



# The Role of the UN International Drug Control Conventions in Facilitating Law Enforcement Cooperation in the Policing of Transnational Drug Trafficking

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## Abstract

Transnational policing is an increasingly important issue in today's globalised world. Transnational crime is an expanding industry and when crime crosses borders, cooperation between states is key. Arguably, this is most important in illegal drug trafficking, a crime of high concern to many states which almost always involves multiple countries. To this end, the UN Drug Control Conventions, introduced to tackle drug trafficking across the world, contain a number of provisions regarding law enforcement cooperation. This piece, by examining legal instruments and existing literature, will explore the role of the conventions regarding cooperation in policing the transnational trafficking of illicit drugs with a particular focus on the US, a major player in the field. Law enforcement cooperation between states existed for many years without international law obligations, however, it was often plagued by political and cultural differences and suffered when international relations were tense. By implementing obligations within the UN conventions, existing practices were codified into international law, meaning that cooperation should be a smoother, and legally-backed, process regardless of the political situation. This piece argues that, although the UN International Drug Control Conventions may not have added completely novel principles or practices to transnational law enforcement, they remain an important tool in facilitating transnational police cooperation and have made a valuable contribution to jurisprudence on the subject.

**Keywords:** drug trafficking, transnational policing, police cooperation, law enforcement, international law

## 1. Introduction

When crime crosses borders, cooperation between states in law enforcement is key in tackling it. Global policing has been expanding with the increased globalisation of crime. Police cooperation can be found at the national, regional and international levels.<sup>1</sup> Although transnational policing interacts with a large range of issues, drug control has dominated research on the subject,<sup>2</sup> and the policing of the global drug market has been described as “the paradigm example” of transnational law enforcement.<sup>3</sup> The prohibition and restriction of the transport and importation of narcotics has been a concern for countries across the world.

Three treaties make up the major jurisprudence on transnational drug crime. These include: The Single Convention on Narcotic Drugs 1961 (hereinafter referred to as the 1961 Convention), The Convention on Psychotropic Substances 1971 (herein after referred to as the 1971 Convention), and The Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (hereinafter referred to as the 1988 Convention). Together, they are known as the United Nations’ (UN) International Drug Control Conventions and they aim to create a standard international regime for tackling the illicit drugs trade. Alongside mechanisms for criminalisation, punishment, and other methods of suppression, the conventions include mechanisms for transnational law enforcement cooperation.

This article explores the extent to which these mechanisms have played a part in enhancing transnational law enforcement cooperation. Particular focus is placed on cooperation in the policing of the trafficking of drugs from the perspective of the United States of America (US), one of the major players in the suppression of drug trafficking. This piece focuses on analysing the mechanisms for operational policing cooperation, rather than the mechanisms for mutual legal assistance, which is beyond the scope of this piece.

This article seeks to investigate the question “what have the UN Drug Control Conventions added to the mechanisms for law enforcement cooperation used in the policing of

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<sup>1</sup> John R. Cencich, “Policing: Transnational,” in *Encyclopedia of Transnational Crime & Justice*, ed. Margaret E. Beare (Thousand Oaks, CA: Sage Publications, 2012), 318.

<sup>2</sup> James Sheptycki, *In Search of Transnational Policing: Towards a Sociology of Global Policing* (Aldershot: Ashgate, 2002), 92.

<sup>3</sup> James Sheptycki, “The ‘Drug War’: Learning from the Paradigm Example of Transnational Policing,” in *Issues in Transnational Policing*, ed. James Sheptycki (Abingdon, Oxfordshire: Routledge, 2000), 21.

transnational drug trafficking?” To do this, an analytical discussion and comparison of the convention provisions is undertaken, followed by a review of historic and current practices. First, the article discusses the meaning and origins of law enforcement cooperation in combatting drug trafficking. Second, the drug control conventions and the cooperation mechanisms in them are examined. This is followed by a look at other means, outside of the conventions, that are currently used for transnational cooperation, including international police organisations such as Interpol. Finally, the article will conclude with a discussion on the role of the drug control conventions in transnational police cooperation and how they have added to existing practices. This piece ultimately argues that, although the UN International Drug Control Conventions may not have added completely novel principles or practices to transnational law enforcement, they remain an important tool in facilitating transnational police cooperation and have made a valuable contribution to jurisprudence on the subject.

## **2. What is Transnational Law Enforcement Cooperation?**

The idea of cooperation between law enforcement agencies has grown in importance with the rise of transnational crime. Though police have increased tools to pursue transnational criminals, transnational crime is still widely prevalent.<sup>4</sup> Law enforcement cooperation between states has developed an important role in transnational criminal law<sup>5</sup> and various forms of cooperation are encouraged.<sup>6</sup> When crime crosses borders, to successfully tackle it, so must law enforcement.

Jurisdiction cannot be exercised by a state outside its territory unless permitted by a rule derived from international customs or from a convention.<sup>7</sup> This potentially limits or hinders law enforcement action and investigations. Given the near universal respect for territorial jurisdiction,<sup>8</sup> law enforcement activity against transnational crime (where part of the offence occurs elsewhere, or witnesses and/or evidence is in another state) requires international

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<sup>4</sup> Saskia Hufnagel and Carole McCartney, “Police Cooperation against Transnational Criminals,” in *Routledge Handbook of Transnational Criminal Law*, ed. Neil Boister and Robert J. Currie (London: Routledge, 2014), 118.

<sup>5</sup> Philip B. Heyman, “Two Models of National Attitudes toward International Cooperation in Law Enforcement,” *Harvard International Law Journal* 31, no. 1 (1990).

<sup>6</sup> Alice Hills, “The Possibility of Transnational Policing,” *Policing & Society* 19, no. 3 (2009).

<sup>7</sup> France vs. Turkey, Series A – no. 10, PCIJ (1927), 18-19.

<sup>8</sup> Heyman, “Two Models,” 99-.

cooperation. Drug trafficking provides a perfect example of a crime which may include multiple states and therefore highlights why cooperation is important. For example, an investigation or operation to intercept or stop drug trafficking may include source countries (where the drugs are grown and/or produced), transit countries (which the drugs are transported through), and destination countries (where the drugs end up on the market). Success in tackling transnational drug trafficking requires global cooperation. As the UN declares, drug trafficking needs to be countered in a “synchronised manner on multiple fronts.”<sup>9</sup>

Hufnagel and McCartney suggest that the very minimum needed for successful policing of cross-border crime is an efficient system of information exchange.<sup>10</sup> Yet even this is not always straightforward. Transnational cooperation of any kind, including policing, can be hindered by issues created by conflicting sovereignties, political tensions, and differences between national agencies. It is also recognised that even between friendly states, law enforcement cooperation can be difficult.<sup>11</sup> Commentators such as Nadelmann point out that having established mechanisms for transnational law enforcement cooperation help to reduce challenges.<sup>12</sup> This may be especially true when these mechanisms are enshrined in law.

### 3. The Origins of Law Enforcement Cooperation on Drug Trafficking

Collaboration among different police forces is almost as old as modern policing itself.<sup>13</sup> Mechanisms for transnational law enforcement cooperation date back to the mid-19th century,<sup>14</sup> a time when many western states were modernising and professionalising their police services. Transnational crime, in various forms, has been prevalent throughout history, and the reach and capabilities of law enforcement networks to tackle it continue to expand.<sup>15</sup> During the earlier years of the Cold War, international cooperation slowed. Although international

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<sup>9</sup> United Nations, Department of Public Information. *Successful Fight Against Drug Trafficking, Transnational Organized Crime Requires Interlocking National, Regional, International Strategies, Third Committee Told* (New York: General Assembly, 2009), <https://www.un.org/press/en/2009/gashc3948.doc.htm>.

<sup>10</sup> Hufnagel and McCartney, “Police Cooperation,” 107-20.

<sup>11</sup> Heyman, “Two Models,” 99-.

<sup>12</sup> Ethan Avram Nadelmann, *Cops Across Borders: The Internationalization of US Criminal Law Enforcement* (University Park, PA: Pennsylvania State University Press, 1993), 10.

<sup>13</sup> Benjamin Bowling and James W. E. Sheptycki, *Global Policing* (London: Sage Publications, 2011), 3.

<sup>14</sup> Nadia Gerspacher, “The History of International Police Cooperation: A 150-year Evolution in Trends and Approaches,” *European Journal of Crime, Criminal Law and Criminal Justice* 9, no. 1-2 (2008): 169-84.

<sup>15</sup> Hufnagel and McCartney, “Police Cooperation,” 120.

organisations such as Interpol continued to exist throughout this period, there were lower levels of participation from states<sup>16</sup> and very little inter-state law enforcement communications. However, during the 1970s, the rise of the illicit drug trade and other transnational crimes led many states to reengage with law enforcement cooperation.<sup>17</sup> Drug trafficking has been a major focus for many states when tackling transnational crime due to its prevalence and perception as highly harmful to both the state and its population.

According to Heymann, the origins of general law enforcement cooperation are European.<sup>18</sup> In terms of the development of transnational policing of drugs trafficking, however, the US has been a major driving force.<sup>19</sup> Drug prohibition was largely a product of campaigning from within the US.<sup>20</sup> Their large expansion in drug enforcement abroad was spurred by President Nixon declaring a “war on drugs.”<sup>21</sup> This rhetoric has also made the country a strong player in the development of the international law on the suppression of transnational drug trafficking. It has been argued that the US has promoted its own criminal justice norms within the transnational field<sup>22</sup> and that the formulation of agreements, such as the 1988 Convention, have been based on distinctly American techniques.<sup>23</sup>

Hufnagel and McCartney suggest that much of the cooperation undertaken by police does not depend on legal instruments.<sup>24</sup> Prior to official legal mechanisms, in many nations it was often custom – in the sense of tradition and informal arrangements – to facilitate transnational law enforcement cooperation.<sup>25</sup> However, because compatibility issues (such as political tensions, cultural and legislative differences, and communication difficulties) had always plagued cooperation efforts, several treaties were created to ensure cooperation would run with fewer issues.<sup>26</sup> The 1988 Convention, in particular, makes a significant contribution

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<sup>16</sup> Gerspacher, “The History of International Police,” 169-84.

<sup>17</sup> Peter Andreas and Ethan Avram Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations* (Oxford: Oxford University Press, 2006), 126.

<sup>18</sup> Heyman, “Two Models,” 99-.

<sup>19</sup> Andreas and Nadelmann, “Policing the Globe,” 5.

<sup>20</sup> Sheptycki, *In Search of Transnational Policing*, 97.

<sup>21</sup> Andreas and Nadelmann, “Policing the Globe,” 130.

<sup>22</sup> Nadelmann, *Cops Across Borders*, 470.

<sup>23</sup> Bowling and Sheptycki, *Global Policing*, 2.

<sup>24</sup> Hufnagel and McCartney, “Police Cooperation against Transnational Criminals,” 120.

<sup>25</sup> Hufnagel and McCartney, “Police Cooperation against Transnational Criminals,” 108.

<sup>26</sup> Gerspacher, “The History of International Police Cooperation.”

to law enforcement cooperation in both legal and operational ways. It also represented a significant commitment by signatory states to strengthen cooperation mechanisms for drugs policing.<sup>27</sup>

#### **4. Law Enforcement Cooperation Mechanisms in the UN Drug Control Conventions**

The UN Drug Control Conventions contain provisions that obligate parties to facilitate different forms of transnational law enforcement cooperation. According to some commentators, many of these originated from mechanisms developed domestically in the US. Article 9(1) of the 1988 Convention consists of a general provision with an obligation on states to “cooperate closely with each other.” This is followed by more details, including specific mechanisms in the subsequent subsections. Following is an overview of several instruments for law enforcement cooperation provided for in the conventions.

##### ***4.1. Information Sharing***

A key part in tackling transnational crime is the sharing of information. The UN Drug Control Conventions provide a legal structure for the transferring of information between parties. The earlier conventions did not contain extensive measures. For example, the 1961 Convention only provides for the sharing of information to international narcotics control bodies, not to other states.<sup>28</sup> The 1988 Convention provides more detail. Going further than previous conventions, Article 9(1)(a) asserts that states must “establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences.”<sup>29</sup> This is a somewhat broad obligation. Usually, international conventions leave the institutional arrangements for exchange of information to be worked out between the agencies. Regional agreements and conventions can be more prescriptive with this. The UN Drug Control Conventions only provide a fallback arrangement for information exchange. There are many barriers to the sharing of information including data protection concerns and the difficulties caused by the

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<sup>27</sup> David P. Steward, “Internationalizing the War on Drugs: The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,” *Denver Journal of International Law and Policy* 18, no. 3 (May 2020): 387-404.

<sup>28</sup> *The International Drug Control Conventions 2013* (United Nations), art. 35(f).

<sup>29</sup> *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art.9(1)(a).

standards and cultures of different police forces. The UN conventions support the idea that national law determines what information can be shared and what confidentiality principles apply. As the UNODC notes in their legislative guide,<sup>30</sup> this can, however, cause problems when parties have inadequate privacy laws or when national laws require the disclosure of sensitive information to the defence in a prosecution.

There has been much discussion surrounding this issue in relation to the US and counter-terrorism, particularly in the context of EU-wide vs. individual state cooperation. In recent years, the US signed information sharing agreements with individual states in exchange for visa-free travel for their citizens.<sup>31</sup> The main problem with this is the concern that data sent under the agreements may not be protected to the same standard as under EU-wide arrangements.<sup>32</sup> Further concerns over data protection were heightened when it was revealed that the National Security Agency (NSA) was undertaking surveillance and information collecting operations without warrants, including in Europe.<sup>33</sup> This led to tensions between the US and the EU authorities, and put several joint counter-terrorism projects in jeopardy.<sup>34</sup> It also hindered further cooperation and restricted information sharing, having potentially damaging effects for current and future investigations.

#### **4.2. Liaison Officers**

One of the earliest methods of police cooperation was placing law enforcement agents in diplomatic missions abroad.<sup>35</sup> The FBI Legal Attaché programme (discussed below) was one of the first, but many countries followed and now have liaison officers in foreign states.<sup>36</sup> Article 9(1)(e) of the 1988 Convention provides for “the exchange of personnel and other

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<sup>30</sup> United Nations, Office on Drugs and Crime, *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crimes and the Protocols Thereto* (New York: Headquarters, 2004).

<sup>31</sup> Marco Funk and Florian Trauner, “Transatlantic Counter-Terrorism Cooperation,” *Alert* 15 (April 2016).

<sup>32</sup> Funk and Trauner, “Transatlantic.”

<sup>33</sup> Kristin Archick, *U.S.-EU Cooperation Against Terrorism* (Federation of American Scientists, 2013).

<sup>34</sup> After the NSA scandal, the European parliament even passed a (non-binding) resolution recommending suspending the TFTP agreement (2010/412/EU: Council Decision of 13 July 2010).

<sup>35</sup> Mathieu Deflem, “International Police Cooperation in North America,” in *International Police Cooperation: A World Perspective*, ed. Daniel J. Koenig and Dilip K. Das (Lanham, MD: Lexington, 2001), 71.

<sup>36</sup> Neil Boister, *An Introduction to Transnational Criminal Law*, (Oxford: Oxford University Press, 2012), 166.

experts, including the posting of liaison officers.”<sup>37</sup> Liaison officers have no policing powers within the host nation, they rely on the national agencies of that state to perform such functions in exchange for access to intelligence and expertise. Their role is primarily to gather intelligence and provide guidance, supporting both their host and home states. In 2012, there were more than 500 Drug Enforcement Agency (DEA) officers operating outside the US in drug-producing and transit states.<sup>38</sup> Despite facing some challenges, Nadelmann reported that they have been largely successful in supplying expertise and knowledge as well as gathering and contributing to intelligence. He credited this to officers ensuring that local policing, laws and practices were harmonised with their own, and effectively operating vicariously through host police agencies.<sup>39</sup> The inclusion of this practice in the 1988 Convention does not introduce liaison offers as a new concept, but it does codify into international law one of the oldest practices of transnational police cooperation.

#### ***4.3. Joint Investigation***

Another method of extraterritorial policing is creating joint investigation teams with other states. The 1988 Convention introduced this method into transnational criminal law.<sup>40</sup> However, the convention makes an exception if such investigations are contrary to domestic law.<sup>41</sup> Indeed, according to Boister, for a large number of signatories, law reform would be necessary to make joint investigations legally possible.<sup>42</sup> This, coupled with the politics and sensitivity of cross-border policing, has meant that many states have not made use of such measures. Subsequent crime suppression treaties have moved further away from this mechanism. The actual role of foreign police in joint investigations is determined by the domestic laws of both states. For example, US domestic law prohibits law enforcement agents from making arrests in foreign states in narcotics control operations.<sup>43</sup> Joint investigation teams

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<sup>37</sup> *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art.9(1)(e).

<sup>38</sup> Boister, *An Introduction*, 166.

<sup>39</sup> Nadelmann, *Cops Across Border*.

<sup>40</sup> *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art.9(1)(c).

<sup>41</sup> *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art.9(1)(c).

<sup>42</sup> Boister, *An Introduction*, 167.

<sup>43</sup> *Foreign Relations and Intercourse, U.S. Code 22 1946* (United States), § 2291(c)(1).



are only formed when a sending state has an interest in taking specific action in another state. Though this is rare and expensive. In practice, according to Boister, instead of joint investigations, states prefer to work only on the parts of the crime that take place within their own territory and investigate parallel to, rather than jointly with, agencies elsewhere.<sup>44</sup> Although this may be an example of politics and bilateral relationships being detrimental to cross-border investigations, the other international mechanisms for law enforcement cooperation in the treaties, particularly those dealing with information sharing, can come into play to avoid great losses of valuable intelligence or investigations.

#### ***4.4. Special Investigative Techniques***

There are a number of “special investigative techniques” endorsed within the various drug conventions. These are mechanisms which allow for law enforcement officials to carry out certain activities which would otherwise be criminally punishable. Whilst The UN Convention against Transnational Organised Crime (a broader convention which provides the main international instrument in the fight against all types of transnational organised crime) contains mechanisms for undercover operations and surveillance,<sup>45</sup> the International Drug Control Conventions only provides a mechanism for controlled delivery.

Controlled delivery permits the delivery of drugs across borders to identify traffickers and collect evidence on wider supply chains and criminal activity, both for arrests and prosecutions. It was introduced by the US and, according to Boister, is one of the most controversial enforcement methods used in transnational law enforcement cooperation.<sup>46</sup> It was initially problematic in civil law countries where the strict principle of legality meant that contraband should be seized immediately.<sup>47</sup> However, the DEA introduced controlled delivery through local police agencies in other states and assured authorities that the courier would be arrested in the destination country and the drugs seized. The mechanism was put to wider audiences through the 1988 Convention. Article 11 obliges parties to use controlled deliveries

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<sup>44</sup> Boister, *An Introduction*, 167.

<sup>45</sup> *Convention Against Transnational Organized Crime and the Protocols Thereto 2004* (United Nations), art. 20.

<sup>46</sup> Boister, *An Introduction*, 168.

<sup>47</sup> Boister, *An Introduction*, 168.

if their basic legal principles allow it, but only on a case-by-case basis and only by agreement between the parties.<sup>48</sup> If domestic law is not adapted to allow controlled deliveries, the mechanism can fail to meet its purposes and potentially lead to undetected cases. However, it is now a standard technique used in many countries and has resulted in a number of important detections.<sup>49</sup> Controlled delivery as a method for disrupting a range of transnational crimes has been promoted by major international organisations and policing agencies including the UNODC and EuroJust (who have produced a handbook to aid agencies wishing to utilise the technique in Europe).<sup>50</sup>

## 5. Other Mechanisms for Transnational Policing of Drug Trafficking in the US

### 5.1. National Efforts

The fight against transnational crime begins at the individual state level and many national police agencies take the lead in solving transnational crimes. In the US, law enforcement officers have been actively involved with international policing efforts.<sup>51</sup> For example, The New York City Police Department has a successful liaison programme with police officers in Europe, Asia, and Latin America. They work abroad to collect criminal intelligence connected to crimes within their city.<sup>52</sup>

The use of federal law enforcement agencies was one of the earliest tools the US deployed in the fight against transnational crime and mainly focused on drug related offences.<sup>53</sup> The Federal Bureau of Investigation (FBI)'s Legal Attaché (LEGAT) programme was one of the first official liaison officer programmes.<sup>54</sup> The DEA is well known for pursuing leads in foreign nations and working with agents in their host countries in areas of mutual concern, with

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<sup>48</sup> *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988* (United Nations), art. 11.

<sup>49</sup> See P. D. Cutting, "The Technique of Controlled Delivery as a Weapon in Dealing with Illicit Traffic in Narcotic Drugs and Psychotropic Substances," *Bulletin on Narcotics* 35, no. 4 (1983); and United Nations, Office on Drugs and Crime Viet Nam, *Promoting the Use of Controlled Deliveries for Wildlife Cases in Viet Nam* (Hải Phòng, Viet Nam: 2019), <https://www.unodc.org/southeastasiaandpacific/en/vietnam/2019/04/wildlife-crime/story.html>.

<sup>50</sup> See for example United Nations, Office on Drugs and Crime Viet Nam, *Promoting the Use of Controlled Deliveries for Wildlife Cases in Viet Nam* (Hải Phòng, Viet Nam: 2019); and European Union Agency for Criminal Justice Cooperation, "Controlled Deliveries."

<sup>51</sup> Cencich, "Policing: Transnational," 319.

<sup>52</sup> Cencich, "Policing: Transnational," 319.

<sup>53</sup> Andreas and Nadelmann, "Policing the Globe," 123.

<sup>54</sup> Andreas and Nadelmann, "Policing the Globe," 132.

a focus on drug trafficking. DEA agents have also sometimes taken a more operational role and made arrests when working overseas.<sup>55</sup> The US Customs Service have also, naturally, played a large role in policing transnational crime. For example, with regards to drug trafficking, since 2019, they have seized over 2.8 million pounds of drugs at the border.<sup>56</sup> These national agencies have all played an important part in combatting transnational drug trafficking. Although there may be some overlap, due to the remit of their work, each agency has a different mandate. Whether working together or separately, each agency can contribute information, intelligence, or evidence from different areas to help secure arrests, prosecutions, and disruption to the illegal drugs market as detailed in the examples above.

The US military is prohibited from participating in domestic law enforcement operations but is permitted to assist with law enforcement activities outside of the country. Members of the US armed forces are involved in a wide range of transnational law enforcement activities, particularly in combating drug trafficking. In this area, the military has helped with intercepting narcotics shipments and participated in specialist operations. For example, special operation teams, working with and supporting the DEA, were instrumental to the locating and capturing of drug lord Pablo Escobar by providing military personnel, equipment and operational expertise.<sup>57</sup>

## ***5.2. Regional Agreements***

Regional transnational policing efforts often happen in areas along borders. For example, at the US-Mexican border there are agreements for cooperation on immigration and customs issues as well as substantive crimes such as human smuggling and drug trafficking. Traditionally these links were kept largely informal, and ignored the concepts of sovereignty and international law, but political and cultural differences between states soured relationships.<sup>58</sup> In more recent times, due to geopolitics and social circumstances, relations with Mexican agents for manpower and intelligence, particularly on transnational crimes such as

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<sup>55</sup> Cencich, "Policing: Transnational," 319.

<sup>56</sup> "Drug Seizure Statistics," United States Customs and Border Protection, last modified June 9, 2021, <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

<sup>57</sup> Cencich, "Policing: Transnational," 320.

<sup>58</sup> Andreas and Nadelmann, "Policing the Globe," 117.

gun and drug smuggling, is essential in the US. Many drugs destined for the US originate in, and are transported through, South and Central America. Often there are numerous countries involved, therefore multi-lateral, regional agreements are crucial. They can also provide a “middle ground” between international agreements or conventions and bilateral agreements as they allow for a more tailored approach with less compromises but provide a legal comeback backed up by other members, although not to the same extent as the bigger international conventions.

### ***5.3. Bilateral Agreements***

As previously mentioned, in the past, law enforcement cooperation was mainly facilitated through bilateral agreements and tradition between the US and individual states. This reflected the idea that crime and security issues was considered a matter to be dealt with by individual states. Despite largely positive attitudes towards international agreements, some critics doubt the usefulness of collaborating in this way, especially given the existing productive bilateral agreements.<sup>59</sup> These agreements are still preferred in certain matters.<sup>60</sup> The US has bilateral law enforcement cooperation treaties with a number of states, particularly within the EU and United Kingdom, with regards to law enforcement and terrorist offences. Bilateral agreements can often provide for more detailed and specific cooperation mechanisms between states. They also often lead to more robust agreements with a lesser level of compromise, as would be found in international agreements due to the fewer participants. However, much like the issues with customary or trust-based agreements, they can fall victim to increased politicisation and related problems. Although they are official mechanisms like the international treaties, they do not have the same backing, number of participants, or arbitration and enforcement options that are available within the International Drug Control Conventions.

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<sup>59</sup> Archick, *U.S. - EU Cooperation Against Terrorism*.

<sup>60</sup> Funk and Trauner, “Transatlantic.”

## 6. International Organisations – The Role of Interpol

Outside of playing a pivotal role in the creation of international legal regimes and utilising its own power internationally, the US is also heavily involved in a number of international organisations relating to policing and judiciary matters. In terms of operational police cooperation, the most important of these is The International Criminal Police Organisation, better known as Interpol. Although legal frameworks, including conventions and legislation, play an important part in their activities, the main purpose is practical cooperation, partnership working and collaboration to achieve their goals, backed by the power of multiple members coming together.

Interpol is not a law enforcement agency in itself – it does not have its own agents and cannot make arrests. Its primary aim is “to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights.”<sup>61</sup> It provides administrative aid as well as communication and information sharing assistance to facilitate state-to-state law enforcement cooperation. Article 35 of the 1961 Convention recognises the role of international bodies such as Interpol and their part as intermediaries in police cooperation. It obliges parties to the treaty to “co-operate closely with each other and with the competent international organizations”<sup>62</sup> and “ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner.”<sup>63</sup>

While Interpol deals with many forms of transnational crime, it is particularly interested in drug trafficking. The Interpol network of drug liaison officers account for a large part of their workforce. Interpol states that it has three main roles in combatting drug trafficking: training national law enforcement officers, analysing and monitoring intelligence and knowledge on drug trafficking, and operational support and coordination for investigations led by national or international organisations.<sup>64</sup> The organisation has had particular success, such

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<sup>61</sup> *Constitution of the International Criminal Police Organisation – INTERPOL 2017* (Argentina et al.), art.2(1).

<sup>62</sup> *The International Drug Control Conventions 2013* (United Nations), art.35(c).

<sup>63</sup> *The International Drug Control Conventions 2013* (United Nations), art.35(d).

<sup>64</sup> “Our Role To Fight Drug Trafficking,” INTERPOL, accessed June 26, 2021, <https://www.interpol.int/Crimes/Drug-trafficking/Our-role-to-fight-drug-trafficking>.

as with “Operation Lionfish – Asia Pacific” in 2017 where an Interpol team involving officers from several countries seized 360 million USD worth of drugs and led to over 300 arrests. The Deputy Director of the Chinese Ministry of Public Security’s Narcotics Control Bureau Department of Investigation and Guidance said that the operation “served as an important initiative for strengthening multilateral cross-border drug enforcement cooperation, providing effective channels of communication and enhancing mutual trust among law enforcement personnel.”<sup>65</sup>

Despite Interpol’s long history and many major successes, it has not escaped controversy. There have been concerns that red notices (the system whereby a state requests a notice for the arrest of a wanted person and Interpol relays it to all member countries) have been used for political reasons. A report conducted by NGO Fair Trials International, found that since the introduction of an electronic system in 2008, the use of red notices has risen and several countries were using the system against political activists.<sup>66</sup> A red notice, however, is not an international arrest warrant and Interpol cannot compel any country to arrest an individual. Compliance with a red notice is up to the discretion of the member countries and Interpol’s system does not allow for the monitoring of the quality of national-level information.<sup>67</sup> This means that the system is open to potential abuse.

Interpol has been recognised by the UN as an intergovernmental body, but it is not a “formal” police cooperation initiative because its constitution is not binding and its members are police forces, not states.<sup>68</sup> Interpol cannot compel or force states to take any action and, as mentioned above, does not have any powers of arrest. It depends on cooperation from its member countries. However, it is still a very useful tool in tackling transnational crime.<sup>69</sup> By including the provision in Article 2(1) of the 1961 Convention (as discussed previously), which

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<sup>65</sup> “Drugs worth USD 360 million seized in INTERPOL-led Operation,” INTERPOL, last modified September 28, 2017, <https://www.interpol.int/News-and-Events/News/2017/Drugs-worth-USD-360-million-seized-in-INTERPOL-led-operation>.

<sup>66</sup> “Strengthening Respect for Human Rights, Strengthening Interpol,” Fair Trials International, last modified November 26, 2013, <https://www.fairtrials.org/publication/strengthening-respect-human-rights-strengthening-interpol>.

<sup>67</sup> *Constitution of the International Criminal Police Organisation – INTERPOL 2017* (Argentina et al.).

<sup>68</sup> Hufnagel and McCartney, “Police Cooperation against Transnational Criminals,” 108.

<sup>69</sup> Hufnagel and McCartney, “Police Cooperation against Transnational Criminals,” 108.

is binding on states, the procedure is made more formal. Therefore, the conventions have not only contributed to direct state-to-state cooperation but also between individual police forces across borders, via Interpol.

## 7. The Role of Law Enforcement Mechanisms in the UN Drug Control Conventions

It has been said that police cooperation depends more on trust than it does on legal frameworks, and the greater the trust between the states, the less formal the procedures need to be.<sup>70</sup> Although this may be true for cooperation in practice, legal mechanisms still play an important part. The drug control conventions are now a “centrepiece of transnational criminal law.”<sup>71</sup> The illicit trafficking of drugs led to their creation,<sup>72</sup> and their primary aim is to create international standards for the control of drugs and the suppression of their illegal trafficking and use.<sup>73</sup> The conventions require states to criminalise certain acts pertaining to the production, supply, possession and trafficking of illicit drugs. The 1988 Convention, in particular, has been described as one of the most detailed and far-reaching instruments in transnational criminal law.<sup>74</sup> Law enforcement cooperation is not the main focus of the conventions, but they do include such provisions and have contributed to practice in this area.

The adoption of the conventions, particularly the 1988 Convention which contained many of the law enforcement cooperation mechanisms and harmonised enforcement action around the world, was a significant step in bringing successful law enforcement measures against transnational drug traffickers.<sup>75</sup> The conventions take existing mechanisms and apply them with a degree of specificity to the transnational drugs trade. The conventions also formalise these mechanisms. By ratifying the conventions, states are under obligation to cooperate using these mechanisms to the extent specified in the conventions.

The UN Drug Control Conventions have had to incorporate and adapt to the diversity of policing arrangements in different states. Most states struggle to coordinate their law

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<sup>70</sup> Boister, *An Introduction*, 160.

<sup>71</sup> Boister, *An Introduction*, 50.

<sup>72</sup> Steward, “Internationalizing the War on Drugs.”

<sup>73</sup> Martin Jelsma and Amira Armenta, “The UN Drug Control Conventions: A Primer” (Transnational Institute, 2015). [https://www.tni.org/files/publication-downloads/primer\\_unconventions\\_24102015.pdf](https://www.tni.org/files/publication-downloads/primer_unconventions_24102015.pdf).

<sup>74</sup> Steward, “Internationalizing the War on Drugs.”

<sup>75</sup> Steward, “Internationalizing the War on Drugs.”

enforcement agencies with other states,<sup>76</sup> standardising<sup>77</sup> transnational crime, like any international matter, can be highly politicised. By creating obligations under the conventions this should, in theory, be minimalised, though this is not always the case in practice.

## 8. Conclusion

With the rise of transnational crime comes the rise in the importance of transnational law enforcement cooperation. Issues of jurisdiction and state sovereignty mean that national police forces cannot exercise their power in foreign states, therefore, to gather evidence or conduct investigations they need to work with other states. Transnational police cooperation has been around for a long time but in the latter half of the 20<sup>th</sup> century cooperation, specifically in policing the illicit drugs trade, became a stronger focus. Since then, law enforcement cooperation in the case of drug trafficking has been used as a prime example of transnational policing.

Together, the UN Drug Control Conventions aim to create an international regime for the suppression of the illegal drugs trade. As discussed throughout this article, they do this through many measures but also include several mechanisms for transnational law enforcement cooperation. Alongside a general provision obliging cooperation with agencies from other states there are also specific mechanisms for operational cooperation. These include information sharing, liaison officers, joint investigations, and controlled deliveries.

Prior to the introduction of the mechanisms in the conventions, police cooperation was achieved largely through customs and trust. There are also regional and bilateral agreements which can provide more details and specificity than international conventions. However, these can be plagued with implementation and application issues due to political differences or ill-will between different states. There is also an important role for international policing and judicial organisations such as Interpol. These organisations do not have powers as police agencies in themselves, but instead provide support to facilitate cooperation between the national police forces of member states.

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<sup>76</sup> Boister, *An Introduction*, 160.

<sup>77</sup> Steward, "Internationalizing the War on Drugs."



Despite these other mechanisms, the UN Drug Control Conventions have still made a valuable contribution in the field of transnational law enforcement cooperation. They have helped to overcome some issues surrounding cooperation in practice. By including mechanisms for transnational police cooperation, the UN Drug Control Conventions globalised standards, and harmonised and enhanced practices which were already in place. The conventions provide a legal backing and include an enforceable obligation on signatory states who do not comply. The conventions may not have introduced anything completely new, but they have formalised some existing mechanisms and codified practice into international law. This is still a valuable contribution to transnational criminal jurisprudence.

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