

The International War on Drugs: How the Chinese Fentanyl Supply Chain to the United States is Fueling America's Most Lethal Narcotic Crisis

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<https://unsplash.com/photos/kkysaOcVE94>

Background

On June 23, 2023, the United States District Court for the Southern District of New York unsealed the indictment of four Chinese companies for the manufacturing and distributing of fentanyl and its precursors to the United States (US).¹ These China-based companies manufactured precursor chemicals (key ingredients used to create fentanyl)² and shipped them to laboratories globally to “synthesize” fentanyl at scale.³ The Chinese Embassy condemned

¹ U.S. v. Hubei Amarvel Biotech Co., LTD., No. 1:23-cr-00302 (S.D.N.Y. filed Jun. 22, 2023).

² *Id.*

³ *Id.* at 2.

the indictments, accusing the US of scapegoating China for its domestic fentanyl crisis.⁴ China later insisted that it is up to the US to not only “correct wrongdoings”, but to create the proper “conditions” for both countries’ anti-drugs efforts.⁵ The US Department of Justice has since introduced a sweeping number of additional indictments against Chinese nationals and Chinese corporations for the trafficking of fentanyl to the US.⁶

While both the US and China have taken measures to prevent the trafficking of fentanyl, the efforts have not been successful in cross-border production and distribution of the narcotic.⁷ Diplomatic relations strain as both countries point to one another for liability in US fentanyl crisis.⁸ The cross-border trafficking of fentanyl has illuminated the many ways in which the current international framework on addressing illicit drug trafficking is inept to address this epidemic. The lethality of fentanyl will force both countries to dance with international law to some capacity, even if they prefer to take their own measures. But what happens when the current international legal framework is not bolstered enough to address the multi-dimensional fentanyl supply chain? This report will explore the elements that contribute to the US’ fentanyl epidemic, and the measures both nations must take to halt a deadly epidemic. Divided in three

⁴ *Spokesperson of the Chinese Embassy in the United States Answers Question from the Media on US Arrest and Indictments of Chinese Individuals and Companies on Fentanyl-related Charges*, EMBASSY OF THE PEOPLE’S REPUB. OF CHINA IN THE U.S., (Jun. 26, 2023), http://us.china-embassy.gov.cn/eng/lcibt/sgfyrbt/202306/t20230626_11104104.htm.

⁵ *China Says Up to US to Create ‘Necessary Conditions’ for Anti-Drugs Cooperation*, AP NEWS (July 7, 2023), <https://apnews.com/article/china-us-fentanyl-cooperation-6643a26f5e1baac3deec3408fc3b0c2e>.

⁶ Eric Tucker & Fatima Hussein, *US Announces Sweeping Action Against Chinese Fentanyl Supply Chain Producers*, AP NEWS (October 3, 2023), <https://apnews.com/article/fentanyl-us-china-mexico-sanctions-drugs-c9ee14f171f1fcbd4db3452cd0bd1d90>.

⁷ See *generally*, SEAN O’CONNOR, FENTANYL: CHINA’S DEADLY EXPORT TO THE UNITED STATES 4 (U.S.-China Economic and Security Review Commission, 2017), https://www.uscc.gov/sites/default/files/Research/USCC%20Staff%20Report_Fentanyl-China%20s%20Deadly%20Export%20to%20the%20United%20States020117.pdf.

⁸ See *China Says Up to US to Create ‘Necessary Conditions’ for Anti-Drugs Cooperation*, AP NEWS (July 7, 2023), <https://apnews.com/article/china-us-fentanyl-cooperation-6643a26f5e1baac3deec3408fc3b0c2e>.

parts, part I will discuss the landscape of the fentanyl crisis. Part II will examine the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and its applicability to the US-China Fentanyl crisis. Part III will offer immediate solutions both nations can take.

Landscape of the US Fentanyl Crisis

Fentanyl is an extremely potent synthetic opioid.⁹ It is the leading cause of death for adults between eighteen and forty-five years old in the US.¹⁰ The narcotic is fifty times more potent than heroin, and one hundred times more potent than morphine.¹¹ In 2022, the US Drug Enforcement Administration (DEA) seized approximately 395.7 million lethal doses of fentanyl.¹² That is enough fentanyl to kill every person in the US (population is approximately 335.5 million).¹³ The US DEA also reported that out of the fentanyl-laced prescription pills it tested in a laboratory, seven out of ten contained a lethal dose of fentanyl.¹⁴ The nationwide increase in opioid overdoses has birthed the US' largest drug epidemic in modern history.¹⁵

⁹ *Fentanyl*, National Institutes of Health, <https://nida.nih.gov/research-topics/fentanyl#references> (last visited Oct. 8, 2023).

¹⁰ *DEA Administrator on Record Fentanyl Overdose Deaths*, U.S. DRUG ENF'T. ADMIN, <https://www.getsmartaboutdrugs.gov/media/dea-administrator-record-fentanyl-overdose-deaths>.

¹¹ *Id.*

¹² *One Pill Can Kill*, U.S. DRUG ENF'T. ADMIN, <https://www.dea.gov/onepill#:~:text=DEA%20Fentanyl%20Seizures%20in%202023,million%20lethal%20doses%20of%20fentanyl>.

¹³ *See U.S. and World Population Clock*, U.S. CENSUS BUREAU, <https://www.census.gov/popclock/> (last visited Oct. 8, 2023).

¹⁴ *One Pill Can Kill*, *supra* note 11.

¹⁵ *See generally*, SEAN O'CONNOR, FENTANYL: CHINA'S DEADLY EXPORT TO THE UNITED STATES, *supra* note 7.

The majority of fentanyl trafficked to the US comes from China.¹⁶ China is the primary global source of fentanyl.¹⁷ In part, this is because China is not only, the largest manufacturer and top exporter of pharmaceutical ingredients but also, has the second largest pharmaceutical industry in the world.¹⁸ Despite having such a large pharmaceutical industry, opioids are not nearly abused by Chinese civilians at the rate they are in the United States.¹⁹ China argues that while it is committed to anti-drug trafficking, it cannot be blamed for a US specific crisis.²⁰ Addressing the US fentanyl crisis will require both countries to collaborate on international law.

Current International Legal Framework

The first international treaty to address the global illicit trafficking of narcotics was formed in 1961 at the United Nations' *Single Convention on Narcotic Drugs*.²¹ That convention established the International Narcotics Control Board, an independent quasi-judicial body tasked with monitoring each government's compliance with the treaty.²² Post 1961, the United Nations (UN) has reconvened and signed additional treaties with greater legal parameters.²³ The treaty that is most universally observed is the 1988 *Convention Against Illicit Traffic in*

¹⁶ FENTANYL FLOW TO THE UNITED STATES 2 (U.S. Drug Enforcement Agency 2020), https://www.dea.gov/sites/default/files/2020-03/DEA_GOV_DIR-008-20%20Fentanyl%20Flow%20in%20the%20United%20States_0.pdf.

¹⁷ FENTANYL: CHINA'S DEADLY EXPORT TO THE UNITED STATES, *supra* note 7, at 7.

¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ *Spokesperson of the Chinese Embassy in the United States Answers Question from the Media on US Arrest and Indictments of Chinese Individuals and Companies on Fentanyl-related Charges*, *supra* note 4.

²¹ UNITED NATIONS, SINGLE CONVENTION ON NARCOTIC DRUGS, 1961 1 (United Nations 1961), https://www.unodc.org/pdf/convention_1961_en.pdf.

²² *The International Narcotics Control Board*, INTERNATIONAL NARCOTICS CONTROL BOARD: ABOUT, <https://www.incb.org/incb/en/about.html>.

²³ *Narcotic Drugs*, INTERNATIONAL NARCOTICS CONTROL BOARD: NARCOTIC DRUGS, <https://www.incb.org/incb/en/narcotic-drugs/index.html>.

Narcotic Drugs and Psychotropic Substances.²⁴ At the signing of that treaty, 191 nations developed comprehensive measures to curb drug traffic by sea and increase international cooperation.²⁵

The 1988 *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* collectively charged each nation with adhering to international law.²⁶ This convention also fortified the drug classification system, designed for nations to track and note new drugs as they discover them.²⁷ This system is often referred to as “schedules”.²⁸ Article 3 of the treaty also charged each nation to adopt the necessary criminal offenses within their jurisdictions when the production, manufacture, extraction, distribution, and transportation of narcotics occurs in their territory.²⁹ The treaty also obligates nations to adopt comprehensive confiscation measures when narcotics and psychotropic substances are found.³⁰ Nations are also encouraged to seek bilateral and multilateral treaty agreements to bolster the international cooperation.³¹

Two issues arise with the UN’s legal framework on the illicit trafficking of narcotics. The first most obvious dilemma is that countries are technically not bound to adhere to the treaties they

²⁴ See *Precursors*, INTERNATIONAL NARCOTICS CONTROL BOARD: PRECURSORS, <https://www.incb.org/incb/en/precursors/index.html>.

²⁵ UNITED NATIONS, CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, 1988 12 (United Nations 1988).

²⁶ *Id.*

²⁷ SCHEDULING PROCEDURES UNDER THE INTERNATIONAL DRUG CONTROL CONVENTIONS 15 (United Nations Office on Drugs and Crime 2020), https://www.unodc.org/documents/commissions/CND/Scheduling_Resource_Material/19-11955_Drug_Conventions_eBook_2.pdf.

²⁸ *Id.*

²⁹ *Id.* CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, *supra* note 11.

³⁰ *Id.* at 16.

³¹ *Id.* at 17.

signed.³² Although the language of the UN treaties declare that nations are to adhere to the measures agreed upon, the UN and its bodies hold no enforcement power to require nations to abide by international law.³³ Second, while the framework is comprehensive, it is not individualized enough to address the dimensional aspects of the trafficking of fentanyl. The trafficking of fentanyl is multilateral and involves distinct countries. An individualized treaty may be needed for effective diplomacy.

It is clear that both countries have taken individual measures to combat the illicit trafficking of narcotics however, individualized efforts won't be enough.³⁴ It is important to note that China continuously defends its commitment to anti-drug trafficking.³⁵ The nation continues to "schedule" additional precursor chemicals to the UN's list, implement additional security measures to its postal and parcel industry that screen for precursors, and prosecute those who violate its laws.³⁶ The US has also implemented sanctions, indictments and other measures to address fentanyl trafficking.³⁷ Yet, neither countries' measures have been sufficient.

Solutions

In order to address the international dimensions of the fentanyl crisis, the US and China should enter into a bilateral and multilateral treaty. The creation of an opioid trafficking specific treaty would allow them to fulfill their obligations under the UN legal framework. A bilateral

³² See generally *Uphold International Law*, UNITED NATIONS, <https://www.un.org/en/our-work/uphold-international-law#:~:text=The%20UN%20Charter%20gives%20the,and%20report%20to%20the%20plenary>.

³³ See generally *Functions and powers of the General Assembly*, UNITED NATIONS: ABOUT, <https://www.un.org/en/ga/about/background.shtml> (outlines powers of UN General Assembly).

³⁴ *Remarks by the Spokesperson of the Chinese Embassy in the United States on the Fentanyl Issue*, EMBASSY OF THE PEOPLE'S REPUB. OF CHINA IN THE U.S., (Sept. 2, 2023), http://us.china-embassy.gov.cn/eng/lcvt/sgfyrbt/202109/t20210903_9031414.htm.

³⁵ *Id.*

³⁶ *See id.*

³⁷ *See China Says Up to US to Create 'Necessary Conditions' for Anti-Drugs Cooperation*, *supra* note 5.

treaty would also diffuse diplomatic tensions on fentanyl liability by evenly splitting obligation and responsibility between both nations. It would allow both nations to negotiate the terms of their agreements and comprehensive action plans on halting the cross-border supply chain of fentanyl.

An US-China illicit drug trafficking extradition treaty could also aid in tensions regarding indictments. Negotiating an extradition treaty would sever the current contentions on indictments because they both could agree upon the conditions of when and how criminals can be brought to justice for crimes committed in the respective nations. It would provide an avenue for both countries to communicate and collaborate on its law enforcement measures.

Conclusion

An exploration into the US fentanyl crisis unveils the intricate and complex supply chain fueling America's most lethal drug epidemic. A nation with a fentanyl epidemic will continue to wage its war on drugs if it cannot collaborate with the nation manufacturing the drug. A treaty between the US and China will forge a path to the eradication of lethal the supply chain, bolster the current international framework, and allow both countries to have clear roles and obligations in their wage against the illicit cross-border trafficking of narcotics.