*

79. UNODC, *supra* note 24, at 70.

In more recent years, the United States has implemented large-scale operations in its interdiction efforts. The U.S. Coast Guard patrols trafficking waters, and U.S. military personnel participate in interception operations across borders.⁸⁰ The United Nations Office of Drugs and Crime releases a yearly World Drug Report containing the amount of seizures by each country. In 2007, the United States intercepted nearly 150,000 kilograms of cocaine, a 50% increase from 2002.⁸¹ Figure 2 above illustrates the amount of global seizures of cocaine from 1987 to 2007. In the same year, the United States seized nearly 1.5 million kilograms of marijuana, a 30% increase from 2002.⁸² Despite these outstanding numbers, only an estimated 41.5% of all cocaine and 25% of all marijuana was intercepted globally in 2007.⁸³

Consequently, interdiction efforts have failed to effectively dismantle the drug industry. Experts believe that seventy percent of a drug needs to be intercepted worldwide to substantially reduce the size of the industry.⁸⁴ Additionally, interception rate estimates may be overstated because it is impossible for authorities to know the exact amount of drugs that are slipping through the cracks. Although these interdiction efforts target traffickers, the crucial enemy, it appears as though operations would have to be at least doubled to truly make a difference, but it is nearly impossible to block every available trafficking route. A larger effort would prove too costly, especially because the United States already spends about \$50 billion a year on antidrug programs around the world.⁸⁵ Experts also believe that interdiction causes a balloon effect: when interception efforts increase in one region, production merely moves to another region, rendering interdiction efforts ineffective.⁸⁶

Another fundamental problem of interdiction is that it actually increases the profits of, and therefore the violence within, the industry. Policymakers argue that by decreasing the supply of drugs, prices will

80. JOJARTH, *supra* note 10, at 96 (discussing how the United States initiated the war on drugs in response to its national security concerns).

81. In 2002 and 2007, the United States seized 101,904 and 147,804 kilograms of cocaine, respectively. UNODC, *supra* note 24, at 76.

82. In 2002 and 2007, the United States seized 1.11 million and 1.45 million kilograms of marijuana, respectively. *Id.*

83. Estimates of marijuana seizures range from 8-42%. Marijuana seizures in 2007 were reported at 5,600 metric tons, and production was estimated between 13,300 and 66,100 metric tons. *Id.* at 70, 89.

84. *Drug Trafficking & Interdiction*, *supra* note 16.

85. See *Drug War Clock*, *supra* note 75 (calculating the amount of money the United States has spent on the war on drugs).

86. *Drug Trafficking & Interdiction*, *supra* note 16.

increase and consumption will go down.⁸⁷ However, these policymakers fail to consider that the supply of drugs is relatively inelastic, meaning the marginal demand for drugs will not change much as the price goes up or down—due in part to the addictive nature of drugs.⁸⁸ Therefore, policymakers are correct in predicting that decreasing the supply will lower consumption, but not by a substantial amount.⁸⁹ The more significant effect will be on the profits of the industry. The relatively small decrease in the quantity of drugs demanded will be offset by the proportionally much higher price of drugs, causing profits to increase and attracting more criminals to the industry.⁹⁰ Interdiction efforts are, in effect, rewarding drug traffickers.

The other main antidrug effort of the United States is to fund, support, and supply international operations. The best example of one of these programs is Plan Colombia, which is discussed in the following subsection.

C. Colombia: Plan Colombia

By the late 1990s, the infamous drug cartels of the previous two decades had been dismantled by the Colombian military, putting an end to Colombia's largest source of violence and corruption. However, Colombia was still a major drug producer, cultivating fifty-six percent of the world's cocaine in 1998.⁹¹ This was coupled with a severe economic downturn in Colombia and Colombian armed forces that were not able "to respond to the growing strength of [the] illegal armed groups," like the FARC.⁹²

In September 1999, former Colombian President Andres Pastrana announced a new antidrug strategy called Plan Colombia.⁹³ The six-year, \$7.5 billion plan focused on three objectives: "(1) reduce the flow of illicit narcotics and improve security, (2) promote social and economic justice, and (3) promote the rule of law."⁹⁴ Within the first objective, the goals were to reduce the production of illicit drugs by fifty percent and reclaim much of the land controlled by illegal armed groups.⁹⁵ Since Plan Colombia's commencement in 2000, the United States has given

87. CHEPESIUK, *supra* note 28, at 102.

88. This economic argument will be covered in more detail in Section IV.

89. N. GREGORY MANKIW, *PRINCIPLES OF MICROECONOMICS* 107 (5th ed. 2008).

90. *Id.*

91. U.N. OFFICE FOR DRUG CONTROL & CRIME PREVENTION [ODCCP], *GLOBAL ILLICIT DRUG TRENDS* 44 (1999), available at http://www.unodc.org/pdf/report_1999-06-01_1.pdf.

92. U.S. GAO, *PLAN COLOMBIA* 9 (2008).

93. *Id.* at 11.

94. *Id.*

95. *Id.* at 1.

over six billion dollars in support,⁹⁶ providing the Colombian military with helicopters and specialized training.⁹⁷

The execution of Plan Colombia involved a combination of procedures to curb Colombia's drug smuggling, while achieving its other objectives. The Plan implemented both aggressive eradication and interdiction efforts. The eradication efforts involved locating drug cultivators and either manually seizing the crop or aerially spraying it with helicopters. Unlike interdiction, this tactic attacks the source of the problem, the supplier, rather than the trafficker. Other tactics included peace talks with rural guerillas and raking the jungle in an attempt to recapture the land.⁹⁸

Plan Colombia succeeded in recapturing the most populated cities and roadways from the illegally armed groups, like the FARC. However, these groups and producers have simply relocated to the less populated areas of the country, deeper into the jungle. Moreover, traffickers have banded together to form elusive "cartelitos," or "baby cartels," in the less populated regions.⁹⁹ These organizations have also been popping up in other Latin American countries, like Mexico.¹⁰⁰

Figure 3. Global Cocaine Production (metric tons) 1994-2008¹⁰¹

96. *Id.* at 2.

97. PBS, *supra* note 7.

98. STEPHEN JOHNSON, HELPING COLOMBIA FIX ITS PLAN TO CURB DRUG TRAFFICKING, VIOLENCE, AND INSURGENCY (2001), <http://www.heritage.org/Research/LatinAmerica/BG1435.cfm>.

99. CHEPESIUK, *supra* note 28, at 31.

100. *Id.*

101. UNODC, *supra* note 24, at 65.

Between 1999 and 2008, the eradication of the coca bush, the plant source of cocaine, increased by more than 500%.¹⁰² Despite these efforts, cocaine production and coca cultivation have slightly increased,¹⁰³ and Colombia continues to cultivate forty-eight percent of the world's cocaine.¹⁰⁴ While Colombia achieved some of its domestic goals, Plan Colombia has failed to effectively address its goal of reducing the flow of illicit narcotics. Raking the jungle was successful in populated areas, but Colombia is far too large to patrol the entire country. The method is effective, but implausible on a large scale. Another weakness of the Plan is its balloon effect because efforts are only focused on one country.¹⁰⁵ If production is curtailed in Colombia, other countries can simply fill the demand. Figure 3 above illustrates this phenomenon in the global cocaine market. Even though production levels of each country have varied drastically year-to-year, the global market consistently produces between 800 and 1,000 metric tons of cocaine a year.

Although Plan Colombia has not been completely successful, it is important to note that it attacked the source of the problem: the market. If successful, the Plan would have effectively eliminated drug trafficking-related violence because, without a product, there is no market, and, without a market, the war on drugs is won.

D. Mexico: Decriminalization

In today's drug market, Mexico faces the most pressing drug trafficking problems. In response, the Mexican legislature enacted the Law Against Small Drug Traffickers in August 2009.¹⁰⁶ The law decriminalizes possession of small quantities of marijuana, cocaine, and other narcotic drugs for personal use.¹⁰⁷ Mexican lawmakers hope that permitting drugs for personal use will allow law enforcement officials to focus their resources on dismantling drug cartels and apprehending traffickers.¹⁰⁸

An important distinction must be made between decriminalization and legalization. In drug policy debates, the two terms are often

102. In 1999, 44,158 hectares of coca bush were eradicated, and in 2008, 229,130 hectares were eradicated. *Id.* at 66.

103. From 2000 to 2006, coca cultivation increased 15% and cocaine production increased 4%. U.S. GAO, *supra* note 92, at 4-5.

104. This figure is as of 2008. UNODC, *supra* note 24, at 68.

105. The balloon effect was first discussed in conjunction with interdiction in subsection 3.B.

106. *Legalization of Drugs*, *supra* note 48.

107. Robin Emmott, *Mexico Drug Law Is "Tool" Against Cartels: U.S.*, REUTERS, Oct. 2, 2009, <http://www.reuters.com/article/idUSTRE5916ZG20091002>.

108. *Id.*

erroneously interchanged; however, they have vastly different meanings. When drugs are *decriminalized*, governments permit use and possession, but trafficking, manufacturing, selling (in some cases), and other stages of the drug trade remain illegal.¹⁰⁹ The most famous example of drug decriminalization occurred in 1976 when the Netherlands began to “tolerate” marijuana through government regulation.¹¹⁰ Under this program, the use and possession of marijuana are still technically illegal, but if consumers and select sellers stay within certain guidelines, the police do not strictly enforce the drug laws.¹¹¹ Under Mexico’s new decriminalization law, the possession of small quantities of certain drugs is explicitly legal, but every other aspect of the trade remains criminal.

On the other hand, *legalization* means that each stage of the drug trade—cultivation, production, trafficking, sale, purchase, possession, and use—becomes legal.¹¹² The violent crimes that occur as a result of these stages would still be illegal. Under a legalization framework, the drug market is treated like any other global market and regulation is left up to individual countries and governments.

Mexico is not the first (nor will it be the last) government in Latin America to decriminalize drugs. For over ten years, both Uruguay and Paraguay have permitted the possession of at least small amounts of drugs.¹¹³ In 1994, a Colombian court ruled it unconstitutional to punish someone for possessing small quantities of drugs for personal use.¹¹⁴ However, in 2009, after receiving pressure from the United States, former Colombian President Alvaro Uribe pushed for the enactment of a constitutional amendment, which would effectively reverse the judgment.¹¹⁵ Nevertheless, only one week after Mexico’s new law came into effect, Argentina’s Supreme Court ruled unconstitutional the arrest of five youths for possession of small amounts of marijuana.¹¹⁶

Only time will tell if Mexico’s new drug policy will be successful in combating drug traffickers. The experiences of the Netherlands and South American countries with similar policies could be used to predict its effectiveness, but none of those countries, with the exception of

109. See RICHARD LAWRENCE MILLER, *THE CASE FOR LEGALIZING DRUGS* 137 (1991).

110. JAMES P. GRAY, *WHY OUR DRUG LAWS HAVE FAILED AND WHAT WE CAN DO ABOUT IT: A JUDICIAL INDICTMENT OF THE WAR ON DRUGS* 217-18 (2001).

111. *Id.* at 218.

112. MILLER, *supra* note 109, at 138.

113. *Latin America Breaks Ranks in US War on Drugs*, CHRISTIAN SCI. MONITOR, Sept. 23, 2009, at 6 [hereinafter *Breaks Ranks*].

114. *Id.*

115. *Id.*

116. *Id.*

Colombia—whose policy could be effectively reversed—faced a trafficking and violence problem as dire as that of Mexico.

In theory, Mexico's decriminalization policy could yield success, but it appears to have the same weaknesses as the operations of other countries. The new law attempts to reallocate resources and funding by focusing less on prosecuting individual drug users and more on combating cartels and traffickers. In essence, this strategy is reduced to a combination of U.S. interdiction efforts and Plan Colombia, but in Mexico. The plan attacks traffickers and cartels, which have proven to be too numerous and elusive to successfully eradicate. Consequently, the law will likely fail.¹¹⁷ However, the Mexican legislature may have taken a step in the right direction.

IV. LEGALIZATION: A NOVEL APPROACH

The past efforts of foreign and domestic governments have proved too feeble to effectively distress global drug trafficking operations, as evidenced by the statistics of persistent violence and the sustained size of the market. However, reflecting on the weaknesses of the previous antidrug programs and assessing them as a whole may elucidate the next step toward a successful drug policy: legalization.

A. *The Conflict: The Not-So-Giving Tree*

It may be helpful to analogize the illicit drug industry to a tree. First, the leaves and the branches are the consumers and the local drug dealers, respectively. Early drug policy focused on these groups, and today's criminal laws attempt to eliminate them. In theory, if these programs successfully deterred the consumption and street selling of drugs, the market would collapse with no demand to satiate. However, no matter how many consumers and dealers are penalized or incarcerated, new ones readily replace them or they are not deterred—possibly due to addiction.

Second, the trunk represents the traffickers, who bring the drugs to the dealers and consumers. The U.N. Convention Against Illicit Trafficking and the interdiction efforts of the United States attack this group. In theory, if these programs successfully captured the majority of traffickers or simply blocked their trade routes, producers would have no efficient way to get their product to consumers, and the market

117. Press Bulletin, *Colectivo por una política integral hacia las drogas*, The Law Against Small Time Trafficking (narcomenudeo) Represents Certain Advances But Also Important Risks for Drug Policy in Mexico (May 1, 2009).

would fall apart. However, traffickers have proven too abundant and elusive for one axe to chop them down.

Third, the roots represent the drug producers, the foundation of the industry. Plan Colombia targeted this aspect of the drug trade, trying to uproot the industry. In theory, if this plan effectively eradicated the bulk of drug-producing crops—and was subsequently instituted in all other major drug-producing nations—then no drugs would ever be produced, the market's supply would disappear, and the market would cease to exist. However, the drug trade is so animate and devious that the moment one root is lifted another has planted itself—illustrating the balloon effect.

Each of these previous endeavors targeted a specific player in the industry: the consumer, the distributor, or the producer. They all fail to effectively address the fundamental aspect of the industry that truly holds it all together—the framework that propelled the industry to the astronomical heights it has reached today: the market. To extend the tree analogy, the market is represented by the fertile soil, nourishing the industry and allowing it to grow. The goal of U.S. interdiction efforts is to affect the supply of the market, but these goals misinterpret the market and actually further incentivize drug traffickers by increasing their profits. In order to be effective, the next international drug policy must target the global market. It must erode the soil that perpetuates the global drug trade, bringing the trafficking industry to its knees.

B. The Plot: Universal Legalization

The most efficient way to affect the global market is to legalize drugs, as prohibition acts as a catalyst in building up the market. It attracts criminals, incentivizes violence, and makes the drug trade one of the most profitable industries in the world. Universal legalization would reverse these trends. It would take the profits out of the industry and put a stop to violent trafficking, possibly ending the drug trade as we know it.

When advocates lobby for the legalization or decriminalization of drugs, they often argue from a domestic stance. They see legalization as an opportunity to reallocate police resources, free up prison space, reduce violent crime among drug dealers and consumers, and tax the industry.¹¹⁸ While all of these prospects are inherently part of legalization—and probably bolster this argument even more—this Note focuses on eradicating the *global* drug trafficking problem. The costs

118. See generally *THE DRUG LEGALIZATION DEBATE* (James A. Inciardi ed., 2d ed. 1999) (discussing the United States' domestic legalization debate at length).

and benefits of legalization should be assessed on the global level, not on the purely domestic level regarding drug problems each nation inevitably faces.¹¹⁹

The concept of legalization entails legalizing every aspect of the drug trade, from production to consumption, worldwide. The immediate benefit of legalization would be a reduction in the violence associated with the drug trafficking aspect of the trade. Prohibition creates the opportunity for self-help violence in the drug trade by driving the market underground.¹²⁰ Legalization would create a legitimate market for drugs, allowing conflicts to be settled in courts of law and attracting commendable market players rather than criminals, much like what happened after the prohibition of alcohol ended in the United States in the 1930s.¹²¹ Skeptics may argue that the violent drug trafficking criminals would not simply become peaceful after legalization occurs. This argument has some merit, but these violent criminals would be sifted out of the industry over time. They would most likely focus their attention on other closely linked illicit trade markets that still offer higher profits, like the arms trade and human trafficking. However, without the enormous income of the drug trade, these other illicit industries would also likely suffer.

Figure 4. Prohibition v. Legalization: Supply and Demand

119. Some overlap inevitably occurs between these two debates.

120. Miron, *supra* note 36.

121. See Miron, *supra* note 14, at 840.

The long-term effects of legalization are most easily illustrated by an economic analysis of the global market. Although the market structures are complicated—drug cartels create a monopoly-like market with fewer players, called an oligopoly—a simple supply and demand analysis will best demonstrate these effects. Due to the increased costs of the global business resulting from prohibition—such as avoiding authorities and violence—the current supply curve for illicit drugs is relatively steep.¹²² Governments are effectively taxing producers and traffickers by imposing these extra costs; consequently, each unit of drugs is sold at a higher price than it would if drugs were legal.¹²³ In Figure 4 above, the supply curve of drugs under prohibition is labeled S_1 . If drugs were legalized, the supply curve would flatten out, becoming more elastic, because the additional costs and barriers to entry of the illicit industry would no longer exist.¹²⁴ The costs of production and distribution would be lower for each unit of drugs, so a lower price would be charged. In Figure 4, the supply curve of drugs under legalization is labeled S_2 .

The demand for drugs, under any policy, is relatively inelastic. The consumption of drugs stays relatively constant when price fluctuates. This is partly due to the addictive nature of drugs—even when price goes up people still need drugs—and the fact that some people will not consume drugs, regardless of how low the price is. In Figure 4, the demand curve under prohibition is labeled D_1 . If drugs are legalized, demand is likely to increase because the cost to the consumer is lower. However, this increase is likely to be modest because the legal status of drugs tends to have little effect on whether most people choose to consume drugs.¹²⁵ Evidence of these phenomena can be abstracted from the U.S. experience with the prohibition of alcohol, a similar market. During Prohibition, alcohol consumption did not vary greatly with the change in price, and, after its repeal, consumption did not increase substantially.¹²⁶ In Figure 4, the demand curve under legalization is labeled D_2 .

The net effect of a change in drug policy from prohibition to legalization is a sharp decrease in price and a modest increase in quantity demanded. Figure 4 above provides price and quantity numbers as an example to better understand this economic situation. As

122. Miron & Zwiebel, *supra* note 13, at 176.

123. *Id.*

124. *Id.*

125. *See id.* at 176-77.

126. Jeffrey A. Miron & Jeffrey Zwiebel, *Alcohol Consumption During Prohibition*, 81 AM. ECON. REV. 242, 246 (1991).

seen in Figure 4, equilibrium¹²⁷ price drops from twelve to four, while quantity demanded increases slightly from seven to ten. The difference that most concerns the global drug trade is the net change in revenue. In Figure 4, revenues (the shaded regions) drop drastically from eighty-four under prohibition to forty under legalization, a fifty-two percent reduction.

Less revenue in the drug market equates to substantially lower profits for drug traffickers. With lower profits, criminals will likely leave the drug market, abandoning drug production in search of other more profitable, and likely illicit, markets. Additionally, the illicit drug market is closely linked to these other illicit markets, like the arms trade, human trafficking, and terrorism. For instance, illegal investments in the drug trade often fund criminal organizations that procure weapons in the arms trade and train terrorists.¹²⁸ Without the profits from the \$500 billion drug industry, many of these other illicit markets may suffer as well, a substantial benefit to the war on terror.

Every last penny of profits from the industry will obviously not just disappear. There will still be a demand for drugs, which will fuel the legalized market. However, if the numbers used in Figure 4 represented reality, about half of the profits, around \$250 billion a year, could evaporate into thin air. New players in the drug market—domestic and international producers and distributors who will resort to judicial process to resolve disputes—will likely recover the other half of the profits. At first, countries with trafficking problems, like Mexico and Colombia, may not see stabilized drug industries until the violent traffickers leave the industry. Over time, however, the drug trade will be akin to other legalized industries. Domestic governments will be able to regulate their drug economies and address consumption issues as they see fit.

The biggest critique of the legalization framework is that demand for drugs is more elastic than legalization proponents think. Skeptics worry that the global consumption of drugs will surge to the levels of other legal substances, like alcohol and tobacco.¹²⁹ Nevertheless, these skeptics fail to realize that most people would still not consume drugs even if they were legal.¹³⁰ Alcohol and tobacco are drastically different than illicit drugs like marijuana and cocaine. The dangers of tobacco

127. Equilibrium occurs when supply equals demand.

128. Lal, *supra* note 53, at 157.

129. See UNODC, *supra* note 24, at 164.

130. Jeffrey A. Miron, *Drug Legalization and the Consumption of Drugs: An Economist's Perspective*, in *SEARCHING FOR ALTERNATIVES: DRUG-CONTROL POLICY IN THE UNITED STATES* 68, 72-73 (Melvyn P. Krauss & Edward P. Lazear eds., 1991).

and alcohol are mostly long term, while drugs like cocaine, marijuana, and other narcotics pose short-term dangers that deter their usage.¹³¹

Other scholars propose decriminalization as the answer.¹³² However, decriminalization would not have the same effect on the market as legalization. In a decriminalized world, production and trafficking would still be illegal, so there would still be the potential for high profits, yielding an incentive for self-help violence, and the drug trade would remain profitable for dangerous criminal organizations. Additionally, under a decriminalization framework, countries would be faced with the same domestic drug problems as legalization.

C. The Protagonist: The United States of America

A successful legalization regime implies that, in theory, every nation across the globe should legalize drugs. However, in practice, convincing every nation to do so in the short term is far from plausible. Mexico may seem to be the logical choice to take the first step toward universal legalization because of its recent drug problems. However, Mexico has a relatively low level of consumption of illicit drugs: 0.8% of the population use cocaine and 3.1% use marijuana,¹³³ both near global averages.¹³⁴ With such a minor share of the demand for drugs, legalization in Mexico would barely affect the global market. Additionally, immediate legalization in Mexico could lead to even more violence because of its ongoing trafficking problem. Without strictly enforced regulation, the traffickers in Mexico could potentially use legalization to their advantage to increase their business in other countries where drugs are still illegal.

A better candidate to take the first step toward universal legalization is the United States. In the words of Secretary of State Hilary Clinton, speaking on behalf of the United States, "Our insatiable demand for illegal drugs fuels the drug trade."¹³⁵ About 3% of U.S. citizens aged fifteen to sixty-four use cocaine (more than six times the global average) and 12.3% use marijuana (more than three times the global average).¹³⁶ Those numbers equate to about 30% of all cocaine

131. See *Drug Information*, U.S. DEA, <http://www.justice.gov/dea/concern/concern.htm> (last visited Apr. 8, 2011).

132. See DOUGLAS HUSAK & PETER DE MARNEFFE, *THE LEGALIZATION OF DRUGS* 83-95 (2005).

133. UNODC, *supra* note 24, at 241, 246.

134. Global consumption of cocaine is estimated at 0.4% to 0.5% and consumption of marijuana is estimated at 3.3% to 4.4%. *Id.* at 80, 106.

135. Mark Landler, *Clinton Says U.S. Feeds Mexico Drug Trade*, N.Y. TIMES, Mar. 25, 2009, http://www.nytimes.com/2009/03/26/world/americas/26mexico.html?_r=1.

136. UNODC, *supra* note 24, at 241, 246.

users globally and 14% of all marijuana users. In addition, the United States—which comprises only 5% of the world's population—consumed 60% of the world's drugs in 1996.¹³⁷ That number could be different now, but it puts this analysis in perspective. Either way, the United States is one of the leading consumers of illicit drugs worldwide. If the United States legalized drugs, it would have a profound effect on the market. Mexican President Felipe Calderon said it best: "If there isn't a generalized, universal legalization policy across the world, and mainly in the main drug consumer, the United States, there won't even be any economic benefits, because the price is determined by the American market."¹³⁸

The United States is also a good candidate because other nations tend to follow its drug policies. Because the United States is the leader of the war on drugs, its drug policies have dominated the United Nations and other global organizations.¹³⁹ With the United States at the helm of legalization, other countries would quickly follow, and universal legalization could become a reality.

D. The Setting: Right Now

In the drug legalization debate, the best time to act is now. With each passing day, more people lose their lives to the drug war. Still, skeptics do not see this policy as plausible any time soon. Nevertheless, legalization in the United States is not merely a pipe dream.

The recent passing of Mexico's new decriminalization law marks a milestone in global drug policy. A pattern of the United States quashing Mexico's plans to alter its drug policy developed in recent years. Most recently, in 2006, Mexico was close to enacting a similar decriminalization law, but Mexican President Vicente Fox vetoed the bill—one he had supported—after he received pressure from George W. Bush's administration.¹⁴⁰ However, Mexico's recent decriminalization law passed in 2009 without U.S. opposition.¹⁴¹ The Obama administration stated that it is taking a "wait-and-see" approach to this legislation.¹⁴² Although it is not legalization, it appears that the United States is finally opening the door to the possibility of altering its drug policies after forty years of failures.

137. Walter Wink, *Getting Off Drugs: The Legalization Option*, FRIENDS J., Feb. 1996, at 13.

138. Mark Stevenson, *Mexicans, US Question Drug Legalization Proposal*, ABC NEWS, Aug. 10, 2010, <http://abcnews.go.com/International/wireStory?id=11362315>.

139. Ethan Nadelmann, *Think Again: Drugs*, FOREIGN POL'Y, Sept./Oct. 2007, at 24, 26.

140. Emmott, *supra* note 107.

141. *Legalization of Drugs*, *supra* note 48, at 6.

142. *Id.*

Furthermore, the public perception of legalizing drugs appears to be shifting in the United States. In November 2010, Californians voted on Proposition 19, which was also known as the Regulate, Control and Tax Cannabis Act.¹⁴³ Proposition 19 would have permitted possession of up to an ounce of marijuana by adults aged twenty-one and older, as well as its consumption in nonpublic places, out of the presence of children.¹⁴⁴ Moreover, it would have also allowed the private growing of marijuana in up to twenty-five square foot plots.¹⁴⁵ The initiative was narrowly defeated with 46.5% voting in favor of Proposition 19.¹⁴⁶ Although the ballot initiative did not pass, experts believe that this issue will be on many states' ballots in the near future, a sign that legalization is a realistic option.¹⁴⁷

V. THE NEXT STEP: GOVERNMENT REGULATION

Eradicating the violence associated with drug trafficking is only the first step in successfully containing the global drug problem. After universal legalization—one could argue *especially* after universal legalization—drug use and abuse problems would still be prevalent. Drug trafficking violence would subside as the new laws affect the global market, but each nation would still face its own domestic drug problem.

Without additional governmental action, legalization could lead to a variety of problems. Manufacturers could produce drugs in more dangerous forms. Street gangs could distribute the drugs legally and then use the profits for other violent activities. Also, consumption in public places and by minors could become prevalent.

Heavy government regulation of the new, legal drug industry is the best solution to these problems. Governments could regulate everything from the cultivation to the consumption of the newly legal drugs, much like the United States has with tobacco and alcohol. In the United States, substantial legislation by both the federal and state governments would be needed to fully regulate the industry and make legalization a success.

The cultivation and manufacturing processes would be the first part of the regulatory framework. The government could allow consumers to

143. Lisa Leff, *California Voters Reject Legalization of Marijuana*, *TAHOE DAILY TRIBUNE*, Nov. 3, 2010, <http://www.tahoedailytribune.com/article/20101103/NEWS/101109891>.

144. *Id.*

145. *Id.*

146. *Calif. Report: Nearly 60 Percent Voted Nov. 2*, CBS L.A., Dec. 11, 2010, <http://losangeles.cbslocal.com/2010/12/11/calif-report-nearly-60-percent-voted-nov-2/>.

147. Leff, *supra* note 143.

cultivate small amounts of drugs for personal use, like the twenty-five square foot plot limit proposed in Proposition 19,¹⁴⁸ or could outlaw private growing altogether. This decision would likely turn on which crops are being grown and the corresponding dangers of producing specific drugs. For instance, growing a small amount of marijuana would be relatively harmless and could be permitted. However, if crops, like the coca plant, require further manufacturing to produce the actual drug, governments could limit its private cultivation. For farmers or those growing larger plots, a permit could be required to grow the drug crops. Manufacturers would also need specific regulations detailing the proper manufacturing processes and product specifications. This would ensure a safer product than what may be currently available on the black market. Some might argue that there will still be a demand for these more dangerous forms of drugs. However, the relatively lower price of the safer, legally manufactured drugs and the fear of punishment from consuming the still illegal forms of drugs will likely deter consumption of the illegal, less safe drugs.

The distribution of the newly legal drugs could also be heavily regulated. The local distribution of drugs from sellers to consumers would likely be a state law issue. States could regulate which businesses are allowed to sell drugs, potentially requiring permits to sell drugs, similar to liquor licenses. The distribution of drugs would also involve a great deal of federal regulation. First, the federal government could highly tax drug sales to provide the nation with a thriving source of revenue. This tax rate, however, must not be set excessively high. If the tax is set too high, the price of drugs could rise to an artificially high level, inviting competition from violent drug traffickers. Second, the federal government could regulate the international trade of drugs. To prevent drug trafficking by violent traders, importers would be required to acquire some sort of authentication. This would assure that the money for the imported drugs would not be used to support violent or criminal activities. Governments could also impose additional excise taxes on the importation and exportation of the drugs.

Possession and consumption could also be heavily regulated. Similar to decriminalization laws in European countries and Mexico, consumers could be allowed to possess drugs up to a certain quantity for personal use. This law would deter distribution by sellers who are not approved. The consumption of drugs would also have limitations. The provisions of Proposition 19 seem to be reasonable: consumption is limited to adults twenty-one years or older, in nonpublic places, and out of the presence of children. States could also enact more specific criminal laws

148. *Id.*

regarding driving under the influence of drugs, public consumption, and other comparable regulations. State laws on alcohol consumption would provide a good barometer for these newly enacted laws. However, these drug laws should be much more stringent than some laws regarding alcohol to ensure public safety. For example, instead of a "legal limit" similar to driving under the influence of alcohol, there should be a no-tolerance policy for driving under the influence of drugs.

CONCLUSION

The illicit drug trade is a violent industry that took flight on the wings of prohibition and globalization. After a failed war on drugs and forty years of ineffective drug policies, something must be done to combat the growing drug trafficking problem and related violence.

Universal legalization presents a viable solution to this dilemma. By attacking the market, rather than the market participants, the legalization framework can successfully end the violence in the industry and reallocate its profits away from criminals. Some problems may present themselves with this approach: drug consumption could increase, criminals could simply move to other industries, and universal acceptance could be unlikely in the short term. Additionally, there are still questions left unanswered: How much will consumption rise? Will the market even survive the radical shifts? How will individual nations fix their domestic drug problems? Will government regulation be enough? Should we really legalize everything at once?

One thing is certain: there is a drug trafficking problem, and that problem is not going away without decisive action. It is inching closer and closer to the United States' borders. With its back against the wall, the ball is in the United States' court.