
**FENTANYL: HOW CHINA’S PHARMACEUTICAL
LOOPHOLES ARE FUELING THE UNITED STATES’ OPIOID
CRISIS**

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On April 1, 2019, China banned all forms of fentanyl and classified fentanyl-related drugs as controlled substances. This note was written and prepared for publication prior to this ban, at a time when fentanyl was freely available in China.

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INTRODUCTION

Have you ever ordered something on Amazon and had it delivered to your home? What if you were told ordering drugs could be as easy as shopping on Amazon? Moreover, what if you were told you could have synthetic drugs, more powerful than heroin, delivered right to your doorstep? You would likely think such a possibility to be absurd. Unfortunately, the reality is synthetic opioids, such as fentanyl, are being purchased online and delivered right to the consumer's door.

Americans consume more opioids than any other country in the world.¹ Federal officials have scrambled to combat the pervasive opioid addiction, which has become a national emergency in the United States.² The issue is that the internet has cut out the middleman and streamlined the delivery process with little legal risk to the manufacturer. This matter will not be “greatly help[ed]” by a newer, bigger, or stronger border wall, as President Trump suggests.³ The root of the opioid crisis lies in China, where synthetic opioids and their precursors are manufactured before being shipped overseas.⁴ While some changes are being made domestically,

* J.D. Candidate, 2019, Syracuse University College of Law. First and foremost, I would like to thank my family, specifically my parents, for providing immeasurable support throughout my academic career. I would also like to thank Professor Kim Wolf-Price for taking the time to provide indispensable guidance throughout this process. Finally, I wish to thank my friends who, throughout this process, forwarded me any opioid articles they came across.

1. CHRIS CHRISTIE ET AL., THE PRESIDENT'S COMMISSION ON COMBATING DRUG ADDICTION AND THE OPIOID CRISIS 115 (2017), available at https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf (last visited Mar. 24, 2019).

2. See *id.*

3. Dan Merica, *Trump Declares Opioid Epidemic a National Public Health Emergency*, CNN (Oct. 26, 2017), available at <https://www.cnn.com/2017/10/26/politics/donald-trump-opioid-epidemic/index.html> (last visited Mar. 24, 2019).

4. U.S. DEP'T OF ST., INT'L NARCOTICS CONTROL STRATEGY REP. 1, 8 (2017). The Bureau for International Narcotics and Law Enforcement Affairs (an agency within the U.S. State Department) published its 2017 International Narcotics Control Strategy Report listing China as a “Major Precursor Chemical Source.”

thanks to the internet, this issue has no borders and cannot be unilaterally controlled.

China is a dominant figure in the world's global market for pharmaceuticals and pharmaceutical ingredients.⁵ However, gaps in China's legislation stemming from political corruption are fueling an opioid epidemic in the United States.⁶ Due to its market prominence, China cannot afford to turn a blind eye to how significantly its regulatory deficiencies affect the United States. The flaws in both international and domestic laws governing pharmaceutical manufacturing and trade must be addressed to prevent traffickers from exploiting the system.

The first section of this paper will set the scene of the current opioid crisis in the United States. The objective of this section is to introduce fentanyl and discuss what makes the drug so dangerous. Specifically, this section will focus on: (1) how fentanyl affects the user; and (2) how it fuels the largest opioid epidemic recorded in history.

The second section will address the complicated structure of China's present organization of administrative agencies and the issues that accompany it. It will explain how China's laws and regulations have created a loophole that is being exploited by chemical companies, and why political corruption contributes to the issue. Furthermore, this section will touch upon the barriers inhibiting quicker and more effective action, as well as actions undertaken thus far.

The third section will assess the United States' and China's cooperative efforts in combating illicit narcotics. This section will explain the framework of how the two countries work together and the various groups that are involved. This section will also discuss the significance of the policy implications behind the United States and China's cooperation.

The fourth section will address the importance of international conventions and the role they play in global narcotics regulations. It will outline the numerous treaties and organizations that are presently in effect and how each influences narcotics law.

5. Melanie Lee & Ben Hirschler, *Special Report: China's "Wild East" Drug Store*, REUTERS (Aug. 28, 2012), available at <https://www.reuters.com/article/us-china-pharmaceuticals/special-report-chinas-wild-east-drug-store-idUSBRE87R0OD20120828> (last visited Mar. 24, 2019).

6. SEAN O'CONNOR, U.S.-CHINA ECON. AND SECURITY REV. COMM'N, FENTANYL: CHINA'S DEADLY EXPORT TO THE UNITED STATES (2017), available at https://www.uscc.gov/sites/default/files/Research/USCC%20Staff%20Report_Fentanyl-China's%20Deadly%20Export%20to%20the%20United%20States020117.pdf (last visited Mar. 24, 2019).

The fifth section will address the United States' laws and organizations in charge of regulating illicit narcotics. This section will analyze the systems the United States presently has in place, and actions being contemplated to curtail the epidemic.

Finally, the sixth section will include recommendations for each of the issues discussed above. Recommendations will be based upon the status quo, developing trends, and pending legislation corresponding to each issue addressed as a factor in this epidemic.

I. WHAT IS THE U.S. OPIOID EPIDEMIC?

A. Introduction to Opioids

Opioids are medications that mimic the pain reducing properties of opium by binding to μ -opioid receptors in areas of the brain that control pain and emotion.⁷ Once bound to these receptors, opioids trigger the release of dopamine in the brain's reward area, resulting in a euphoric "high" feeling.⁸ Over time, the brain becomes accustomed to this feeling and requires more of the opioid to trigger the same level of pain relief.⁹ This increase in tolerance results from the user's dependence upon the opioid to satisfy the feelings of withdrawal, which occur when the euphoric feeling wears off.¹⁰

In 2015, the quantity of opioids prescribed in the United States was sufficient to keep every citizen "medicated around the clock for three weeks."¹¹ Opioid addiction often begins with the misuse of legally prescribed medications such as morphine, oxycodone, or hydrocodone.¹² Users quickly develop a tolerance to prescription opioids and struggle to

7. *Opioid Crisis Fast Facts*, CNN (Jan. 16, 2019), available at <http://www.cnn.com/2017/09/18/health/opioid-crisis-fast-facts/index.html> (last visited Mar. 24, 2019).

8. *Id.*

9. *Id.*

10. *Id.*

11. Joanna Walters, *America's Opioid Crisis: How Prescription Drugs Sparked a National Trauma*, THE GUARDIAN (Oct. 25, 2017), available at <https://www.theguardian.com/us-news/2017/oct/25/americas-opioid-crisis-how-prescription-drugs-sparked-a-national-trauma> (last visited Mar. 24, 2019).

12. *Opioid Crisis Fast Facts*, *supra* note 7. Opioid drugs are generally much cheaper than their safer alternatives. A serious issue made worse by insurance companies restricting access to pain medications with lower rates of addiction and dependence. Katie Thomas & Charles Ornstein, *Amid Opioid Crisis, Insurers Restrict Pricey, Less Addictive Painkillers*, N.Y. TIMES (Sept. 17, 2017), available at <https://www.nytimes.com/2017/09/17/health/opioid-painkillers-insurance-companies.html> (last visited Mar. 24, 2019).

find enough to get high. As a result, users turn to stronger illicit drugs such as heroin and fentanyl.¹³

This behavior has driven what has become the deadliest drug epidemic in American history.¹⁴ Presently, the United States is experiencing a “death toll equal to September 11th every three weeks,” a sobering statistic that cannot be ignored.¹⁵

B. Fentanyl

Fentanyl is an opioid medication generally prescribed to cancer patients who are in severe pain.¹⁶ Classified as a Schedule II drug,¹⁷ it is 50 times more powerful than heroin and 100 times more powerful than morphine.¹⁸ Fentanyl is so potent that just touching an amount the “size of a few grains of sand” is enough to kill a person.¹⁹

What makes fentanyl attractive to users is the rapid and intense euphoric effect it elicits. Fentanyl works and binds the same way as all other opioids, but it crosses the blood-brain barrier quicker than other substances, resulting in a stronger high.²⁰ The side effects of fentanyl

13. See *Opioid Crisis Fast Facts*, *supra* note 7.

14. Maya Salam, *The Opioid Epidemic: A Crisis Years in the Making*, N.Y. TIMES (Oct. 26, 2017), available at <https://www.nytimes.com/2017/10/26/us/opioid-crisis-public-health-emergency.html> (last visited Mar. 21, 2019).

15. Ali Vitali and Corky Siemaszko, *Trump Vows U.S. Will ‘Win’ Fight Against Opioid Crisis*, NBC NEWS (Aug. 8, 2017), available at <https://www.nbcnews.com/storyline/americas-heroin-epidemic/trump-vows-u-s-will-win-fight-against-opioid-crisis-n790751> (last visited Mar. 21, 2019).

16. Sara Sidner, *Fentanyl: The Powerful Opioid That Killed Prince*, CNN (Oct. 25, 2017), available at <http://www.cnn.com/2016/05/10/health/fentanyl-new-heroin-deadlier/index.html> (last visited Mar. 21, 2019). Fentanyl was introduced as an intravenous anesthetic, but also comes in the form of patches and lozenges. O’CONNOR, *supra* note 6, at 3.

17. A drug classified as Schedule II is legally available; however, it has a high potential for abuse, so it may only be obtained through a non-refillable prescription. *Id.* at 15.

18. *Id.*

19. Sidner, *supra* note 16.

20. Alice G. Walton, *Why Fentanyl Is So Much Deadlier Than Heroin*, FORBES (Apr. 9, 2016), available at <https://www.forbes.com/sites/alicegwalton/2016/04/09/why-fentanyl-is-so-much-more-deadly-than-heroin/#69ffe9627f6a> (last visited Mar. 21, 2019). When fentanyl binds to opioid receptors in the brain, it floods your brain’s reward centers with dopamine. Dopamine is a neurotransmitter that increases when you have a rewarding experience, prompting you to look for that same response again. However, the dopamine response to drugs of abuse is orders of magnitude more, which is why people with addictions are constantly seeking the same rewarding feeling. They are not addicted to the drug; their brain is addicted to the neurochemical surge the drug elicits. The brain then becomes accustomed to this surge and requires this constant stimulation for the

include nausea, vomiting, analgesia, and sedation.²¹ Most significantly, fentanyl causes respiratory depression which can lead to death by respiratory arrest.²² The rate of respiratory depression is proportional to the dose of fentanyl and can range from a slow to immediate death.²³

Originally, fentanyl users illegally extracted the chemical from pharmaceutical patches and either injected it or pressed it into pills.²⁴ Presently, fentanyl sold on the street is largely synthetically manufactured in China and shipped to the United States and Mexico.²⁵ Compared to heroin, fentanyl is much simpler to make and results in higher profits for manufacturers.²⁶

Fentanyl's key ingredient is N-Phenethyl-4-piperidinone (hereinafter "NPP"). NPP is a chemical precursor, used in the manufacture of fentanyl, which can be purchased from Chinese chemical companies.²⁷ Depending on the current market price, one could purchase 25 grams of NPP for approximately \$87.²⁸ NPP is then combined with \$720 worth of other chemicals, which results in about 25 grams of fentanyl.²⁹ Thus, it costs about \$810 to create enough fentanyl to make up to \$800,000 worth of pills on the black market.³⁰

In addition to being cheap, fentanyl is also easier to distribute because its potency permits smaller volume shipments.³¹ Chinese chemical exporters utilize several methods to illicitly ship fentanyl to the Western Hemisphere. Some common strategies include forwarding systems, mislabeling packaging, concealing the drug in silica packets, and modifying

user to function normally. Depriving the brain of this stimulation causes the user to become violently "sick" and unable to function normally. Thus, opioid addiction is not an issue of will, it is a neurochemical issue within the most primitive part of the brain. *Fentanyl: The Drug Deadlier Than Heroin*, VICE VIDEO (2016), available at https://video.vice.com/en_us/video/fentanyl-the-drug-deadlier-than-heroin/57169d30dbb30e8656f09c76 (last visited Mar. 21, 2019).

21. Walton, *supra* note 20.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Walton, *supra* note 20.

27. Jeanne Whalen & Brian Spegele, *The Chinese Connection Fueling America's Fentanyl Crisis*, WALL ST. J. (June 23, 2016), available at <https://www.wsj.com/articles/the-chinese-connection-fueling-americas-fentanyl-crisis-1466618934> (last visited Mar. 21, 2019).

28. *Id.*

29. *Id.*

30. *Id.*

31. Walton, *supra* note 20.

the chemical structure.³² United States Customs and Border Protection (“CBP”) officials seize fentanyl more frequently than any other synthetic opioid.³³ In August and September of 2017, federal officials seized about 200 pounds of fentanyl and fentanyl-laced heroin in two separate New York City raids.³⁴ This seizure alone contained enough fentanyl to kill more than 32 million people and had a street value worth well over \$30 million.³⁵ And while CBP is seizing a great deal of fentanyl, much more is making its way to the United States from China.

C. Present Status of the United States

On October 26, 2017, amid the worst ever drug epidemic in U.S. history, President Trump declared the opioid epidemic a public health emergency, pursuant to the Public Health Services Act (“PHSA”).³⁶ This declaration directs federal administrative agencies to focus funds towards combating the epidemic, while States are given the flexibility to allocate federal grants to addiction, treatment, and prevention.³⁷

This order differs from a national emergency declaration pursuant to the Stafford Act, which would permit the government to tap into the Federal Emergency Management Agency’s (“FEMA”) Disaster Relief Fund.³⁸ FEMA funds are preserved to alleviate instances of natural disasters—not health emergencies.³⁹ This is because the Stafford Act is designed to respond to emergencies that are brief and isolated to a geographic area.⁴⁰ The opioid crisis is a complicated nationwide health crisis that does not have a short-term solution.⁴¹ Moreover, FEMA’s current

32. O’CONNOR, *supra* note 6, at 3.

33. *Id.*

34. NYC Authorities Seize Nearly 200 Pounds of Fentanyl Worth \$30 Million, FOX NEWS (Sept. 19, 2017), available at <http://www.foxnews.com/health/2017/09/19/nyc-authorities-seize-nearly-200-pounds-fentanyl-worth-30-million.html> (last visited Mar. 21, 2019).

35. *Id.*

36. Merica, *supra* note 3.

37. Christina Wilkie, *Trump Declares the Opioid Epidemic a Public Health Emergency*, CNBC (Oct. 26, 2017), available at <https://www.cnbc.com/2017/10/26/trump-declares-the-opioid-epidemic-a-public-health-emergency-.html> (last visited Mar. 21, 2019).

38. Dan Merica, *White House to Declare Opioid Epidemic a Public Health Emergency*, ABC ACTION NEWS (Oct. 26, 2018), available at <https://www.abcactionnews.com/news/national/white-house-to-declare-opioid-crisis-a-public-health-emergency> (last visited Mar. 12, 2019).

39. *Id.*

40. *Id.*; see generally Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, 42 U.S.C. § 5121 et seq., (1988).

41. Merica, *supra* note 3.

funds have been depleted from the several hurricanes that have devastated the U.S. coastline.⁴² Therefore, a national emergency declaration would have done little to impact the opioid epidemic.

In a deeply partisan and divided Congress, declaring this emergency was one of the few recent issues that received bipartisan support. Approximately 35,000 Americans died of heroin or opioid overdoses in 2015.⁴³ Since then, the death rate from synthetic opioids has risen by more than 72 percent.⁴⁴ These statistics indicate the significance of this epidemic because opioid abuse continues to increase. The inability to curb fentanyl's popularity indicates there is an immediate need to initiate conversations with China to stymie the production of Chinese opioids.

II. CHINA'S ROLE IN THE OPIOID EPIDEMIC

A. Control Over the Global Pharmaceutical Market

Second only to the United States in size, China's pharmaceutical market consists of 5,000 companies that rely on mass producing inexpensive generic drugs and pharmaceutical ingredients for revenue.⁴⁵ Fueled by government sponsored export tax rebates, China's pharmaceutical companies are the world's largest manufacturer and exporter of pharmaceutical ingredients; China nets approximately \$105 billion in annual sales from pharmaceutical exports.⁴⁶ China's control over the industry is so firm that should it stop exporting active pharmaceutical ingredients (hereinafter "APIs"), the world's pharmacies would be empty within three months.⁴⁷

Additionally, China is a significant contributor in the global chemical market. It is estimated that there are over 160,000 chemical companies operating legally and illegally, with some facilities generating over one million pills a day.⁴⁸ Through the first 11 months of 2015, China generated \$60 billion in sales from chemical production, a 6.8 percent increase from 2014.⁴⁹ While the statistics on fentanyl production were

42. *Id.*

43. Vitali & Siemaszko, *supra* note 15.

44. Jacob Soboroff, Mitch Koss, & Aarne Heikkila, *Fentanyl Crisis: Deadly Drug Easily Available for Online Purchase*, NBC NEWS (Aug. 9, 2017), available at <https://www.nbcnews.com/storyline/americas-heroin-epidemic/fentanyl-crisis-deadly-drug-easily-available-online-purchase-n791311> (last visited Apr. 1, 2019).

45. O'CONNOR, *supra* note 6, at 7.

46. *Id.*

47. Lee & Hirschler, *supra* note 5.

48. O'CONNOR, *supra* note 6, at 7.

49. *Id.*

not specifically available, it was estimated that more than half of the 178 global suppliers of NPP reside in China.⁵⁰ This dominant grip on the world's pharmaceutical and chemical markets is what makes addressing this issue both so pressing and complicated to approach.

B. China's Regulatory Framework

China is one the largest manufacturers of pharmaceutical ingredients and a significant contributor to the global chemical market.⁵¹ However, as a nation, it maintains little control over these industries.⁵² Unlike the United States, China does not have an issue with illicit fentanyl use, so little attention is paid to regulating its production and distribution.⁵³ Liu Yuejin, Commissioner of China's National Narcotics Control Commission ("NNCC") and Vice Minister for Public Security, asserts that nations who consume illegal narcotics are "not justified in requiring only drug-producing countries to counter the manufacture of drugs."⁵⁴ While this statement is true, the measures China has taken have had little to no impact on curbing illicit opioid production.

China's administrative structure is complex and contains multiple overlapping agencies. China's regulatory deficiencies are exacerbated by its complicated and disorganized administrative structure.⁵⁵ The agencies that have a hand in drafting, administering, and enforcing regulations for chemical manufacturing and exports include: (1) China Food and Drug Administration; (2) State Council Leading Group on Product Quality and Food Safety; (3) NNCC; (4) Anti-Smuggling Bureau within the General Administration of Customs; (5) Ministry of Chemical Industry; (6) Ministry of Agriculture; (7) Ministry of Commerce; and (8) General Administration of Quality Supervision, Inspection, and Quarantine.⁵⁶ A system with eight agencies involved in one issue is susceptible to bureaucratic infighting, which can prevent efficient and effective governing.⁵⁷ This is likely one reason why gaps plague China's legislation regarding the scope of administrative agencies.

50. *Id.* at 8.

51. Justin Madden & John Caniglia, *Tracing the Path of a Deadly Batch of Heroin from China to Akron*, CLEVELAND.COM (Aug. 31, 2017), available at https://www.cleveland.com/metro/index.ssf/2017/08/tracing_the_path_of_a_deadly_b.html (last visited Mar. 24, 2019).

52. *Id.*

53. *Id.*

54. Whalen & Spegele, *supra* note 27.

55. O'CONNOR, *supra* note 6, at 8.

56. *Id.*

57. *Id.*

Similar to U.S. Congressional structure, China's State Council oversees the nation's administrative functions and executes its laws.⁵⁸ The State Council administers 22 ministries, seven commissions, and other offices directly under the Council, all of which comprise the State Council's primary policymaking and supervisory offices.⁵⁹

One of the offices that falls directly under the State Council is the National Medical Products Association ("NMPA") (formerly known as the China Food and Drug Administration ("CFDA")). In 2018, the NMPA was established as a result of regulatory reform aimed at splitting the duties of the CFDA.⁶⁰

The CFDA was responsible for drafting the country's laws and regulations on food and drugs, as well as publishing the national pharmacopeia.⁶¹ When the CFDA was formed, it was intended to consolidate power, remove bureaucracy, and improve drug regulation.⁶² However, despite this attempt to address issues through an administrative reorganization, gaps remain in China's regulatory policies. This latest restructuring aims to bridge these gaps by separating the food and drug regulatory responsibilities into two new administrative bodies. Thus, the NMPA will only be responsible for: (1) overseeing the quality and safety of medicines, medical devices and cosmetics; (2) drafting regulations and standards for medicines, medical devices and cosmetics; (3) the registration of medicines, medical devices and cosmetics; (4) the post-marketing risk control of medicines, medical devices and cosmetics; and (5) the registration of licensed pharmacists, etc.⁶³

Previously, API producers could manufacture and distribute illicit ingredients into the global marketplace with little to no oversight from

58. *China's State Organizational Structure*, CONG. EXEC. COMM'N ON CHINA, available at <https://www.cecc.gov/chinas-state-organizational-structure#sc> (last visited Mar. 24, 2019).

59. *Id.*

60. Nick Beckett & Daisy He, *Clarification of the Role of China National Medical Products Administration*, LEXOLOGY (Oct. 9, 2018), available at <https://www.lexology.com/library/detail.aspx?g=6e0382ab-20f4-4739-b06d-5e32d6a617e4> (last visited Mar. 24, 2019).

61. *See Main Responsibilities*, CHINA FOOD AND DRUG ADMIN., available at <http://www.sfdachina.com/info/51-1.htm> (last visited Mar. 29, 2019).

62. *See* Alexander Gaffney, *China's SFDA Becomes CFDA Amidst Consolidation of Power and New Leadership*, RAPS (Mar. 25, 2013), available at <https://www.raps.org/regulatory-focus%E2%84%A2/news-articles/2013/3/china-s-sfda-becomes-cfda-amidst-consolidation-of-power-and-new-leadership> (last visited Mar. 24, 2019).

63. Beckett & He, *supra* note 60.

the State Food and Drug Administration (“SFDA”).⁶⁴ Until 2014, chemical companies were exploiting a loophole that distinguished them from pharmaceutical companies.⁶⁵ The SFDA regulated everything produced by pharmacies, but chemical companies, which produce “everything from sweeteners to solvents,” were not subject to these policies.⁶⁶ Thus, chemical companies would manufacture drug ingredients and classify them as chemicals rather than APIs.⁶⁷ While these ingredients are in fact chemicals, their more specific designation would have subjected them to the SFDA’s regulations.⁶⁸ This gray area permitted these companies to operate free from inspection and certification requirements. China closed this loophole in 2014 when China’s State Administration of Work Safety imposed new regulations and tighter licensing requirements on chemical production.⁶⁹ Regardless, chemical companies continue to manufacture manipulated pharmaceuticals and ship them overseas where the substances are illegal.⁷⁰

The root of the problem is that these companies are not in violation of any Chinese legislation. These manufacturers are producing APIs that are completely legal under Chinese law; however, they are shipping them, for “research means,” to countries where APIs are illegal.⁷¹ Moreover, it is unlikely these companies are probing the buyer’s alibi to ensure their purpose is truly for research.

64. Lee & Hirschler, *supra* note 5. Until March 2013, the SFDA was in charge of regulating China’s medical devices as well as food and drug sectors. It was at this time that the SFDA was restructured and rebranded into the CFDA, which was a reflection of the agency’s accession to ministerial level—placing them under the purview of China’s State Council. Stewart Eisenhart, *China: State Food and Drug Administration Renames Itself China Food and Drug Administration (CFDA)*, EMERGO (Mar. 27, 2013), available at <https://www.emergo-byul.com/blog/2013/03/china-state-food-and-drug-administration-renames-itself-china-food-and-drug> (last visited Apr. 19, 2019).

65. O’CONNOR, *supra* note 6.

66. Lee & Hirschler, *supra* note 5.

67. *Id.*

68. *See id.*

69. O’CONNOR, *supra* note 6. The concepts of the pharmaceutical industry are constantly changing and are a modern aspect of society. Therefore, legislation more than twenty years old may no longer be relevant or effective for maintaining policy objectives and redrafting legislation might be necessary. See Enrique Fefer, *6 Pharmaceutical Legislation and Regulation in MANAGING ACCESS TO MEDICINES AND HEALTH TECHNOLOGIES* (2012), available at <http://apps.who.int/medicinedocs/documents/s19577en/s19577en.pdf> (last visited Apr. 1, 2019).

70. Fefer, *supra* note 69.

71. *Deadly Fentanyl Trade Linked to Chinese Companies*, NPR (Apr. 21, 2016), available at <https://www.npr.org/2016/04/21/475161589/deadly-fentanyl-trade-linked-to-chinese-companies> (last visited Mar. 19, 2019).

A team from NBC News recently investigated exactly how easy it was to order fentanyl online.⁷² In one Google search the team was directed to Ching Labs—the first result populated.⁷³ Within minutes the investigators were in communication with an employee guaranteeing shipping.⁷⁴ The employee was so confident in Ching's packaging that they offered free reshipping if the first order was confiscated.⁷⁵ The entire process took a matter of clicks and the employee never once questioned the buyer's intended use of the fentanyl.⁷⁶ This news segment emphatically demonstrated how easily a person may purchase illicit substances over the internet, and why the United States struggles to contain opioid abuse.

C. Regulations

China's poor regulatory structure is a foundational issue in curtailing both the illicit production and trafficking of narcotics. China's drug control policy focuses on "prevention, education, illicit crop eradication, interdiction, rehabilitation, commercial regulation, and law enforcement."⁷⁷ The Ministry of Public Service ("MPS"), an agency under the State Council, oversees public security and enforces criminal regulations nationwide.⁷⁸ The MPS encompasses a variety of bureaus, including the Narcotics Control Bureau and Anti-Smuggling Bureau, who enforce China's drug control laws.⁷⁹ China has adopted narcotics control provisions, but the law is loosely constructed and offers little guidance.

Recent policy changes now permit the MPS to control other synthetic substances that have no known medicinal purpose.⁸⁰ When evaluating a substance for control, the MPS can now consider the harm to

72. See Soboroff, Koss, & Heikkila, *supra* note 44.

73. *Id.* (see video embedded within the article).

74. *Id.*

75. *Id.*

76. *See id.*

77. *China: Bureau of International Narcotics and Law Enforcement Affairs 2016 International Narcotics Control Strategy Report (INCSR)*, U.S. DEPT. OF ST. (2016), available at <https://www.state.gov/j/inl/rls/nrcrpt/2016/vol1/253251.htm> (last visited Mar. 25, 2019) [hereinafter *INCSR Report*].

78. *Id.*

79. *Id.* The Anti-Smuggling Bureau ("ASB") within the General Administration of Customs is responsible for the enforcement of China's drug control laws at seaports, airports, and land border check points. *Id.*

80. Press Release, U.S. Drug Enforcement Admin., Acting Administrator Chuck Rosenberg Meets with Drug Control Officials in China (Jan. 13, 2017), available at <https://www.dea.gov/divisions/hq/2017/hq011317.shtml> (last visited Mar. 25, 2019).

citizens of foreign countries when evaluating a substance for control.⁸¹ This encourages a clear line of communication between the United States Drug Enforcement Administration (“DEA”) and Chinese officials. With deaths due to opioid overdoses rising, DEA officials are now encouraged to communicate with Chinese agencies to ensure the scheduling of all opioids, analogs, and precursors.⁸² Lance Ho, the head of DEA’s Beijing office, stated “[o]nce China controls a substance it has a dramatic effect on the United States in terms of lives saved.”⁸³ However, Chinese efforts during this epidemic have been slow and too sporadic to have a significant impact. Still, the U.S.’s narcotics control efforts are dependent upon China’s cooperation as chemical analogues and precursors are originating from Chinese labs.

In 2008, China approved the Narcotics Control Law of the People’s Republic of China which contained provisions governing narcotics manufacture and export, including:

[t]he state practices the licensing system to the manufacture, trading and transportation of precursor chemicals; [t]he state exercises control over narcotic drugs and psychotropic drugs, and practices the licensing system and the examination and inspection system to the experimental research, manufacture, trading, use, storage and transportation of such drugs; [w]here anyone violates state provisions during the course of production, trading, transportation, import or export of precursor chemicals and causes the precursor chemicals to flow into illegal channels, if a crime is constituted, he shall be subject to corresponding criminal responsibility; and [w]here any narcotic drugs, psychotropic drugs or precursor chemicals are stolen, robbed, lost, or diverted into illegal channels, the involved entity shall immediately take necessary control measures, and report the situation to the public security organ immediately.⁸⁴

These regulations provide administrative power and prohibit illicit narcotic transactions, but alone they fail to restrict the behavior of chemical companies. Under these regulations, chemical companies are only compliant so long as they are licensed manufacturers and are distributing their products through legal channels. However, most manufacturers do

81. *Id.*

82. *Id.*

83. Philip Wen, *China Disputes Trump’s Claims of Fentanyl ‘Flood’ Into United States*, REUTERS (Nov. 3, 2017), available at <https://www.reuters.com/article/us-china-drugs-usa/china-disputes-trumps-claims-of-fentanyl-flood-into-united-states-idUSKBN1D30DB> (last visited Mar. 25, 2019).

84. (中华人民共和国禁毒法) [Narcotics Control Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 29, 2007, effective June 1, 2008), arts. 21, 23, 64, available at <http://www.lawinfochina.com/display.aspx?lib=law&id=6604> (last visited Mar. 25, 2019).

not label themselves as pharmaceutical companies, but as chemical research companies to elude the scope of these provisions. Thus, as long as the companies are not manufacturing any substances prohibited under Chinese law, they have not violated any of these provisions. The issue has been both plugging these gaps in legislation and tracking those outright producing illicit substances.

Additionally, China's regulations require that administrative officials foster cooperation with other countries and adhere to international conventions regarding narcotics control. Chinese law mandates the NNCC to be "in charge of organizing and conducting international cooperation in narcotics control upon the authorization of the State Council."⁸⁵ Moreover, the law calls for the State Council to "make more efforts in exchanging narcotics control information with the law enforcement organs of other countries or regions as well as international organizations."⁸⁶ These provisions are important for the United States as they compel the Chinese to work with federal agents and exchange information that will target companies circumventing regulations.

D. How Chemical Companies Circumvent Regulations

While China has made some regulatory changes, part of the challenge for U.S. counternarcotic efforts is to keep up with the illusive efforts of Chinese chemical exporters. These exporters use online marketplaces to anonymously sell synthetic drugs for low prices and at low risk. The internet facilitates the export of APIs as one search produces hundreds of results for Chinese companies selling ingredients that have not been Good Manufacturing Practice ("GMP") or CFDA certified.⁸⁷ Buyers can order fentanyl through online listings, and exporters will ship the products through a series of forwarding systems that inhibit authorities' ability to track the source.⁸⁸ Moreover, chemical companies hire broker companies to relabel and conceal these substances to further cover their tracks.⁸⁹ This is not a difficult task for exporters as fentanyl's potency allows it to be shipped in smaller quantities, making it easier to disguise. As the team from NBC News discovered, these companies have become so confident in their deception that they will guarantee a free second shipment should customs intercept the first.⁹⁰

85. *Id.* art. 54.

86. *Id.* art. 56.

87. Lee & Hirschler, *supra* note 5.

88. *Id.*

89. *Id.*

90. O'CONNOR, *supra* note 6; *see also* Soboroff & Heikkila, *supra* note 44.

These companies are creative in their deception. U.S. CBP is often unable to identify and seize APIs or drugs because Chinese manufacturers alter their structures to create unregulated substances.⁹¹ Thus, these companies are eluding legal ramifications by taking advantage of how easy it is to manipulate the fentanyl molecule.⁹² By the time regulators can identify one analogue these distributors have already created a new unregulated molecule, which allows distributors to remain one step ahead of the law.⁹³ To truly make a difference, the process for regulating illicit substances must be streamlined to keep up with the sophistication of exporters.

China maintains that the U.S.'s claims regarding China-based opioid shipments are inflated, which has strained the United States and China's cooperative efforts.⁹⁴ Until recently, there has been little to no presence of law enforcement in the illicit chemical field.⁹⁵ Regulators are vastly outnumbered by the number of chemical companies throughout the country, and are incapable of inspecting all production and distribution facilities.⁹⁶ This lack of oversight makes it easy for chemical companies to evade authorities. When there is a threat of law enforcement, many unregistered labs quickly shutdown and relocate, resuming operation somewhere else.

Moreover, because of the lucrative nature of China's pharmaceutical and chemical industry, the gaps present in Chinese legislation may exist because of political corruption.⁹⁷ To date, no senior central Chinese government official has been found in association with the production, distribution, or laundering of illicit substances; the concern lies with local leaders who may actively undermine chemical regulations.⁹⁸ In 2014, China launched investigations and removed local government officials associated with corrupt practices.⁹⁹ In the Yunnan province alone, 41

91. *Id.*

92. Jessica Schneider, *DOJ Indicts Two Chinese Nationals in Fentanyl Trafficking Case*, CNN (Oct. 18, 2017), available at <http://www.cnn.com/2017/10/18/politics/doj-chinese-nationals-fentanyl-trafficking/index.html> (last visited Mar. 25, 2019).

93. *Id.*

94. O'CONNOR, *supra* note 6.

95. *Id.*

96. *Id.*

97. *See id.*

98. *China*, U.S. DEPT. OF ST., available at <https://www.state.gov/j/inl/rls/nrcrpt/2016/vol1/253251.htm> (last visited Mar. 19, 2019); *see also* O'CONNOR, *supra* note 6.

99. O'CONNOR, *supra* note 6; *see also* Wendy Lipworth & Ian Kerridge, *China's Pharma Scandal and the Ethics of the Global Drug Market*, THE

officials were expelled for drug use.¹⁰⁰ Most notably, Zhou Yongkang, former Minister of Public Security, was arrested in 2015 on graft charges¹⁰¹ that lead to the sentencing of many of his colleagues.¹⁰² While central government corruption is likely not a widespread issue, local corruption coupled with a chaotic administrative framework is not conducive to transparent regulating. Chinese law gives too many agencies a hand in chemical and narcotics regulation, which can easily disguise political corruption for bureaucratic infighting. China's laws, regulations, and efforts up to this point have failed to curb the behavior of chemical companies and halt the flow of opioids through its borders.

E. China's Approach to Opioid Abuse and Actions Taken Thus Far

Like most nations, China focuses on issues impacting its people first; illicit fentanyl abuse is not a significant issue in China. Therefore, until recently, Chinese authorities placed little emphasis on controlling its production and export.¹⁰³ In October 2015, China named 116 synthetic substances, including six fentanyl analogs, to its list of controlled chemical substances.¹⁰⁴ At that time, China only controlled for 19 fentanyl-related products, and many chemical precursors—such as NPP—remained unregulated.¹⁰⁵ Once these substances were banned in China, the DEA reported that seizures of the listed compounds dropped significantly.¹⁰⁶ This is likely because underground Chinese labs had begun

CONVERSATION (Sept. 18, 2013), available at <http://theconversation.com/chinas-pharma-scandal-and-the-ethics-of-the-global-drug-market-16424> (last visited Mar. 25, 2019) (noting that corruption investigations began after GlaxoSmithKline was accused of bribery for the inappropriate promotion of antidepressants and failing to report safety data. It was estimated \$3.34 million was fraudulently exchanged in this case.).

100. O'CONNOR, *supra* note 6.

101. In a legal context, charges of graft are charges of political corruption. See Eric Angevine, *What is the Meaning of Graft & Corruption?*, LEGAL BEAGLE (Dec. 19, 2018), available at <https://legalbeagle.com/6635615-meaning-graft-corruption.html> (last visited Mar. 19, 2019).

102. *China*, *supra* note 98; see also Nectar Gan, *Ex-Aide of Disgraced China Security Tsar Zhou Yongkang Jailed for Corruption*, S. CHINA MORNING POST (Feb. 15, 2017), available at <https://www.scmp.com/news/china/policies-politics/article/2071053/ex-aide-disgraced-china-security-czar-zhou-yongkang> (last visited Mar. 19, 2019).

103. O'CONNOR, *supra* note 6, at 5.

104. *Id.* at 6.

105. *Id.*

106. Eric Niiler, *Keeping Fentanyl Out of the U.S. Will Take More Than a Wall*, WIRED (Mar. 1, 2017), available at <https://www.wired.com/2017/03/keeping-fentanyl-us-will-take-wall/> (last visited Mar. 20, 2019).

tweaking the fentanyl molecule's chemical structure, and were manufacturing a new unregulated analog.

The prominence of fentanyl analogues prompted an increase in scheduling legislation. Beginning March 1, 2017, China agreed to stop the sale and manufacture of carenfentanyl, furanyl fentanyl, acrylfentanyl, and valeryl fentanyl—analogs that had become prevalent since previous regulations.¹⁰⁷ More importantly, taking effect February 1, 2018, China's MPS announced scheduling controls over the two fentanyl precursors NPP and 4-anilino-N-phenethylpiperidine (hereinafter "ANPP"), a measure that will make it more difficult to manufacture all forms of fentanyl.¹⁰⁸ Nevertheless, lawmakers and chemical companies continue to play a chess match with each other, a game that does not favor lawmakers.

China has displayed mixed intentions throughout its efforts to resolve the opioid crisis. At the 2016 G20 Summit, China stated it was "committed to targeting U.S. bound exports" of chemicals that are outlawed in the United States but not in China. Since 2016, the NNCC reports that Chinese authorities have arrested "dozens" of synthetic drug exporters, confiscated eight illegal labs, and seized about two tons of various psychoactive substances.¹⁰⁹ However, Chinese regulators have also obstructed the United States' ability to conduct drug inspections by delaying visa approvals for Federal Drug Association ("FDA") officials. In the past, Chinese officials have stated "foreign companies should take responsibility for standards by buying products from properly certified exporters"¹¹⁰—a statement that clearly intends to distinguish whom China feels should bear the burden of liability in these transactions.

The issue with this logic is that the substances fueling the opioid crisis are not being bought by companies, but by individuals looking to make or sell opioids for illicit purposes. Therefore, it should fall under China's responsibility to regulate companies whom they are benefiting from—especially when their business practices are illegal in nature and have public health implications on an international scale.

107. *Id.*

108. This legislation was the result of the ongoing collaboration between the DEA and China's MPS. *China Announces Scheduling Controls on Two Fentanyl Precursor Chemicals*, U.S. DRUG ENF'T ADMIN. (Jan. 5, 2018), available at <https://www.dea.gov/divisions/hq/2018/hq010518.shtml> (last visited Mar. 20, 2019).

109. *China Bans Drug So Deadly Considered a Terrorist Threat*, N.Y. POST (Feb. 16, 2017), available at <https://nypost.com/2017/02/16/china-bans-drug-so-deadly-its-considered-a-terrorist-threat/> (last visited Mar. 20, 2019).

110. Lee & Hirschler, *supra* note 5.

While China has generally cooperated with the U.S.'s efforts to reduce opioid production and trafficking, on several occasions it has fervently denied the significance of its role in the epidemic. In August 2017, Yu Haibin, director of China's Narcotics Control Bureau, proclaimed that the United States could not "solely blame China for fentanyl's abuse."¹¹¹ He further stated that China was ahead of the United States in outlawing fentanyl analogues and was working with the States to curb trafficking.¹¹² Yu doubled down on this position in November when he asserted that China's "biggest challenge" regarding opioid smuggling "is the huge demand from the U.S."¹¹³ He claimed the United States needed to bolster its educational and promotional campaigns to reduce domestic demand, reduce its internet-based drug crimes, and share more lab data with China to improve their detection efforts.¹¹⁴ He also took a jab at the United States' evolving drug policy, implying the expanding legalization of medical and recreational marijuana was fueling the opioid epidemic.¹¹⁵ Yu stated, "I think this trend has had a negative effect on public recognition or mentality on the opioid problem."¹¹⁶

Yu's statements illustrate China's refusal to address its role in the problem and are indicative of why curbing the opioid epidemic has been so difficult. The U.S. government has grasped the severity of the present circumstances and began instituting corrective action. However, the U.S.'s efforts alone will not be sufficient to control the opioid market. The United States needs China to take its role in this epidemic seriously and increase its own self-policing. This epidemic will only come to an end if both countries take cooperative efforts to crack down on their respective weaknesses.

III. THE UNITED STATES AND CHINA'S COOPERATIVE EFFORTS

It is imperative that the United States and China maintain open communication on matters relative to opioid abuse. Both the United States and China are parties to an agreement that requires bilateral

111. Soboroff, Koss, & Heikkila, *supra* note 44.

112. *Id.*

113. Steven Jiang, *China Says US Not Doing Enough to Cut Demand for Opioids*, CNN (Dec. 28, 2017), available at <http://www.cnn.com/2017/12/28/asia/china-drugs-us-intl/index.html> (last visited Mar. 22, 2019).

114. *Id.*

115. *Id.*

116. *Id.*

cooperation in criminal matters.¹¹⁷ Signed on June 19, 2000, the Agreement on Mutual Legal Assistance in Criminal Matters (“AMLACM”) requires the two countries to provide mutual legal assistance during investigations, prosecutions, and other criminal proceedings.¹¹⁸ This agreement is significant within the scope of the opioid epidemic because it requires China to assist in the investigation of illegal production and trafficking reported by the United States¹¹⁹

The agreement clearly lays out the ways in which China must provide assistance. Some of the avenues defined under assistance include: (1) taking the testimony or statements of persons; (2) making persons available to give evidence or assist in investigations; (3) locating or identifying persons; (4) executing requests for inquiry, searches, freezing and seizures of evidence; and (5) transferring persons in custody for giving evidence or assisting in investigations.¹²⁰ Thus, under the purview of this agreement, China obligated itself to undertake greater investigation into the illegal production of opioids and precursor chemicals being illegally shipped into the United States.

In addition, under the AMLACM, and per the framework of the United States–China Joint Liaison Group on Law Enforcement Cooperation,¹²¹ the Bilateral Drug Intelligence Working Group¹²² and the

117. *INCSR Report, supra* note 77.

118. *Id.*

119. In December 2017, after acting on a tip from U.S. officials, Chinese officials raided an illicit fentanyl factory and arrested nineteen people associated with the endeavor. Additionally, Chinese officials are awaiting proof from the U.S. regarding two Chinese kingpins accused of manufacturing fentanyl and supplying hundreds of American dealers. Keegan Hamilton, *China Raids Fentanyl Factory But Remains Silent on Wanted Kingpins*, VICE NEWS (Dec. 28, 2017), available at https://news.vice.com/en_ca/article/yw5we7/china-raids-fentanyl-factory-but-remains-silent-on-wanted-kingpins (last visited Mar. 22, 2019).

120. *INCSR Report, supra* note 77.

121. The Joint Liaison Group, established in 1998, is a major channel for China-US law enforcement cooperation. It involves the foreign ministries, security departments, justice departments and others. *China, US to Discuss Law Enforcement Cooperation*, ST. COUNCIL OF CHINA (Nov. 16, 2016), available at http://english.gov.cn/news/international_exchanges/2016/11/16/content_281475492603192.htm (last visited Mar. 22, 2019).

122. DEA and the Narcotics Control Bureau of China are parties that established the BDIWG, which brings legal and law enforcement experts together to share information and discuss cooperation. *INCSR Report, supra* note 77. BDIWG is held to discuss ways to improve and enhance U.S.–China joint drug investigations. This group’s cooperative efforts have been essential in combating the fentanyl and psychoactive substance epidemic. *Id.*; see also Press Release, U.S. Drug Enforcement Agency, U.S. and Chinese Drug Enforcement Agencies Meet on Synthetic Opioid Efforts (Sept. 29, 2016), available at <https://www.dea.gov/press->

Counternarcotics Working Group¹²³ meet to form a mutual understanding of the current drug issues. During this meeting, the parties exchange observations and information on trends in drug abuse and trafficking as well as the relevant legal and regulatory challenges.¹²⁴ The goal of these annual meetings is to address obstacles in precursor chemical control, discuss recent progress, and find mutual regulatory interest.

On October 6, 2017, both parties met and emphasized their intentions to continue to improve cooperation on narcotics control and administration.¹²⁵ Specifically, the parties discussed the need to exchange intelligence, track new substances, combat “illicit production and trafficking of fentanyl . . . and precursor chemicals,” and share tracking information for packages shipped between the two countries.¹²⁶ Both countries also agreed to begin reviewing international narcotics control issues during UN-based, and other multi-national, forums.¹²⁷

Agreement alone is not enough. It is important that both parties maintain diligent efforts to ensure their end of these obligations are met. Constant communication is crucial in tackling an epidemic that is based upon an ever-evolving industry. In order to start making a serious dent in the opioid crisis, both countries must continue to target high profile traffickers and shut down clandestine labs. Additionally, both the United States and China must begin to draw more strongly from multinational forums to form a strong system of narcotics regulation.

IV. INTERNATIONAL LAW AND ORGANIZATIONS

Every country has different regulations and maintains a different level of oversight over its illicit drug market. This inconsistency in regulatory management is what permits the illicit narcotic market to exist; consequently, this is the gap international conventions are designed to bridge.¹²⁸ However, even international agreements have flaws and cannot alone serve as a universal solution to the narcotic market.

releases/2016/09/29/us-and-chinese-drug-enforcement-agencies-meet-synthetic-opioid-efforts (last visited Mar. 22, 2019).

123. *INCSR Report*, *supra* note 77.

124. *Id.*

125. *First U.S.-China Law Enforcement and Cybersecurity Dialogue*, U.S. DEP'T OF JUST. (Oct. 6, 2017), available at <https://www.justice.gov/opa/pr/first-us-china-law-enforcement-and-cybersecurity-dialogue> (last visited Mar. 22, 2019).

126. *Id.*

127. *Id.*

128. See DANIEL C.K. CHOW & THOMAS J. SCHOENBAUM, *INTERNATIONAL BUSINESS TRANSACTIONS* 30-32 (3rd ed. 2015).

In addition to national law and regulations, countries must also comply with international law and code set by adopted conventions. International law is distinct from state-based legal structures because it primarily applies to countries rather than private citizens.¹²⁹ However, some forms of international law become national law when they require state-based legal systems to conform to certain standards.¹³⁰ While most international law is consent-based authority, the overall goal of these directives is to create a stable framework for international relations.¹³¹

A. Treaties

International drug treaties drafted to stem drug trafficking are not new. First, in 1961, the United Nations drew up a treaty known as the Single Convention on Narcotic Drugs (hereinafter “1961 Convention”).¹³² This treaty was designed to curb illicit drug production, trafficking, and possession by establishing a system of enforcement that penalizes according to the classification of the drug.¹³³ This was the first implementation of a four-tier drug scheduling system which classified drugs based upon their accepted use and potential for abuse.¹³⁴ Over 184 countries became a signatory to this agreement, which required them to implement its terms into their domestic law.¹³⁵ While these signatories are permitted to make the law stricter, they must adhere to the baseline

129. Robert J. Beck, *International Law and International Relations*, OXFORD RES. ENCYCLOPEDIAS (Jan. 2018), available at <http://internationalstudies.oxfordre.com/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-406?product=oreisa#acrefore-9780190846626-e-406-bibItem-21> (last visited Mar. 20, 2019).

130. CHOW & SCHOENBAUM, *supra* note 128, at 31.

131. Beck, *supra* note 129.

132. *The Single Convention on Narcotic Drugs*, FINDLAW, available at <http://criminal.findlaw.com/criminal-charges/the-single-convention-on-narcotic-drugs.html> (last visited Mar. 25, 2019).

133. *Id.* (however, the 1961 Convention does explicitly provide both medicinal use and scientific research as exceptions to its provisions).

134. *Id.*; see also *Drug Schedules*, DEA, available at <https://www.dea.gov/druginfo/ds.shtml> (last visited Mar. 21, 2019). Article 3(3)(iii) also accounts for the scheduling and regulation of precursor chemicals used to manufacture illicit narcotics. U.N. OFF. ON DRUGS AND CRIME, *THE INTERNATIONAL DRUG CONTROL CONVENTION 28* (2013), available at https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf (last visited Mar. 25, 2019).

135. *The Single Convention on Narcotic Drugs*, *supra* note 132 (stating that “[t]he United States implemented The Single Convention on Narcotic Drugs into its federal laws as The Controlled Substances Act which makes it illegal to possess even a small quantities of narcotics.”).

requirements of the treaty.¹³⁶ However, this freedom has encouraged nations to implement the 1961 Convention differently.¹³⁷ For example, despite its illegality, the Netherlands eluded international law regarding recreational marijuana use by fostering a policy of non-enforcement.¹³⁸ Thus, it should be no surprise that, despite commitments to international legislation, national governments still find a way to bend the law in a manner consistent with their views.

Second, in 1990, the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (hereinafter "CAIT") was enacted to support the 1961 Convention and 1971 Convention on Psychotropic Substances Act.¹³⁹ CAIT was created to combat the still growing demand for narcotics for recreational use, and largely devoted its influence to targeting organized crime.¹⁴⁰ The treaty requires its signors to cooperate in the investigation and confiscation of all drug related assets. Moreover, CAIT relaxed bank secrecy laws, permitting authorities to acquire bank, financial, or commercial records related to organized drug offenses.¹⁴¹ Article three of the treaty also mandates signatories ban possession of drugs for personal use, stating:

Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention . . .¹⁴²

136. *Id.*

137. *Id.*

138. *Id.* Officials have not prohibited state-level legalization of marijuana in the United States, despite the Controlled Substances Act, due to the impracticality of enforcement. The 1961 Convention provides signatories some ambiguous language to support these nonconforming undertakings: "[p]arties shall adopt such measures *as may be necessary* to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant (emphasis added)." Molly Quinn, *Implications of U.S. Noncompliance With the Single Convention on Narcotic Drugs of 1961*, MICH. J. OF INT'L. L., available at <http://www.mjilonline.org/implications-of-u-s-noncompliance-with-the-single-convention-on-narcotic-drugs-of-1961/> (last visited Mar. 25, 2019).

139. Jimmy Gurulé, *The 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances—A Ten Year Perspective: Is International Cooperation Merely Illusory?*, 22 FORDHAM INT'L. L. J. 74, 77-78 (1998).

140. *Id.*

141. *Id.*

142. CHRISTINE VAN DEN WYNGAERT, INTERNATIONAL CRIMINAL LAW A COLLECTION OF INTERNATIONAL AND REGIONAL INSTRUMENTS 1079 (4th ed. 2011).

This language establishes a caveat by providing possession is only prohibited if “contrary to the provisions of the 1961 Convention.”¹⁴³ This creates ambiguity because the 1961 Convention asserts possession is not permitted “except under legal authority.”¹⁴⁴ This ambiguity creates the wiggle room for states, such as Colorado, to introduce laws legalizing marijuana possession. It also provides wiggle room for China to permit chemical companies to continue exploiting regulatory weaknesses for economic advantage. This shows that there are even gaps within international law that need to be tightened if the world’s illicit narcotic market is to be controlled.

B. Organizations

International organizations were implemented to ensure the success of international treaties and conventions. The World Health Organization (“WHO”) is an agency within the United Nations that concentrates on international public health.¹⁴⁵ Part of its obligations, under the United Nations Single Convention on Narcotic Drugs (1961), the United Nations Convention on Psychotropic Substances (1971), and the United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) is to report to the United Nations regarding statistics on abuse of narcotics.¹⁴⁶ These treaties grant WHO the authority to advise on the scheduling of a substance according to its dependence producing properties.¹⁴⁷

In addition to WHO, the International Narcotics Control Board (“INCB”) is an independent body established under the authority of the 1961 Convention responsible for implementing the United Nations’ international drug regulation conventions.¹⁴⁸ As an impartial convention, the INCB works to identify and forecast alarming trends in drug use, and recommends the required preventative measures.¹⁴⁹ Furthermore, it evaluates chemicals being trafficked in illicit transactions and gauges whether

143. *Id.*

144. U.N. OFF. ON DRUGS AND CRIME, *supra* note 134, at 53.

145. *See About WHO*, WHO, available at <http://www.who.int/about/en/> (last visited Mar. 25, 2019).

146. *Essential Medicines and Health Products*, WHO, available at http://www.who.int/medicines/areas/quality_safety/sub_under_int_control/en/ (last visited Mar. 25, 2019).

147. *Id.*

148. *International Narcotics Control Board (INCB)*, U.N. OFF. ON DRUGS AND CRIME, available at <https://www.unodc.org/lpo-brazil/en/drogas/jife.html> (last visited Mar. 25, 2019).

149. *Id.*

they need to be scheduled under international law.¹⁵⁰ It also pinpoints weaknesses in both national and international regulatory systems, facilitating improvements in these systems.¹⁵¹ This oversight assists governments in preventing the delivery of narcotics and precursor chemicals, from illicit sources, from reaching unregulated markets.

It is not only illegal opioids that are subject to international oversight, but also prescription opioids. Established in 1980, the International Conference of Drug Regulatory Authorities (“ICDRA”) is another authority aimed at encouraging WHO members to develop an international consensus on drug regulations.¹⁵² Gathering every two years, the ICDRA guides regulatory authorities in both the national and international regulation of medicines, vaccines, biomedicines, and herbals.¹⁵³

While the ICDRA conference does not focus specifically on narcotics and narcotics abuse, the opioid crisis is rooted in the abuse of prescription opioids. An estimated 21 to 29 percent of patients who receive prescription opioids for chronic pain misuse them, and 8 to 12 percent of those patients develop an opioid abuse disorder.¹⁵⁴ The ICDRA offers WHO member states a forum for drug regulatory authorities to collaborate on strengthening cooperation and consensus regarding pharmaceutical regulations.¹⁵⁵ This conference assembles authorities who are empowered to solve the foundational issue in the opioid crisis. International agreement and action are critical. The international community needs to establish a consensus standard for opioid prescriptions and monitoring of patients who receive such prescriptions. This would eliminate variation in pharmaceutical standards and cause a dramatic decrease in patients developing an opioid dependence.

Similar to the goals of the ICDRA, the International Conference on Harmonization of Technology for Registration of Pharmaceuticals for Human Use (hereinafter “ICH”) assembles regulatory authorities in the

150. *Id.*

151. *Id.*

152. *International Conference of Drug Regulatory Authorities*, WHO (2018), available at http://www.who.int/medicines/areas/quality_safety/regulation_legislation/icdra/en/ (last visited Apr. 1, 2019).

153. *Id.*

154. *Opioid Overdose Crisis*, NAT'L INST. ON DRUG ABUSE (Jan. 2019), available at <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited Apr. 1, 2019). In 2012, over 255 million opioid prescriptions were dispensed in the U.S. *U.S. Prescribing Rate Maps*, CDC (July 31, 2017), available at <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html> (last visited Apr. 1, 2019). This number has since decreased to around 191 million prescriptions. *Id.*

155. Fefer, *supra* note 69, at 6.4.

pharmaceutical industries of the United States, Europe, and Japan to examine the technical and scientific facets of drug registration.¹⁵⁶ The objective of this conference is to harmonize the technical guidelines and requirements for new and existing pharmaceutical registration, an issue China's government struggles to control.¹⁵⁷ However, China is not a party to the ICH.¹⁵⁸ While WHO is intended to act as a bridge between ICH and non-ICH countries, through the ICDRA the influence of the ICH has not reached China's porous pharmaceutical regulations.¹⁵⁹ China's loophole-ridden pharmaceutical regulations are a foundational issue of the opioid crisis, an issue the ICH could standardize.

Lastly, there is the United Nations Office on Drugs and Crime ("UNODC"), created specifically to combat trafficking of illicit drugs and international crime.¹⁶⁰ Its governing body, the Commission on Narcotic Drugs ("CND"),¹⁶¹ is granted explicit permission under the 1961 Convention to: (1) amend the schedules; (2) bring relevant matters to the attention of the INCB; (3) make recommendations for implementing the 1961 Convention; and (4) convince non-parties of the 1961 Convention to act in accordance with its recommendations.¹⁶²

In March 2017, the UNODC voted to "schedule" two chemical precursors and a new fentanyl analog to the international control list.¹⁶³ Both ANPP and NPP—the two primary chemicals used in illicit fentanyl production—were added to the international control list in hopes of making it more difficult for illicit labs to acquire them.¹⁶⁴ While this is far from a silver bullet, this decision will obligate "countries to regulate the production, sale, and export of the precursors to fentanyl, and to criminalize

156. *Id.* at 6.5.

157. *Id.*

158. *See id.*

159. *Id.* at 6.6.

160. *About UNODC*, U.N. OFF. ON DRUGS AND CRIME (2018), available at <https://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop> (last visited Apr. 1, 2019).

161. *CND*, U.N. OFF. ON DRUGS AND CRIME (2018), available at <http://www.unodc.org/unodc/en/commissions/CND/index.html> (last visited Apr. 1, 2018).

162. Single Convention on Narcotic Drugs art. 8, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 151.

163. *U.N. Drugs Body Places Fentanyl Ingredients on Control List*, REUTERS (Mar. 16, 2017), available at <https://www.reuters.com/article/us-un-drugs-fentanyl/u-n-drugs-body-places-fentanyl-ingredients-on-control-list-idUSKBN16N2MB> (last visited Mar. 24, 2019).

164. *Id.* (stating that the fentanyl analog scheduled is known as butyrfentanyl).

sale or trafficking outside of those regulations.”¹⁶⁵ This is a significant step forward and will substantially reduce the global presence of these substances, ultimately reducing the production of fentanyl.

In addition, the UNODC annually publishes two reports as part of the Global Synthetics Monitoring: Analyses, Reporting and Trends Programme (“SMART”), which detail the “emerging patterns and trends” in the global synthetic drug market.¹⁶⁶ In March 2017, SMART released an update that focused its attention on fentanyl and the growing opioid market.¹⁶⁷ The update reveals how the increasing complexity of the opioid market has impacted more than just the United States—it has become a global issue.¹⁶⁸ This is an alarming revelation, which shows that on a global scale legislation is insufficient to regulate this persistently expanding market. As detailed above, there are multiple governing bodies, organizations, and treaties whose responsibility is to manage narcotics regulations and illicit activity. Nevertheless, our best efforts to stymie illicit manufacturers and traffickers are quickly circumvented. International conventions are weakly enforced and lack the stringent language and global enforcement necessary to compel signatories, such as China, to abide to their commitments.

V. U.S. LAW AND ORGANIZATIONS

International conventions are important guideposts, but they are simply not enough. The United States cannot rely on China’s promises of reform and cooperation during the opioid crisis. Instead, the United States must also make concerted efforts of its own to slow the progression of opioid use.

Time is being wasted trying to persuade China that it is the primary contributor of illicitly manufactured and distributed synthetic opioids. The primary issue in the United States is not manufacture, but internal distribution and abuse. Rather than pleading with China to reform its pharmaceutical and chemical regulatory structure, a change that seems

165. *Id.*

166. Press Release, U.N. Office on Drugs and Crime, Report: Fentanyl’s Increasing Flows Fuel Steep Rise in Overdose Deaths (Mar. 6, 2017), available at https://www.unodc.org/unodc/en/press/releases/2017/March/report_increasing-flows-of-fentanyl-fuel-a-steep-rise-in-overdose-deaths.html (last visited Mar. 24, 2019).

167. *Id.*

168. See generally *Global SMART Update: Fentanyl and Its Analogues – 50 Years On*, U.N. OFF. ON DRUGS AND CRIME (Mar. 2017), available at https://www.unodc.org/documents/scientific/Global_SMART_Update_17_web.pdf (last visited Mar. 24, 2019).

unlikely, the United States should focus on improving border screening regulations. Obstructing the import and internal sale of opioids can have a huge impact on the demand for these substances on the web.

A. Public Health Emergency

In response to the media attention and public outcry over the opioid epidemic, the United States is seeking legislative measures to assist in reducing opioid abuse within the country. In January 2018, Health and Human Services (“HHS”) voted to extend the public health emergency for another 90 days.¹⁶⁹ While this renewal is important for spreading awareness, it has yet to draw the additional funding it was intended to.¹⁷⁰ Without Congressional funding this declaration is little more than a public service announcement.¹⁷¹ However, there are other ways of tackling the opioid epidemic.

B. Controlled Drug Substances Act

One such way is rethinking the way fentanyl is classified. The Controlled Drug Substances Act (“CSA”) is a U.S. federal drug policy that regulates the “manufacture, importation, possession, use and distribution of certain narcotics, stimulants, depressants, hallucinogens, anabolic steroids” and other chemicals as dictated by the DEA, HHS, or FDA.¹⁷² The CSA falls under title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, which establishes the five schedules under which medications, chemicals, and other substances are classified based on their potential for abuse, medical application, and safety.¹⁷³ Fentanyl is classified as a schedule II drug because of its high potential for abuse, but since it is used for treating cancer patients, it also has an accepted medical use in the United States.¹⁷⁴ While fentanyl will likely never be upgraded to a schedule I substance, the DEA stated it will classify any illicit

169. Rachel Roubein, *HHS Extends Trump’s Emergency Declaration for Opioids*, THE HILL (Jan. 19, 2018), available at <http://thehill.com/policy/healthcare/369853-hhs-extends-trumps-emergency-declaration-for-opioids> (last visited Mar. 24, 2019).

170. *Id.*

171. Brianna Ehley, *Trump Administration Extending Opioid Emergency Declaration*, POLITICO (Jan. 19, 2018), available at <https://www.politico.com/story/2018/01/19/trump-opioids-emergency-declaration-extension-300590> (last visited Mar. 24, 2019).

172. L. Anderson, *CSA Schedules*, DRUGS.COM (May 18, 2018), available at <https://www.drugs.com/csa-schedule.html> (last visited Mar. 24, 2019).

173. *Id.*

174. *Id.*

analogues of fentanyl as schedule I substances.¹⁷⁵ This action would permit the criminal prosecution of anyone caught possessing, distributing, or manufacturing illicit variations of the drug; a task previously burdensome for prosecutors.¹⁷⁶

Such change is critical as prosecutions regarding fentanyl are arduous. Previously, prosecutors could prosecute for the manufacture, distribution, or possession of analogues of a controlled substance pursuant to the Federal Analogue Act.¹⁷⁷ However, this was a difficult task as it required prosecutors to prove both that the analogues were “structurally similar to other scheduled drugs” and that they had the “same effects on the body.”¹⁷⁸ This often resulted in a legal dispute between multiple scientific expert witnesses testifying to the chemical structure of the drugs in dispute.¹⁷⁹ Changing the scheduling of fentanyl analogues would eliminate lengthy litigation and permit prosecutors to quickly remove those involved in the illicit narcotic market from the streets. Such legislative action would allow authorities to keep pace with clandestine labs attempting to bypass regulations by altering the chemical structures of controlled substances.

C. *INTERDICT Act*

In addition to the regulation and treatment of illicit substances, another policy goal of the United States is to prevent illicit substances from being shipped into the country altogether. On January 10, 2018, President Trump signed into effect the INTERDICT Act.¹⁸⁰ This Act will raise funding for screening equipment used by CBP agents in identifying fentanyl, fentanyl analogs, and other illicit substances being shipped into the

175. Sarah N. Lynch, *U.S. Drug Agency to Toughen Stance on Illicit Fentanyl Analogues*, REUTERS (Nov. 9, 2017), available at <https://www.reuters.com/article/us-usa-justice-opioids/u-s-drug-agency-to-toughen-stance-on-illicit-fentanyl-analogues-idUSKBN1D92RI> (last visited Mar. 25, 2019).

176. *See id.*

177. Federal Analogue Act, 21 U.S.C. § 813 (1988) (stating that “A controlled substance analogue shall, to the extent intended for human consumption, be treated, for the purposes of any Federal law as a controlled substance in schedule I.”).

178. Lynch, *supra* note 175; *see also* United States v. Forbes, 806 F. Supp. 232 (D. Colo. 1992) (holding the statute must be interpreted conjunctively to prevent legal substances with similar effects to controlled substances being labeled illegal).

179. Lynch, *supra* note 175.

180. Dave Boyer, *Trump Signs Law to Gives Border Patrol Better Tools to Stop Smuggling of Fentanyl*, WASH. TIMES (Jan. 10, 2018), available at <https://www.washingtontimes.com/news/2018/jan/10/trump-signs-interdict-act-help-border-patrol-detec/> (last visited Mar. 25, 2019).

United States.¹⁸¹ Fentanyl's ability to be shipped in such small quantities compels such changes. As mentioned earlier, traffickers actively conceal fentanyl in packages shipped into the United States. Thus, an increase in personnel at borders and improved screening technology at post offices will reduce the supply reaching dealers in the United States. Moreover, because fentanyl is a man-made substance, it is easier for officials to determine who manufactured and distributed the seized product.¹⁸² Thus, border control is critical to U.S. officials identifying and shutting down more illegal labs. These legislative steps are essential as the United States cannot sit idly waiting for China to bolster its customs. The United States must continue to make unilateral efforts to cut off the flow of illicit narcotics coming in from China.

D. STOP Act

A legislative initiative fully on point is the Synthetics Trafficking and Overdose Prevention Act ("STOP") proposed by Senator Rob Portman.¹⁸³ In conjunction with the INTERDICT Act, STOP is designed to prevent illegal shipments of opioids from entering the United States. Presently, CBP only receives advanced electronic data on mail that enters the country through private carriers.¹⁸⁴ However, the vast majority of mail enters the country through foreign postal services and with no background information to screen it.¹⁸⁵ This act will require all foreign mail to have advance electronic data before being allowed into the United States.¹⁸⁶ The requisite information would include who the mail is addressed to, where it is going, and what it contains.¹⁸⁷ Having this information in advance will permit authorities to better target incoming packages and ultimately prevent these narcotics from being distributed throughout the country. More importantly, CBP authorities will have the capability of identifying illicit manufacturers and working with Chinese

181. Hannah Schwarz, *Fentanyl Legislation Would Beef Up Border Detection*, PRESSCONNECTS (Apr. 12, 2017), available at <https://www.pressconnects.com/story/news/local/2017/04/12/fentanyl-legislation-would-beef-up-border-detection/100376132/> (last visited Mar. 25, 2019).

182. *Id.*

183. See Press Release, Rob Portman, Portman, Klobuchar, Rubio, Hassan Introduce Legislation to Address Overdose Spike from Synthetic Opioids, (Feb. 14, 2017), available at <https://www.portman.senate.gov/public/index.cfm/2017/2/portman-klobuchar-rubio-hassan-introduce-legislation-to-address-overdose-spike-from-synthetic-opioids> (last visited Mar. 25, 2019).

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

officials to shut them down. The goal is to target the source of the epidemic by slowly cutting off its life line. Eventually, the financial and legal risks will become too great and the prominence of the Chinese chemical market will wane.

E. SUPPORT for Patients and Communities Act

Most recently, President Trump authorized comprehensive legislation designed to support policies governed by the Centers for Medicare & Medicaid Services and the U.S. Food and Drug Administration.¹⁸⁸ The Substance–Use Disorder Prevention That Promotes Opioid Recovery and Treatment Act (“SUPPORT”) is constructed to improve addiction treatments and curtail prescription abuse.¹⁸⁹ First, the bill designates more funding for “health homes” that provide care for persons who suffer from substance abuse.¹⁹⁰ It also loosens restrictions on substance abuse treatments conducted via telehealth¹⁹¹ and permits Medicare to cover treatment programs that employ drugs and therapy.¹⁹²

Second, SUPPORT highlights the FDA’s authority to regulate that painkiller packaging be restricted to “blister packs,” which support treatment regimens lasting only a few days.¹⁹³ The law also permits the FDA to include the “reduced effectiveness [of opioids]” under the definition of “adverse effects of opioids.”¹⁹⁴ These measures are intended to revamp the entire health care continuum. Specifically, the measures aim to prevent patients from developing a prescription drug abuse disorder, and to improve the treatment available to those who suffer from such disorders.¹⁹⁵ Additionally, the legislation aims to improve electronic tracking on international mail, to prohibit kickbacks on referrals to rehabilitation

188. Jeff Overley, *Trump Signs Vast Opioid Legislation into Law*, LAW360 (Oct. 24, 2018), available at <https://www.law360.com/articles/1095464/trump-signs-vast-opioid-legislation-into-law> (last visited Mar. 25, 2019).

189. *Id.*

190. *Id.*

191. Telehealth employs electronic information and technologies such as videoconferencing, streaming services, the internet, and wireless communications to support long-distance clinical health care, health care related education, and public health services. *What is Telehealth? How is Telehealth Different From Telemedicine?*, HEALTHIT (Sept. 22, 2017), available at <https://www.healthit.gov/faq/what-telehealth-how-telehealth-different-telemedicine> (last visited Mar. 25, 2019).

192. Overley, *supra* note 188.

193. *Id.*

194. *Id.*

195. Kathleen McDermott et al., *A First Look at the Sweeping New Opioid Law*, LAW360 (Oct. 25, 2018), available at <https://www.law360.com/articles/1095542/a-first-look-at-the-sweeping-new-opioid-law> (last visited Mar. 25, 2019).

centers, and to require controlled substances covered by Medicare to be electronically prescribed.¹⁹⁶ Thus, SUPPORT aims to improve oversight over both ends of substance abuse—exposure and treatment—which are the two areas most crucial to reducing substance abuse.

VI. RECOMMENDATIONS

The opioid crisis is a multifaceted epidemic that has bloomed because of several compounding international issues, flawed national regulation and oversight, and the ease of opioid accessibility. All of these issues stem from China's vast and generally unchecked chemical companies. Nevertheless, the present state of the epidemic cannot be overcome without multiple authorities taking corrective action on foundational issues.

First, at the very root of the issue, China needs to take corrective action and close the gaps within its regulations. Second, international cooperation between China and the United States in identifying major illicit manufacturers and traffickers must become a priority. Third, international authorities need to establish a single, unified convention that all countries must strictly adhere to. Fourth, the United States must enforce measures that will curb the demand for illicit opioids, increase border/customs security, and streamline regulatory action.

Loopholes in China's pharmaceutical regulation are a significant barrier to reducing the number of opioids and precursor chemicals being illegally trafficked. Chinese chemical labs are taking advantage of the present legislation and lack of oversight—factors the United States has no influence on. China has legal power, human and financial resources, and independence in decision making. However, to be effective, Chinese regulatory officials must also have the “necessary political support.”¹⁹⁷ The absence of oversight over the pharmaceutical and chemical industries is due to a lack of political urgency, which China must address immediately.¹⁹⁸

China must take divisive action to slow the shipment of illicit narcotics to the U.S. markets. Presently, Chinese officials must draft regulations that increase attention towards precursor chemicals and make them tougher for illegal manufacturers to obtain. Kai Pflug, a consultant in China's chemical industry, stated the opioid “problem will persist” so long as “in China, you can produce chemicals without serious

196. Overley, *supra* note 188.

197. Fefer, *supra* note 69, at 6.15.

198. *See id.*

supervision.”¹⁹⁹ In the long term, China must reorganize its administrative system and establish an effective system of regulatory enforcement.

Second, the United States must continue to be diligent in its collaborative efforts with China. To this point, China prohibited the manufacture of 23 fentanyl analogues, a clear sign of its commitment to assist the United States.²⁰⁰ It is crucial that the United States maintain open communication with Chinese officials to expose underground labs, dealers, and changes in chemical structure. Unilateral action will have no influence on an industry that remains a step ahead of the law.

Third, international law needs a single international convention that binds all nations to its standards. Current conventions only apply to those who are signatories to the agreement, and even then, conventions only require those signatories to maintain the baseline requirements. Thus, parties may establish various standards of regulation so long as they comply with the basic guidelines of the given convention. The issue with permitting such leeway is the variation in national standards that develops as a result.²⁰¹ In some countries, the treaty's requirements are improperly implemented at the national level and fall below the designated requirements, or are disregarded entirely.²⁰² This leads to global tension between abiding countries and those who choose not to observe the “universal adherence.”²⁰³ A 1994 report on the effectiveness of international control stated that a “large part of the shortcomings” of international drug control is because these conventions were intended to be universal, but have yet to be universally adopted.²⁰⁴ Presently, there is too much parity in implementing narcotics regulations across the globe. A stronger international convention needs to be established that unifies all countries under the same obligations and reduces opportunity to exploit loopholes.

Fourth, the United States must take measures to reduce the internal demand for fentanyl and its derivatives. There are several approaches officials can take to substantially reduce the impact opioid use is having

199. Sui-Lee Wee & Javier C. Hernandez, *Despite Trump's Plea's, China's Online Opioid Bazaar is Booming*, N.Y. TIMES (Nov. 8, 2017), available at <https://www.nytimes.com/2017/11/08/world/asia/china-opioid-trump.html> (last visited Mar. 29, 2019).

200. *Id.* (stating that China maintains a “hard-line stance” when it comes to domestic narcotics activity, as the country's strict narcotics laws carry a penalty of execution for those found guilty of trafficking).

201. *See generally* Int'l Narcotics Control Bd., Rep. on the Effectiveness of the Int'l Drug Control Treaties, U.N. DOC. E/INCB/1994/1/Supp.1 (1994).

202. *Id.* ¶ 110(b)

203. *Id.* ¶ 110(a).

204. *Id.*

on American society. First, action must be taken to curtail the amount of opioid prescriptions being written by doctors. While opioid prescriptions have decreased since 2010, prescription rates remain three times higher than they were in 1999 and four times higher than they are in Europe.²⁰⁵ The FDA should mandate that only doctors who complete training in pain management are permitted to prescribe opioids for extended use. Moreover, state governments should restrict the size of opioid prescriptions to minimize the risk of dependence and prevent excess pills from being distributed illegally.²⁰⁶

Moreover, actions should be taken that impact pharmaceutical companies themselves. Pharmaceutical companies and their distributors have largely taken a blind eye to pill mills.²⁰⁷ The federal government is responsible for ensuring that pharmaceutical companies monitor their supply and distribution of drugs.²⁰⁸ One way of ensuring better oversight over opioid distribution is for insurance companies to begin limiting coverage for certain medications.²⁰⁹ This would prevent doctors from prescribing opioids except to those who suffer from severe and chronic pain.

Another way to combat illicit opioid use is to treat those who have addiction disorders. Too often, patients who overdose are not offered long-term treatment and regularly leave the emergency room seeking their next high.²¹⁰ Additional funding and state intervention is necessary to establish more treatment programs.²¹¹ To protect the lives of drug users, some States are considering “safe injection” clinics that allow people to use drugs under the supervision of medical professionals.²¹² Similar

205. Michael R. Bloomberg, *A Seven-Step Plan for Ending the Opioid Crisis*, BLOOMBERG (Jan. 10, 2018), available at <https://www.bloomberg.com/opinion/articles/2018-01-10/a-seven-step-plan-for-ending-the-opioid-crisis> (last visited Mar. 25, 2019).

206. *Id.* (stating that some states have already restricted the size of opioid prescriptions, but all states must enact restrictive regulation for an impact to be felt).

207. *Id.*

208. *Id.*

209. *Id.*

210. Bloomberg, *supra* note 205.

211. *Id.*

212. Christine Vestal, *As Fentanyl Death Toll Spikes, States Step Up Their Interventions*, PBS NEWS HOUR (May 8, 2017), available at <https://www.pbs.org/newshour/health/as-fentanyl-spreads-states-step-up-responses> (last visited Mar. 25, 2019). Many states have also employed designated “Safe Stations” where people struggling with addiction can go for medical assistance. Steven R. Johnson, *Scramble is on to Find New Ways to Stop Opioid Overdose Deaths*, MODERN HEALTHCARE (July 10, 2017), available at <http://www.modern-healthcare.com/article/20170710/NEWS/170719999> (last visited Mar. 25, 2019). Between May 2016 and June 2017, over 1,800 people reportedly sought help at

clinics in foreign countries have demonstrated success in reducing the number of deaths due to overdose.²¹³ However, such sites are unlikely to become commonplace in the United States as they are prohibited under federal drug laws.²¹⁴ Providing opioid abusers a safe location to use is the first step towards treatment; it ensures safe use of the drug and prevents the patient from losing their life due to an overdose.²¹⁵

The United States must also improve its system of screening international mail. A January 2018 report produced by U.S. Senators Rob Portman and Tom Carpenter detailed the results of an investigation into illicit fentanyl trafficking.²¹⁶ A subpoena of Western Union uncovered \$230,000 in payments between six online sellers and U.S.-based buyers, spread out over 500 financial transactions.²¹⁷ The street value of these orders roughly translates to about \$766 million worth of fentanyl.²¹⁸ Currently, only 36 percent of United States Postal Service (“USPS”) bound shipments have advanced electronic data attached to them.²¹⁹ Officials are advocating for several federal improvements, beginning with requiring all international packages to come with advanced electronic data.²²⁰ Moreover, USPS is being asked to automate their process for turning over targeted packages to keep up with CBP’s increasing rates of suspicious packages.²²¹

CONCLUSION

The Chinese government consists of numerous overlapping administrative agencies. Instead of having one central agency overseeing regulatory functions, the Chinese split this responsibility across numerous governing bodies. When a government fragments its regulatory functions in this fashion, it becomes susceptible to inconsistent implementation,

designated Safe Stations, which have been credited with reducing overdose emergency calls by 30%. *Id.*

213. *Id.*

214. *Id.*

215. *Id.* With fentanyl, people do not have time to realize they are overdosing. Vestal, *supra* note 212. Unlike those who use regular drugs, fentanyl users “don’t even have time to pull the needle out [before] they’re on the ground.” *Id.*

216. Erin Mershon, *For Chinese Fentanyl Sellers, USPS Is the ‘Virtually Guaranteed’ Route to Not Get Caught*, STAT NEWS (Jan. 24, 2018), available at <https://www.statnews.com/2018/01/24/china-fentanyl-usps/> (last visited Mar. 25, 2018).

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. Mershon, *supra* note 216.

lapse of enforcement, duplicated responsibilities, and wasted resources.²²² Moreover, such systems are also susceptible to corruption which could prevent necessary legislative changes from being passed. Thus, China's poor regulatory control over its pharmaceutical and chemical industries is a direct result of its administrative organization.

If China strengthened and enforced its regulatory language, the illicit stream of narcotics flowing into the United States would significantly reduce. In fact, as discussed above, every time China makes regulatory changes the United States reaps immediate benefits. As a result, the significance of China's recent decision to schedule fentanyl precursors is an important step that will protect both Chinese and American citizens. While China is unlikely to prohibit the manufacture of fentanyl, it can enact systems of oversight that ensure its labs are engaging the legal side of the market. Enacting a customs procedure which requires advanced electronic data on packages shipped to the United States, similar to the proposed STOP Act, would help ensure the shipments being sent are for legal purposes.

Furthermore, present international conventions have done little to enhance China's regulatory standards. The lack of a strict universal standard for narcotics regulation has permitted China and other countries to continue to loosely regulate drug manufacture and distribution. There is too much deference given to national governments when it comes to enforcing international conventions. National governments manipulate the baseline requirements of a convention and ultimately create different standards that allow gaps in international relations. Presently, international conventions function as little more than a suggestion and offer no multinational framework. The issue is, how does one compel a nation to become party to a convention they have no interest in? Countries who are global leaders in the manufacture of chemicals, pharmaceuticals, and narcotics should be required to adhere to global standards or be subject to economic sanctions.

The United States must also accept responsibility for its own deficiencies. First and foremost, the United States must take action to curb internal demand for opioids. This starts with reducing the number of opioid prescriptions written, effectively preventing people from developing a reliance. This means setting a higher standard for opioid prescriptions, increasing training for physicians licensed to issue prescriptions, and limiting the amount issued per prescription. Additionally, the United States must take the initiative and continue establishing measures that make it more difficult for illicit opioids to enter the country. Presently, the CBP

222. See Fefer, *supra* note 69, at 6.7.

is ill equipped to properly deal with the deceptive methods of traffickers. And while the root of the issue lies in China, U.S. officials cannot continue to point their finger and wait for the problem to be solved—this is a multifaceted issue. For the United States to bring the epidemic to an end it must work with China to simultaneously correct their respective issues. Unilateral efforts will only permit the opioid epidemic to continue to thrive, as narcotics traffickers will continue to outpace national officials.

ADDENDUM

On April 1, 2019, China announced that it would ban all variations of fentanyl, a move that bypasses the lengthy case-by-case procedure that was previously being employed.²²³ Effective May 1, 2019, this latest attempt to curb illicit fentanyl manufacture should plug the gaps that have plagued China's regulations.²²⁴

While this move is a monumental step forward in controlling the opioid epidemic, there are still flaws that will require attention. First, the ban does not cover all precursor chemicals used to produce fentanyl and its analogues.²²⁵ Thus, these precursors could still be manufactured and shipped to Mexico where they could be used to produce various fentanyl analogues.²²⁶ Second, and perhaps most important, is whether China has the capacity to enforce this effort upon its vast pharmaceutical empire.²²⁷

Both parties must remain vigilant in their efforts to regulate and adapt to the constantly evolving efforts of illicit manufactures. China's pledge must be taken for exactly what it is, a pledge—it does not guarantee that the production of illicitly produced fentanyl will suddenly cease. More importantly, it does not excuse the United States from fortifying its own legislation and protections. If China's measures are to be effective, the United States must, at minimum, continue to bolster its border patrol, narcotics treatment, and narcotics prevention efforts.

223. Steven L. Meyers & Abby Goodnough, *China Bans All Types of Fentanyl, Cutting Supply of Deadly Drug to U.S. and Fulfilling Pledge to Trump*, N.Y. TIMES (Apr. 1, 2019), available at <https://www.nytimes.com/2019/04/01/world/asia/china-bans-fentanyl-trump.html> (last visited Apr. 20, 2019).

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*