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## The New World Order and the Need for an International Criminal Court

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# The New World Order and the Need for an International Criminal Court

William N. Gianaris

## **Abstract**

This Article contends that the current status of international law enforcement is inadequate to address the newly emergent problems of international crime and that new measures are needed. Part I briefly reviews the historical background of international cooperation in the field of law enforcement, including past attempts to form an international criminal court. Part II describes and analyzes the current status of international law enforcement, including the most recent and extensive attempt to increase the level of cooperation in the field of international drug trafficking, the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Part III addresses the reasons why the current level of international cooperation is inadequate to deal with the problems posed by the degree and magnitude of international crime today. Part IV propounds the hypothesis that an international criminal court, strengthened with strict enforcement measures, would be able to better address these problems and better deal with international crime.

# THE NEW WORLD ORDER AND THE NEED FOR AN INTERNATIONAL CRIMINAL COURT

*William N. Gianaris\**

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## INTRODUCTION

As the world changes at a rapid pace, so do the needs and opportunities for the international community to come together to address its newly emerging problems. The burgeoning scope and increasing magnitude of international crime pose a problem that requires an international response.<sup>1</sup>

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1. By "international crime," I am referring to the more traditional crimes nor-

Drug trafficking and terrorism have been and remain the most serious and damaging of all international crimes, but more complex and subtle crimes such as money laundering, securities and bank fraud, and white collar crime are quickly increasing in frequency and magnitude.<sup>2</sup> The United States' inability to prosecute known and indicted criminals due to another nation's inability or unwillingness to cooperate evinces the international community's need to address this problem more adequately.<sup>3</sup> The recent failure of the United States to secure the extradition and prosecution of the Libyan citizens, Abdel Basset Ali al-Megrahi and Lamem Khalifa Fhimah, allegedly responsible for the 1988 terrorist bombing of Pan Am Flight 103 over Lockerbie, Scotland, because of the lack of Libyan coop-

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inally committed by individuals that are part of most countries' criminal penal codes, such as drug trafficking, terrorism, counterfeiting, fraud, and white collar crime, which are committed on a transnational level, i.e. where the criminal activity occurs in more than one nation or substantially affects nation(s) other than the one where the criminal activity occurred. See M. CHERIF BASSIOUNI, *INTERNATIONAL CRIMINAL LAW: CRIMES 1-14, 24-25* (1986) [hereinafter BASSIOUNI, ICL: CRIMES] (delineating such crimes); *Alfadda v. Fenn*, 935 F.2d 475 (2d Cir.) (describing transnational crimes more fully), *cert. denied*, 112 S. Ct. 638 (1991); see also M. CHERIF BASSIOUNI, *A DRAFT INTERNATIONAL CRIMINAL CODE AND DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL TRIBUNAL 41-59* (1987) [hereinafter BASSIOUNI, DRAFT CODE] (describing traditional crimes (*delicts*) and other non-traditional international crimes over which international criminal court can have jurisdiction). This Article will not deal with the more political international crimes normally committed by a state or agents of a state, such as aggression, war crimes, environmental crimes, crimes against humanity, genocide, torture, or unlawful use of weapons. BASSIOUNI, *DRAFT CODE, supra*. While an international criminal court could and should eventually deal with both types of crimes, it does not appear feasible that countries would be willing to allow an international criminal court to hear such types of political cases which could also be dealt with in a non-criminal fashion and by other international organizations. While this Article will confine itself to the more "traditional" types of crimes, other less "traditional" types of crimes can also be dealt with in a similar fashion in the future. It is contended that an international criminal court can initially exercise jurisdiction over the crimes of international drug trafficking, terrorism, and certain economic crimes.

2. See Lisa L. Davis & Bruce Zagaris, *International Cooperation in a World Marketplace: Preventing & Prosecuting Commodity Futures Fraud & Abuses*, 15 NOVA L. REV. 507 (1991) (describing problems in countering international scale commodity futures crimes); Michael A. DeFeo, *Depriving International Narcotics Traffickers and Other Organized Criminals of Illegal Proceeds and Combatting Money Laundering*, 18 DENV. J. INT'L L. & POL'Y 405 (1990) (explaining challenge to law enforcement of money laundering).

3. John B. Anderson, *An International Criminal Court—An Emerging Idea*, 15 NOVA L. REV. 433 (1991); M. Cherif Bassiouni, *A Comprehensive Strategic Approach on International Cooperation for the Prevention, Control and Suppression of International and Transnational Criminality*, 15 NOVA L. REV. 353, 357 (1991) [hereinafter Bassiouni, *Comprehensive Strategic Approach*].

eration, exemplifies this current international deficiency.<sup>4</sup> An international criminal court would provide a neutral international forum to which the Libyan authorities would be more likely to surrender the two indicted suspects for prosecution.<sup>5</sup> In addition to facilitating such jurisdictional problems, the creation of an international criminal court with strict enforcement measures, such as economic sanctions against non-cooperative nations and the possible use of an international police force where necessary, would also generate greater international cooperation and success in law enforcement.

While attempts to create such a court have failed in the past, the current political and social conditions all give new international impetus to the creation of such a forum. Such conditions include the large increase in the breadth and complexity of international crime, the increased position of strength of the United States and the Western law-abiding democratic nations arising from the end of the cold war, and the collapse of the Soviet empire. An international criminal court with jurisdiction over international narcotics trafficking, terrorism, and international economic crimes that threaten the stability of the world's economy would provide such a forum.

This Article contends that the current status of international law enforcement is inadequate to address the newly

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4. Chris Hedges, *More Sanctions May Be the Way to Push Libya, Mideast Aides Say*, N.Y. TIMES, May 10, 1992, § 1, at 10; David Johnston, *U.S. and British Demand the Two Libyans*, N.Y. TIMES, Nov. 28 1991, at A3; Paul Lewis, *Security Council Votes to Prohibit Arms Exports & Flights to Libya*, N.Y. TIMES, Apr. 1, 1992, at A1; *Qaddafi Rejects U.N. Demands on Bomb Suspects*, N.Y. TIMES, Apr. 5, 1992, § 1, at 13; Andrew Rosenthal, *U.S. Accuses Libya as Two are Charged in Pan Am Bombing*, N.Y. TIMES, Nov. 15, 1991, at A1. Because of the duration and the impact of the sanctions, Libyan and Arab support for Qaddafi seems to be wavering. See *Council to Maintain Sanctions on Libya*, WASH. POST, Aug. 13, 1992, at A19 (reporting that U.N. Security Council agreed to continue the sanctions, banning air links and military sales originally imposed on April 15, 1992); Caryle Murphy, *Arab States Said to Press Libya to Extradite Bomb Suspects*, WASH. POST, June 7, 1992, at A29 (reporting that Egyptians implored Tripoli to surrender suspects to avoid imposition of stiffer economic sanctions); see also Caryle Murphy, *Two Libyan Newspapers Attack Gadhafi Policies; Pursuit of Arab Unity Called A 'Mirage'*, WASH. POST, June 11, 1992, at A18 (reporting that Libyan newspapers are criticizing Qaddafi's decision not to extradite suspects to U.S. or Britain).

5. Barbara Crossette, *U.S. Dismisses Libyan Offer on Neutral Trial Site for Bomb Suspects*, N.Y. TIMES, Mar. 3, 1992, at A10. The greater likelihood for Libya's turning over the two suspects to such a court can be seen by the statement of Libyan Foreign Minister Ibrahim Bishari that the Libyan government would be willing to turn the two men over to be tried "in front of a neutral court in any neutral country." *Id.*

emergent problems of international crime and that new measures are needed. Part I briefly reviews the historical background of international cooperation in the field of law enforcement, including past attempts to form an international criminal court. Part II describes and analyzes the current status of international law enforcement, including the most recent and extensive attempt to increase the level of cooperation in the field of international drug trafficking, the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.<sup>6</sup> Part III addresses the reasons why the current level of international cooperation is inadequate to deal with the problems posed by the degree and magnitude of international crime today. Part IV propounds the hypothesis that an international criminal court, strengthened with strict enforcement measures, would be able to better address these problems and better deal with international crime. This Article, therefore, concludes that the time has arrived to establish such a fully-empowered international criminal court to deal with today's level of international crime.

*I. THE HISTORY OF INTERNATIONAL LAW  
ENFORCEMENT COOPERATION AND THE  
ATTEMPTS TO ESTABLISH AN  
INTERNATIONAL CRIMINAL  
COURT*

Nations' attempts to cooperate in law enforcement and to combat international crimes date back to the 19th century. In 1815, the Congress of Vienna sought to abolish slavery.<sup>7</sup> Na-

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6. U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, U.N. Doc. E/CONF. 82/15 and rev. 1 (adopted by consensus, Dec. 19, 1988) [hereinafter 1988 U.N. Convention], reprinted in 28 I.L.M. 493 (1989); see A REPORT ON THE STATUS OF THE DRAFT, THE U.S. NEGOTIATING POSITION, AND ISSUES FOR THE SENATE, S. REP. NO. 64, 100th Cong., 1st Sess. (1987); see also REPORT OF THE FOREIGN RELATIONS COMMITTEE, S. EXEC. REP. NO. 15, 101st Cong., 1st Sess. (1989) [hereinafter S. EXEC. REP.] (reporting favorably subject to certain understandings). The Senate gave its advice and consent to ratification on Nov. 6, 1989, and the U.S. instrument of ratification was deposited with the United Nations on Feb. 20, 1990. David P. Stewart, *Internationalizing The War on Drugs: The U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 18 DENV. J. INT'L L. & POL'Y 387 (1990) (commenting specifically on convention's implications for international criminal law).

7. Anderson, *supra* note 3; BASSIOUNI, ICL: CRIMES, *supra* note 1, at 22; Bassiouni, *Comprehensive Strategic Approach*, *supra* note 3, at 356.

tions also negotiated subsequent numerous bilateral extradition treaties to deal with fleeing criminals.<sup>8</sup> One such treaty, signed by the United States and Colombia, was the 1888 Convention for the Reciprocal Extradition of Criminals.<sup>9</sup> Signatory nations did not always fully abide by these treaties and non-signatory nations often offered safe havens for fleeing criminals, thereby often rendering extradition treaties porous and ineffective.<sup>10</sup>

The beginning decades of the 20th century saw greater attempts by nations to combat transnational crimes through multilateral treaties.<sup>11</sup> Conventions signed included the 1910 Agreement for the Suppression of the Circulation of Obscene Publications,<sup>12</sup> the Hague International Opium Convention of 1912,<sup>13</sup> the Geneva International Opium Convention of

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8. Roger S. Clark, *Crime: The UN Agenda on International Cooperation in the Criminal Process*, 15 NOVA L. REV. 475, 476 (1991) (commenting that most of such treaties were bilateral); Mark A. Sherman, *United States International Drug Control Policy, Extradition, and the Rule of Law in Colombia*, 15 NOVA L. REV. 661, 670 (1991).

9. Sherman, *supra* note 8, at 670. Notably, this convention did not deal with illicit drug trafficking, thereby making it almost useless today.

10. Clark, *supra* note 8, at 476; see Abraham Abramovsky, *The Political Offense Exception and the Extradition Process: The Enhancement of the Role of the U.S. Judiciary*, 13 HASTINGS INT'L & COMP. L. REV. 1, 9 (1989) (explaining evolving judicial interpretations by U.S. courts of exceptions to extradition treaties, notably political offense exception). The United States and the United Kingdom expanded the crimes covered by their extradition treaties to attempt to ensure that Irish Republican Army terrorists could not seek safe haven in the United States. Supplementary Extradition Treaty, June 25, 1985, U.S.-U.K., S. TREATY DOC. NO. 8, 99th Cong., 2d Sess., reprinted in 24 I.L.M. 1105-09 (1985).

11. Clark, *supra* note 8, at 476-77. These treaties include the International Agreement for the Suppression of the White Slave Traffic, Mar. 18, 1904, 1 L.N.T.S. 83; the Agreement for the Suppression of the Circulation of Obscene Publications, May 4, 1910, 7 Martens Nouveau Recueil Général de Traités (ser. 3) 266; the International Opium Convention, Jan. 23, 1912, 38 Stat. 1912, 8 L.N.T.S. 187; the International Convention for the Suppression of the Traffic in Women and Children, opened for signature Sept. 30, 1921, 9 L.N.T.S. 415; the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, opened for signature Sept. 12, 1923, 27 L.N.T.S. 213; the International Convention Adopted by the Second Opium Conference and Protocol Relating Thereto ("Geneva International Opium Convention"), Feb. 19, 1925, 81 L.N.T.S. 317; and the International Convention for the Suppression of Counterfeiting Currency, April 20, 1929, 112 L.N.T.S. 371.

12. May 4, 1910, 37 Stat. 1511, 7 Martens Nouveau Recueil Général de Traités (ser. 3) 266.

13. Jan. 23, 1912, 38 Stat. 1912, 8 L.N.T.S. 187, reprinted in 6 AM. J. INT'L L. 177 (Supp. 1912). This was the first international narcotics convention.

1925,<sup>14</sup> the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 1931,<sup>15</sup> and the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs of 1936.<sup>16</sup>

More significantly, in 1924, the International Association of Penal Law ("IAPL") was established in Paris.<sup>17</sup> By 1926, the IAPL supported criminal jurisdiction for the Permanent Court of International Justice of the League of Nations.<sup>18</sup> In 1937, the League of Nations sponsored a conference on international criminal law in Geneva, Switzerland that resulted in the promulgation of the Convention for the Prevention and Punishment of Terrorism and for the Creation of an International Criminal Court.<sup>19</sup>

After World War II, the newly created United Nations appointed the Special Committee of the General Assembly to draft a statute for the formation of an International Criminal Court that resulted in the production of the Draft Statute in 1951.<sup>20</sup> Two years later, in response to reservations of U.N. member states,<sup>21</sup> the U.N. 1953 Committee on International

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14. Feb. 19, 1925, 81 L.N.T.S. 317, *reprinted in* 23 AM. J. INT'L L. 135 (Supp. 1929). Under this Convention, governments were required to submit annual statistics within quarterly reports with regard to opium, coca leaves, and narcotic drugs to the newly created Permanent Central Opium Board. *Id.*

15. July 13, 1931, 48 Stat. 1543, 139 L.N.T.S. 301, *reprinted in* 28 AM. J. INT'L L. 21 (Supp. 1934); Quincy Wright, *The Narcotics Convention of 1931*, 28 AM. J. INT'L L. 475 (1934). This Convention tried to limit the quantities of drugs available in each country and territory so as to have enough only for medical and scientific needs. *Id.*

16. June 26, 1936, 198 L.N.T.S. 299; J.G. Starke, *The Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs*, 31 AM. J. INT'L L. 31 (1937). This treaty attempted to prevent the avoidance of prosecution and facilitate extradition of drug offenders. *Id.*

17. Robert A. Friedlander, *The Foundations of International Criminal Law: A Present-Day Inquiry*, 15 CASE W. RES. J. INT'L L. 13, 18 (1983).

18. *Id.* at 18-19; Richard Jescheck, *Development, Present State and Future Prospects of International Criminal Law*, 52 REVUE INT'L DE DROIT PENAL 337 (1981).

19. Friedlander, *supra* note 17, at 19; BENJAMIN B. FERENCZ, AN INTERNATIONAL CRIMINAL COURT: A STEP TOWARD WORLD PEACE—A DOCUMENTARY HISTORY AND ANALYSIS 269-398 (1980). The Convention on terrorism was, however, only signed by India and the Convention for an international criminal court was not signed by any nation. FERENCZ, *supra*, at 54; Friedlander, *supra* note 17, at 19.

20. *Draft Statute for An International Criminal Court* (Annex to the Report of the Committee on International Criminal Jurisdiction, Aug. 31, 1951) U.N. GAOR, 7th Sess., Supp. No. 11, U.N. Doc. A/2136 (1952) [hereinafter *1951 Report and Draft Statute*]; see BASSIOUNI, DRAFT CODE, *supra* note 1, at 6-7 (commenting that this Draft Statute was in part modeled after International Court of Justice).

21. *1951 Report and Draft Statute*, *supra* note 20, ¶¶ 60-110 (describing jurisdic-



Criminal Jurisdiction revised this 1951 Draft Statute with a report, the Draft Statute for an International Criminal Court ("1953 Draft Statute").<sup>22</sup>

The 1953 Draft Statute provided for the establishment of an international criminal court "to try natural persons accused of crimes generally recognized under international law."<sup>23</sup> The court could obtain jurisdiction by convention, by special agreement, or by unilateral decision,<sup>24</sup> and only where the state instituting the proceedings had conferred jurisdiction upon the court over the offenses involved.<sup>25</sup> The court also could ask national authorities to assist in the performance of its duties to the extent the nation being asked had agreed.<sup>26</sup> The 1953 Draft Statute also provided for a five-judge Committing Chamber to examine the evidence offered by the complainant and to determine whether the evidence was sufficient to support the complaint.<sup>27</sup> The 1953 Draft Statute also provided for a prosecuting attorney to be appointed for the complainant who would file an indictment based on the findings certified by the Committing Chamber.<sup>28</sup> While the 1953 Draft Statute did not provide for a right to trial by jury,<sup>29</sup> the defendant was presumed innocent and accorded many rights equivalent to U.S. constitutional rights.<sup>30</sup> The court also would have had the

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tional aspects of this proposal). Many states were unwilling to surrender their national sovereignty to an international criminal court to the extent provided for by the 1951 Draft Statute. *Id.*; BASSIOUNI, DRAFT CODE, *supra* note 1, at 7; FERENCZ, *supra* note 19, at 365-71.

22. *Revised Draft Statute for an International Criminal Court*, (Annex to the Report of the 1953 Committee on International Criminal Jurisdiction), U.N. GAOR, 9th Sess., Supp. No. 12, U.N. Doc. A/2645 (1954) [hereinafter *1953 Draft Statute*]; see M. CHERIF BASSIOUNI, *INTERNATIONAL CRIMINAL LAW: ENFORCEMENT 7-8* (1987) [hereinafter BASSIOUNI, *ICL: ENFORCEMENT*].

23. *1953 Draft Statute*, *supra* note 22, art. 1.

24. *Id.* art. 26(2).

25. *Id.* art. 29.

26. *Id.* art. 31.

27. *Id.* art. 33.

28. *Id.* art. 34.

29. *Id.* art. 37. Trials would be without jury unless otherwise provided in the instrument conferring jurisdiction upon the court. At least seven of the 15 judges could render a verdict if no jury was provided. *Id.* art. 44.

30. *Id.* art. 38. Such U.S. constitutional rights include the right to be present at all stages of the proceeding, the right to a defense, the right to an attorney, the right to discovery, the right to cross-examine, and the right to speak in one's own defense or to remain silent without inference being drawn from this silence. *Id.*

power to issue arrest warrants<sup>31</sup> and set bail.<sup>32</sup>

In 1954, the 1953 Draft Statute was followed by a Draft Code of Offences Against the Peace and Security of Mankind, prepared by the International Law Commission, that listed thirteen separate international crimes.<sup>33</sup> Unfortunately, however, the states involved were never able to come to an agreement and sign either this Draft Statute or the Draft Code into existence. This was due in large part to their inability to agree on what constituted an act of "aggression," which act was made illegal by Article 2(1) of this Draft Code.<sup>34</sup> Thus, due mainly to the political considerations involved in defining a state's "act of aggression," the states involved have to date been unable to pass the 1953 Draft Statute and 1954 Draft Code, thus making the establishment of an international criminal court impossible.<sup>35</sup>

While states adopted neither the 1953 Draft Statute on an international criminal court nor the 1954 Draft Code, states entered into numerous treaties in the post-World War II era that stressed greater international cooperation in law enforcement, particularly in the areas of international drug trafficking and terrorism. In the field of international drug trafficking, a 1953 U.N. Protocol sought to limit the agricultural production of the opium poppy to the amount needed for medical use.<sup>36</sup> In 1961, however, the Single Convention on Narcotic Drugs ("Single Convention")<sup>37</sup> was adopted and virtually replaced all existing multilateral narcotics treaties.<sup>38</sup> While the Single

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31. *Id.* art. 40.

32. *Id.* art. 41.

33. *Report of the International Law Commission*, U.N. GAOR, 9th Sess., Supp. No. 9, at 9, U.N. Doc A/2693 (1954) (listing 13 violations of international law for which those responsible would be punished).

34. *Id.* art. 2(1); see FERENCZ, *supra* note 19, at 41-48 (commenting on disagreement over what aggression entailed).

35. BASSIOUNI, *DRAFT CODE*, *supra* note 1, at 8-11; see FERENCZ, *supra* note 19, at 41-48 (commenting on disagreement over what aggression entailed).

36. June 23, 1953, Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, U.N. Doc. E./N.T./8 (1953).

37. Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 204 [hereinafter *Single Convention*] (entered into force Dec. 13, 1964, for the United States June 24, 1967).

38. *Id.*; S. EXEC. REP., *supra* note 6, at 154-55; Jeffrey L. Harding, *International Narcotics Control: A Proposal to Eradicate an International Menace*, 14 CAL. W. INT'L L.J. 530, 544 (1984). This Convention was ratified by more than half of the members of the United Nations. S. EXEC. REP., *supra* note 6, at 154. The Convention created the

Convention was a major development because of the extent and scope of its adoption, its many weaknesses rendered it somewhat ineffective. These weaknesses included its lack of effective international cooperation measures (cooperation depended upon nations' voluntary actions), of authority given to the international narcotics control bodies, of obligations and incentives for preventing the overproduction of drugs, of international enforcement mechanisms, and of international sanctions for individual offenders.<sup>39</sup>

In 1971, the Convention on Psychotropic Substances was enacted.<sup>40</sup> This Convention, largely modeled after the 1961 Single Convention, adopted strict international controls for psychotropic substances such as LSD and mescaline.<sup>41</sup> Furthermore, in 1972, the Geneva Protocol Amending the 1961 Single Convention on Narcotics Drugs ("1972 Protocol") was adopted.<sup>42</sup> This Protocol, while still relying on nations' voluntary cooperation, increased the competence of the previously created International Narcotics Control Board. The 1972 Protocol also expanded the scope and effectiveness of extradition, technical assistance, drug treatment, rehabilitation, and preventive measures.<sup>43</sup> The attempt, however, to control international drug trafficking reached its culmination in the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,<sup>44</sup> the most far-reaching convention in the field of international narcotics control and law enforcement cooperation.

Moreover, in the early 1970s a series of conventions were adopted to combat international terrorism. These conventions include the 1971 Convention for the Suppression of Unlawful

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International Narcotics Control Board which superseded and replaced the Permanent Central Opium Board and the Drug Supervisory Body. *Id.* at 155. While it did not replace the 1936 Convention, *supra* note 16, with the exception of extradition, it did adopt similar provisions. *Id.*; Harding, *supra*, at 544 n.130.

39. See S. EXEC. REP., *supra* note 6, at 155 (commenting on weakness of Single Convention).

40. Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175.

41. *Id.*; see S. EXEC. REP., *supra* note 6, at 155-60; Harding, *supra* note 38, at 546.

42. Mar. 25, 1972, 26 U.S.T. 1439, 976 U.N.T.S. 3 [hereinafter 1972 Protocol] (entered into force Aug. 8, 1975).

43. *Id.* arts. 2-9, 14-16; S. EXEC. REP., *supra* note 6, at 160-61; Harding, *supra* note 38, at 546-47.

44. 1988 U.N. Convention, *supra* note 6.

Seizure of Aircraft,<sup>45</sup> the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation,<sup>46</sup> and the 1979 International Convention Against the Taking of Hostages ("1979 Convention").<sup>47</sup> The 1979 Convention attempted to foster greater cooperation in the prevention and prosecution of terrorist offenses.<sup>48</sup> It mandated that a state shall be obliged either to extradite or to prosecute an individual who committed an offense.<sup>49</sup> The 1979 Convention's effectiveness, however, was greatly weakened by a number of exceptions that enabled states to avoid extradition or prosecution.<sup>50</sup> Furthermore, although the 1979 Convention provided for the submission of any disputes to arbitration and to the International Court of Justice, it was further limited by provisions allowing each state the right to renounce the 1979 Convention by written notification and by providing no methods to deal with recalcitrant states.<sup>51</sup>

The series of European Conventions<sup>52</sup> as well as the Model Treaties that were adopted by the United Nations from 1985 to 1990 are also worthy of mention.<sup>53</sup> These Conven-

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45. Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105, *reprinted in* 10 I.L.M. 133 (1971) (entered into force, Oct. 14, 1971).

46. Sep. 23, 1971, 24 U.S.T. 564, 974 U.N.T.S. 177, *reprinted in* 10 I.L.M. 1151 (1971) (entered into force Jan 26, 1973)

47. G.A. Res. 34/146, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/C6/34/46 (1979), *reprinted in* 18 I.L.M. 1456 (1979) (entered into force June 3, 1983, for United States Dec. 7, 1984).

48. *Id.* arts. 1-5.

49. *Id.* art. 8.

50. *Id.* art. 9. Such exceptions included situations where the State felt that the request for extradition was made for the purpose of prosecuting or punishing a person because of his race, religion, nationality, ethnic origin, or political opinion, or because the person's position might be prejudiced. *Id.*

51. *Id.* art. 16.

52. These European Conventions include the 1957 Convention on Extradition, Dec. 13, 1957, 359 U.N.T.S. 273, Europ. T.S. No. 24; the 1959 Convention on Mutual Assistance in Criminal Matters, Apr. 20, 1959, 472 U.N.T.S. 185; the 1970 European Convention on the International Validity of Criminal Judgements, May 28, 1970, 973 U.N.T.S. 57, Europ. T.S. No. 70; the 1972 European Convention on the Transfer of Proceedings in Criminal Matters, May 15, 1972, Europ. T.S. No. 73; and the 1977 Convention for the Suppression of Terrorism, Jan. 27, 1977, Europ. T.S. No. 90; see BASSIOUNI, ICL: CRIMES, *supra* note 3, at 97-99 (commenting on level of international cooperation attempted by these conventions).

53. See *The Model Agreement on the Transfer of Prisoners (Report of the 7th U.N. Cong. on the Prevention of Crime and the Treatment of Offenders)*, U.N. Doc. A/CONF.121/22/Rev 1, at 53 (1986); *The Model Treaty on Extradition (Report of the 8th U.N. Cong. on the Prevention of Crime and the Treatment of Offenders)*, U.N. Doc. A/CONF.144/28, at 71 (1990); *The*

tions and treaties were particularly significant because they attempted to establish a uniform criminal justice system whereby signatory nations cooperated in the fields of investigation, evidence gathering, enforcement, and prosecution.<sup>54</sup>

## II. *THE 1988 U.N. CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AND THE CURRENT STATUS OF INTERNATIONAL LAW ENFORCEMENT*

### A. *International Narcotics Trafficking*

In 1988, the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("1988 U.N. Convention")<sup>55</sup> was adopted at an international conference of 106 states, including the United States.<sup>56</sup> The 1988 U.N. Convention marked a significant development in the international community's fight against international drug trafficking by explicitly recognizing illicit drug trafficking as an international criminal activity,<sup>57</sup> and requiring each signatory state to establish legislation outlawing the production, possession, transportation, or distribution of listed narcotic drugs and psychotropic substances.<sup>58</sup> The 1988 U.N. Convention additionally required signatory states to criminalize the following drug-related activities: money laundering; the acquisition, possession, or use of property knowingly derived from drug trafficking; the possession of equipment or materials used in producing or manufacturing narcotic drugs or psychotropic substances; and the conspiracy, participation, or aiding and abetting any of the

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*Model Treaty on Mutual Assistance in Criminal Matters. Id.* at 82; *The Model Treaty on the Transfer of Proceedings in Criminal Matters. Id.* at 96; *The Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released. Id.* at 103; *The Model Treaty for the Prevention of Crimes that Infringe on the Cultural Heritage of Peoples in the Form of Movable Property. Id.* at 110; see Clark, *supra* note 8, at 475-500 (describing such treaties more fully).

54. See *supra* notes 52-53 (listing European conventions and U.N. Model Treaties designed to facilitate and coordinate international criminal investigation and prosecution).

55. 1988 U.N. Convention, *supra* note 6.

56. *Id.*; Stewart, *supra* note 6, at 387.

57. 1988 U.N. Convention, *supra* note 6, pmb1.; Stewart, *supra* note 6, at 387.

58. 1988 U.N. Convention, *supra* note 6, art. 3.

above offenses.<sup>59</sup> The 1988 U.N. Convention thus broadened the scope of offenses covered to effectively combat international drug traffickers who often never physically handle the narcotics but organize, finance, supervise, and profit from international drug trafficking.<sup>60</sup>

Additionally, the 1988 U.N. Convention specified the instances in which the signatory states were required to establish jurisdiction over the covered offenses<sup>61</sup> and furnished the power to confiscate all forms of property used in or derived from the covered offenses.<sup>62</sup> Furthermore, the 1988 U.N. Convention postulated the cooperation between nations in the confiscation of such property.<sup>63</sup> The 1988 U.N. Convention also stipulated the widest measure of mutual legal assistance in the investigations, prosecutions, and judicial proceedings with regard to the listed criminal offenses.<sup>64</sup> This mutual assistance embraced the following procedures: the taking of evidence or statements from persons; service of judicial documents; searches and seizures; examination of objects and sites; providing bank, financial, and business records and documents; and identifying or tracing proceedings, property, instrumentalities,

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59. *Id.*

60. S. EXEC. REP., *supra* note 6, at 161.

61. 1988 U.N. Convention, *supra* note 6, art. 4. A state has jurisdiction basically where (a) the offense is committed (i) in its territory or (ii) aboard a vessel flying its flag or an aircraft which is registered under its laws at the time the offense is committed or (b) the offense is (i) committed by one of its nationals or by a person who has his habitual residence in its territory or (ii) committed on board a vessel concerning which that party has been authorized to take appropriate action pursuant to article 17 or (iii) one of those established in accordance with article 3, paragraph 1, subparagraph (c)(iv) (conspiracy) and is committed outside its territory with a view to the commission within its territory. *Id.*

62. *Id.* art. 5. Parties are required to take all necessary measures to allow their appropriate authorities to identify, trace, seize, or freeze property, proceeds, instrumentalities, or any other objects, or take preliminary steps towards the eventual confiscation of that property. *Id.* art. 5(2).

63. *Id.* art. 5(4)(a). This article provides that the party in whose territory such property is situated shall (i) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or (ii) submit to its competent authorities, with a view to giving effect to the extent requested, an order of confiscation issued by the requesting party in accordance with paragraph 1 of this article, in so far as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested party. *Id.*

64. *Id.* art. 7.

or other potential evidentiary objects.<sup>65</sup>

Regarding extradition, the 1988 U.N. Convention amended existing signatory states' current extradition treaties to incorporate these covered offenses as extraditable and made the 1988 U.N. Convention a legal basis for extradition.<sup>66</sup> The states were also called upon to expedite, simplify, and enhance the effectiveness of extradition proceedings.<sup>67</sup> The 1988 U.N. Convention provided that a state from which extradition of an individual is requested but refused shall submit the case to its own competent authorities should that state have jurisdiction.<sup>68</sup> The 1988 U.N. Convention states, however, that a state may avoid extradition when substantial grounds reveal that the person is being prosecuted on account of "race, religion, nationality or political opinions," or extradition would cause prejudice for any of those reasons.<sup>69</sup>

The 1988 U.N. Convention also required signatory states to enhance cooperation and efforts to track and intercept illicit narcotics trafficking,<sup>70</sup> to eradicate plants containing narcotic or psychotropic substances,<sup>71</sup> and to reduce the demand for illicit drugs.<sup>72</sup> Lastly, the 1988 U.N. Convention assigned to the International Narcotics Board, established under the Single Convention,<sup>73</sup> and to the U.N. Commission on Narcotic Drugs, broad supervisory responsibilities including the oversight of illicit manufacture and export of narcotic drugs, psychotropic substances, and related materials and equipment, as well as the publication of an annual report.<sup>74</sup> The 1988 U.N. Convention also permitted state parties to submit otherwise unresolvable disputes to the International Court of Justice.<sup>75</sup>

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65. *Id.* art. 7(2).

66. *Id.* art. 6(1)-(4).

67. *Id.* art. 6(7)-(11).

68. *Id.* art. 6(9).

69. *Id.* art. 6(6).

70. *Id.* arts. 7, 11, 12, 15 & 17.

71. *Id.* art. 14.

72. *Id.*

73. *See supra* notes 37-38 and accompanying text (describing Single Convention).

74. 1988 U.N. Convention, *supra* note 6, arts. 21-23.

75. *Id.* art. 32.

### B. *International Economic Crimes*

The area of international economic crimes also has several recent, noteworthy developments. With the increased interdependency and integration of the world's economies, the level of international crime in the global marketplace has increased dramatically.<sup>76</sup> Such crime includes international investment scams, money counterfeiting, and money laundering.

The various international investment scams include offshore boiler rooms,<sup>77</sup> circumvention of foreign regulation,<sup>78</sup> diversion of funds to foreign bank accounts,<sup>79</sup> and international market manipulation.<sup>80</sup> National laws attempt to address such scams and crimes, but an overall international approach is lacking.<sup>81</sup> While the Commodity Futures Trading Commission has jurisdiction over international commodity futures transactions with some connection to the United States,<sup>82</sup>

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76. Davis & Zagaris, *supra* note 2, at 511-12. "According to a 1990 study by the North American Securities Administrators Association (NASAA) on international investment fraud and abuse, 'international investment swindles are now the fastest growing category of fraud with which state securities agencies are dealing today.'" *Id.* at 511 (quoting NORTH AMERICAN SECURITIES ADM'R ASS'N, 1990 STUDY ON INT'L INV. FRAUD AND ABUSE (1990)). A recent example of this is the charges filed against the Bank of Credit and Commerce International ("BCCI") by the U.S. Department of Justice and the Manhattan District Attorney's Office. See Steve Lohr, *Indictment Charges Clifford Took Bribes—Broader Inquiry into BCCI Disclosed*, N.Y. TIMES, July 30, 1992, at A1 (describing indictments). In this case, top officials and affiliates of BCCI were charged with fraud, money laundering, and bribery of officials of ten different nations. *Id.* This case has been characterized as "the largest financial fraud in history." *Id.*

77. Davis & Zagaris, *supra* note 2, at 512-14. "A boiler room is an enterprise normally operated out of inexpensive low-rent quarters which uses high pressure sales tactics with false or misleading information and which targets generally unsophisticated investors." *Id.* at 512 n.11 (quoting COMMODITY FUTURES TRADING COMMISSION, THE CFTC GLOSSARY: A LAYMAN'S GUIDE TO THE LANGUAGE OF THE FUTURES INDUSTRY (1990)).

78. *Id.* at 514-15. Circumvention of foreign regulation occurs when a foreign company circumvents U.S. law by offering prohibited options for sale in the United States. *Id.*

79. *Id.* at 515.

80. *Id.* at 516-17. International market manipulation is the manipulation of the price of commodities or commodity futures contracts by way of illegal schemes. *Id.*

81. In the United States, for example, the Commodity Futures Trading Commission ("CFTC") regulates commodity futures and options exchanges in the United States. 7 U.S.C. §§ 1-26 (1988); Davis & Zagaris, *supra* note 2, at 518 n.41 (citing 7 U.S.C. §§ 1-26 (1988)). The U.S. Department of Justice is responsible for the prosecution of criminal violations. *Id.* at 519 n.48 (construing PHILIP M. JOHNSON & THOMAS L. HAZEN, COMMODITIES REGULATION § 4.27, at 252 (1989)).

82. 7 U.S.C. §§ 1-26 (1988); Davis & Zagaris, *supra* note 2, at 520 n.49. The U.S.



prosecution of such crimes often requires the cooperation of other nations controlling evidence of the crime or the criminal himself. Furthermore, while the U.S. courts have held that they have extraterritorial subject matter jurisdiction for securities law violations where there is either substantial conduct contributing to the criminal acts committed in the United States or where fraudulent conduct committed outside of the United States results in substantial deleterious effects inside the United States, the effectiveness of such jurisdiction also depends on other nations' collaboration.<sup>83</sup>

Existing international approaches require too much voluntary cooperation to be effective. While the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters<sup>84</sup> provided for letters rogatory and the taking of evidence by consular officials and private commissioners for the purposes of international evidence gathering, such participation depends on each nation's willingness to cooperate.<sup>85</sup> Informal agreements<sup>86</sup> usually mandate a greater degree of cooperation between nations, but again these are entirely voluntary.<sup>87</sup> Mutual Legal Assistance Treaties ("MLATS") also provide for a greater degree of law enforcement cooperation, but many of these are unratified and riddled with gaps that hamper cooperation.<sup>88</sup> International organizations, such as the International Organization of Security Commissions ("IOSCO"),<sup>89</sup> also seek

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courts have also interpreted this jurisdiction broadly. *Id.* at 522-24. *E.g.*, *Tamari v. Bache & Co. (Lebanon) S.A.L.*, 730 F.2d 1103 (7th Cir.), *cert. denied*, 469 U.S. 871 (1984); *Psimenos v. E.F. Hutton & Co.*, 722 F.2d 1041 (2d Cir. 1983).

83. *E.g.*, *Alfadda v. Fenn*, 935 F.2d 475 (2d Cir.), *cert. denied*, 112 S. Ct. 638 (1991); *Psimenos v. E.F. Hutton & Co.*, 722 F.2d 1041 (2d Cir. 1983); *Grunenthal GmbH v. Hotz*, 712 F.2d 421 (9th Cir. 1983); *SEC v. Kasser*, 548 F.2d 109 (3d Cir.), *cert. denied sub nom. Churchill Forest Indus. v. SEC*, 431 U.S. 938 (1977).

84. *Opened for signature* Mar. 18, 1970, 23 U.S.T. 2555, 847 U.N.T.S. 231.

85. *Id.* art. 23.

86. *Davis & Zagaris*, *supra* note 2, at 532-33 (commenting that such informal agreements include information sharing agreements and mutual assistance agreements).

87. *Id.*

88. *Id.* at 543-44.

89. *Id.* at 544-48. The IOSCO was formed in 1984 as a predominantly educational organization and has evolved into a very influential international organization that facilitates coordination and cooperation among the securities and commodities regulators around the world. *Id.* at 545 (citing U.S. GENERAL ACCOUNTING OFFICE, GAO/NSIAD-89-115, *INT'L FINANCE: REGULATION OF INTERNATIONAL SECURITIES MARKETS* 18 (1989)).

an international approach to the regulation of securities and commodity futures markets.<sup>90</sup> In 1986, IOSCO's members adopted the "Rio Resolution," in which signatory nations agreed to gather and share information relating to market surveillance and customer protection.<sup>91</sup> While there are many attempts to cooperate on an international level in securities regulation and to prevent international commodity scams and abuse, such schemes and abuses will grow as the world economy integrates unless nations classify them as international crimes and enforce and prosecute them with a greater degree of certainty.<sup>92</sup>

Another flourishing international crime, extensively employed especially by international drug traffickers, is money laundering.<sup>93</sup> Drug traffickers and other criminals hoard and accumulate their illegal profits and invest their savings throughout the world. Tracing this money is often the sole method of apprehending major criminals, whose involvement would otherwise be impossible to detect,<sup>94</sup> and confiscating these assets debilitates the profitability of major crimes. While abundant U.S. legislation combats money laundering,<sup>95</sup> international treaties and organizations did not effectively address it until 1988. The 1988 U.N. Convention furnished the ability to "confiscate" all proceeds from the covered illegal activities and affirmatively obliged the signatory states to cooperate and

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90. *Id.* (citing Guy, *IOSCO Moves Ahead*, F.I.A. REV. 8 (May/June 1990)).

91. Davis & Zagaris, *supra* note 2, at 545-48. Other organizations include the Organization for Economic Cooperation and Development ("OECD") and the Wilton Park Group. Davis & Zagaris, *supra* note 2, at 548-49.

92. *Id.* at 549.

93. Michael A. DeFeo, *Depriving International Narcotics Traffickers and Other Organized Criminals of Illegal Proceeds and Combatting Money Laundering*, 18 DENV. J. INT'L L. & POL'Y 405 (1990); Sara J. Hughes, *Policing Money Laundering Through Fund Transfers: A Critique of Regulation under the Bank Secrecy Act*, 67 IND. L.J. 283 (1992).

94. DeFeo, *supra* note 93, at 411. While major drug traffickers, for instance, may insulate themselves from any connection to the drugs or contraband being distributed, they would most likely control or have some connection with the money and assets generated by drug distribution. *Id.* at 410-11.

95. See, e.g., 1970 Bank Secrecy Act, Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified as amended at 12 U.S.C. §§ 1730(d), 1829(b), 1951-1959 (1988) and in scattered sections of 31 U.S.C. (1988)); 1984 Comprehensive Crime Control Act, Pub. L. No. 98-473, 98 Stat. 1976 (1984) (codified as amended in scattered sections of 5 U.S.C., 18 U.S.C., 19 U.S.C., 21 U.S.C., 26 U.S.C., 31 U.S.C., 36 U.S.C., and 42 U.S.C. (1988)); 1986 Money Laundering Act, Pub. L. No. 99-570, sec. 1357(g), 100 Stat. 3207-18, 3207-26 (codified as amended at 31 U.S.C. §§ 5317, 5322(b) (1988)).

share with each other all relevant information and documents from banks and other organizations.<sup>96</sup> Some states are not able to enforce foreign criminal jurisdiction of forfeiture, however, which complicates the actual seizure of these assets.<sup>97</sup> To overcome this problem, the U.N. Crime Prevention and Criminal Justice Branch is preparing model treaties to structure a basic framework for tracing and seizing illegal proceeds.<sup>98</sup> The European Economic Community has also addressed the problem of money laundering in a convention and directive.<sup>99</sup>

### C. *Terrorism*

Lastly, in combatting terrorism, although the treaties of the 1970s provided a means for international cooperation, certain nations remain noncompliant. A recent example of this is Libya's opposition to the extradition of two Libyan individuals who were indicted in the United States for the 1988 bombing of Pan Am Flight 103 over Scotland which killed 270 people.<sup>100</sup> Promising action evolved from this refusal, however, when the United Nations ordered the surrender of these two individuals to either Britain or the United States and imposed economic sanctions against Libya for noncompliance.<sup>101</sup> The United Nations' intervention in this instance placed some "teeth" into the enforcement of an international treaty in the field of international criminal law.

Furthermore, while terrorism has been a violent and disruptive crime for several decades, international narcotics dealers now also use it to control and to intimidate governments that oppose them.<sup>102</sup> This presents the frightening problem of

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96. 1988 U.N. Convention, *supra* note 6, arts. 5, 7; Stewart, *supra* note 6, at 395.

97. Stewart, *supra* note 6, at 396.

98. DeFeo, *supra* note 93, at 413.

99. Council of Europe: Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of Nov. 8, 1990, 30 I.L.M. 148 (1991); Council Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering, No. 91/308, O.J. L 166 (1991); see Jeffrey L. Quillen, Note, *The International Attack on Money Laundering: European Initiatives*, 1 DUKE J. COMP. & INT'L L. 213 (1991).

100. See *supra* note 4 (discussing Libya's opposition to extradition efforts).

101. See *supra* note 4 (discussing U.N. reaction to Libyan hostility).

102. INTERNATIONAL NARCOTICS CONTROL BOARD, 1991 REPORT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD 39 (1991) [hereinafter U.N. REP.]; Faiza Patel, *Crime Without Frontiers: A Proposal for an International Narcotics Court*, 22 N.Y.U. J. INT'L L. & POL. 709, 713 (1990); Bruce Zagaris, *Protecting the Rule of Law from Assault in the*

the use of terrorism, not by dispossessed ethnic groups or zealots, but by well-financed and superbly organized criminals with the resources and the tenacity to go to almost any extreme to maintain their billion-dollar drug industry. This is a frightening thought with serious and deadly possibilities. Clearly, the international community must act to eradicate these criminals before their power grows even more.

### III. *THE INADEQUACIES OF THE CURRENT SYSTEM OF INTERNATIONAL LAW ENFORCEMENT*

The inadequacy of the current system of international law enforcement can be seen by the growth in narcotics trafficking and use, despite the 1988 U.N. Convention designed to fight such growth.<sup>103</sup> This is due to several factors in addition to the obvious factor of the greed of the traffickers.

First, despite attempts to facilitate extradition through current treaties, namely the Single Convention<sup>104</sup> and the 1988 U.N. Convention,<sup>105</sup> the successful extradition or prosecution of international criminals remains a difficult and complex task. The most obvious reason for states' general reluctance to surrender jurisdiction for a crime committed abroad is their national pride and sovereignty.<sup>106</sup> The problem with this is that the requested state may not be in a position to prosecute the crime itself due to its own lack of commitment or the location of witnesses and evidence abroad.<sup>107</sup> This lack of commitment may be due to several reasons: perception of the offense as not serious enough to warrant prosecution, intimidation by the criminals' terrorist tactics, as with the narcotics traffickers in

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*War Against Drugs and Narco-Terrorism*, 15 NOVA L. REV. 703, 703-04 (1991); Alan Cowell, *Inquiry into Sicilian Slaying Looks for Mafia Link to Colombian Drug Cartel*, N.Y. TIMES, July 21, 1992, at A3 (reporting on possibility that top Italian prosecutor Giovanni Falcone was murdered in response to investigation of Mafia and Colombian plan to import cocaine to Europe); Arnold H. Lubasch, *U.S. Indicts Colombians in '89 Deaths*, N.Y. TIMES, Aug. 14, 1992, at B3 (reporting that Pablo Escobar and Dandeny Munoz-Mosquera of Medellin cartel charged with bombing Avianca airline jet); Stephen G. Trujillo, *Peru's Maoist Drug Dealers*, N.Y. TIMES, Apr. 8, 1992, at A25.

103. Joseph B. Treaster, *Smuggling and Use of Illicit Drugs Are Growing, U.N. Survey Finds*, N.Y. TIMES, Jan. 13, 1992, at A11.

104. Single Convention, *supra* note 37, art. 36(2)(b).

105. 1988 U.N. Convention, *supra* note 6, art. 6.

106. Patel, *supra* note 102, at 719-23.

107. *Id.* at 720-22.

Colombia,<sup>108</sup> resentment harbored by the requested state toward the requesting state asking the requested state to make a major sacrifice (as with Latin American countries whose economies are based or influenced largely by the drug trade, and where the requesting state provides such a demand for these drugs that drug traffickers flourish in the requested states),<sup>109</sup> or disagreement between the requesting and the requested state over whether a crime was in fact committed. A state, such as Libya, may completely refuse to cooperate because of such a disagreement.<sup>110</sup>

Furthermore, the crimes covered by such extradition treaties may become outdated due to the criminals' development of new modes of operation.<sup>111</sup> For example, many states do not yet allow drug-related offenses such as money laundering or other economic crimes to serve as a basis for extradition.<sup>112</sup> Although the 1988 U.N. Convention sought to deal with this

108. There were some developments in Colombia such as the arrest of Pablo Escobar, head of the Medellin Drug Cartel, and many of his associates. Reports of his escape, however, and the egregious comforts that he enjoyed during incarceration, which allowed him to retain control of the cartel, quickly dampened hopes for progress. See *Around the World—Escobar's Prison Life*, WASH. POST, Aug. 4, 1992, at A15 (reporting that Escobar indulged in pornographic movies, ordered jail guards around, and ran his Medellin cocaine cartel by computer links); *Around the World—The Reward for Escobar*, WASH. POST, Aug. 15, 1992, at A16 (reporting also that Escobar has been charged with terrorism in bombing of Avianca Airlines jet); Don Podesta, *Escobar's Escapades Point Up Epic Colombian Drug Troubles*, WASH. POST, July 30, 1992, at A20 (commenting that Escobar's "ranch-jail," christened "The Cathedral" offered its inmate many luxuries, humiliating Colombian government). As a result of the escape, the U.S. government offered a US\$2,000,000 reward for Escobar's capture; see U.N. REP., *supra* note 102, at 38 (commenting on such narcotics traffickers' increasing use of terrorism).

109. U.N. REP., *supra* note 102, at 37-39; Patel, *supra* note 102, at 718; see Trujillo, *supra* note 102 (commenting that cocaine accounts for at least 35 to 45 percent of Peru's export earnings).

110. See *Qaddafi Rejects U.N. Demands on Bomb Suspects*, N.Y. TIMES, Apr. 5, 1992, at A13 (reporting that refusing to turn over suspects because of disagreement over whether crime was committed); see also *Ficconi v. Attorney General of the United States*, 462 F.2d 475, 478-79 (2d Cir.) (objecting to extradition because offense alleged committed not in extradition order), *cert. denied*, 409 U.S. 1059 (1973); *United States ex rel. Donnelly v. Mulligan*, 76 F.2d 511 (2d Cir. 1935) (allowing executive decree to broaden reextradition capability).

111. Patel, *supra* note 102, at 726-27 (describing how new drug development and law enforcement methods force constant updating of extradition treaties).

112. *Id.* at 728; ROBERT LINKE, EXTRADITION FOR DRUG-RELATED OFFENSES: A STUDY OF EXISTING EXTRADITION PRACTICES AND SUGGESTED GUIDELINES FOR USE IN CONCLUDING EXTRADITION TREATIES, at 29, 51-52, U.N. Doc. St/NAR/5, U.N. Sales No. E.85.X1.6 (1985).

problem, it still persists.<sup>113</sup> A state may also encounter great difficulty apprehending a criminal and acquiring the evidence that would permit the criminal's extradition or prosecution. This may be a problem where a drug trafficker and his crops are barricaded with military defenses in a remote area of the country.<sup>114</sup> Thus, numerous problems make extradition a less than adequate means of dealing with complex international crimes.

Second, the current international law enforcement system is inadequate because clauses of conventions normally allow signatory states to avoid certain provisions and even the convention itself.<sup>115</sup> As long as such "escape clauses" exist, these international conventions cannot compel states to cooperate in prosecuting international criminals who seek to hide behind the veil of transnational borders.

Third, despite the existence of these treaties and Conventions, the production of the narcotics crops continues to increase.<sup>116</sup> Thus, even as one country eradicates or reduces its crops of coca or opium, another country takes its place to fill the demand.<sup>117</sup> For example, Colombian drug lords shifted from cocaine production to heroin production,<sup>118</sup> while new locations such as Africa and Chile emerge to grow and distribute cocaine, thus replenishing the international supply.<sup>119</sup> Fourth, and most significantly, the international community lacks any type of concrete enforcement mechanism.<sup>120</sup> Although the 1988 U.N. Convention allows disputes under the

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113. Patel, *supra* note 102, at 728; LINKE, *supra* note 112, at 29, 51-52.

114. U.N. REP., *supra* note 102, at 37-39; Nathaniel C. Nash, *Cocaine Invades Chile, Scorning the Land Mines*, N.Y. TIMES, Jan. 23, 1992, at A4 (commenting that ease of travel through borders exacerbates international enforcement problems).

115. *E.g.*, 1988 U.N. Convention, *supra* note 6, arts. 6(6), 30, 32(4); Harding, *supra* note 38, at 548-49.

116. *See* U.N. REP., *supra* note 102 (commenting on production of narcotics crops); Joseph B. Treaster, *Smuggling and Use of Illicit Drugs Are Growing*, U.N. Survey Finds, N.Y. TIMES, Jan. 13, 1992, at A11.

117. U.N. REP., *supra* note 102, at 37-40; Nash, *supra* note 114 (noting that ease of travel between Chile and Peru allows other nations to fill production voids); Treaster, *supra* note 116.

118. Joseph B. Treaster, *Colombia's Drug Lords Add New Product: Heroin for U.S.*, N.Y. TIMES, Jan. 14, 1992, at A1.

119. Nash, *supra* note 114, at A4.

120. Harding, *supra* note 38, at 549; José A. Cabranes, *International Law and Control of the Drug Trafficking*, 7 INT'L LAW. 761, 764 (1973).

Convention to be settled between the two parties in an agreeable manner or by the International Court of Justice, it permits a state to choose to avoid completely these methods of dispute settlement, thereby allowing the dispute to remain unresolved.<sup>121</sup> Moreover, while the International Narcotics Control Board can alert the parties or the U.N. General Assembly of any non-compliance, it is only empowered to recommend an embargo of the import or export of drugs from a particular nation.<sup>122</sup> In actuality, the Board can do nothing to reprimand a state for not cooperating with the terms of the 1988 U.N. Convention or for assisting in narcotics trafficking or related crimes. While nations can collectively apply economic sanctions to punish a non-cooperating state, as is the case with Libya,<sup>123</sup> such an ad hoc approach does not provide a long-term solution. A long-term solution requires an organized and formal approach that empowers the international community with strict enforcement mechanisms. A truly effective international law enforcement system requires a structure that would earn the trust of nations by being fair and neutral and that would command the respect of the nations by strict enforcement measures.

#### IV. *THE NEED FOR AN INTERNATIONAL CRIMINAL COURT WITH STRICT ENFORCEMENT MEASURES*

A realization of the shortcomings of the current status of international law enforcement has led many, including prominent U.S. law organizations such as the American Bar Association and the New York State Bar Association, to propose or to discuss the creation of some type of international criminal court as a solution.<sup>124</sup> The U.S. Congress, in the 1988 Anti-

121. 1988 U.N. Convention, *supra* note 6, art. 32.

122. Harding, *supra* note 38, at 549; 1972 Protocol, *supra* note 42, art. 6(2). This measure has never been imposed.

123. See *supra* note 4 (commenting that United Nations has imposed sanctions against Libya for failure to produce Lockerbie bombing suspects).

124. AMERICAN BAR ASSOCIATION, TASK FORCE ON AN INTERNATIONAL CRIMINAL COURT (1991) [hereinafter ABA REP.]; M. Cherif Bassiouni, *The Time Has Come for an International Criminal Court*, 1 *IND. INT'L & COMP. L. REV.* 1 (1991); N.Y. STATE BAR ASSOCIATION, THE CREATION OF AN INTERNATIONAL CRIMINAL COURT, REPORT OF THE COMMERCIAL AND FEDERAL LITIGATION SECTION (1991) [hereinafter NYSBA REP.]; BASSIOUNI, DRAFT CODE, *supra* note 1; FERENCZ, *supra* note 19; Anderson, *supra* note

Drug Abuse Act, called for negotiations on the creation of an international criminal court with jurisdiction over the prosecution of persons accused of international drug trafficking.<sup>125</sup> The U.S. House of Representatives went further in 1989, and stated that the United States "should pursue the establishment of an International Criminal Court to assist the international community in dealing more effectively with those acts of terrorism, drug trafficking, genocide and torture that are condemned as criminal acts in the international conventions cited in the preamble."<sup>126</sup> Such a court would serve the valuable purpose of providing a neutral, international forum for the impartial prosecution of international criminals, and avoid the problems stemming from the current ad hoc approach requiring multilateral cooperation.

#### A. *The Problems an International Criminal Court Would Address*

An international criminal court would initially serve the useful function of providing an alternative forum to nations reluctant to extradite a criminal to another nation with a different criminal justice system for any of the reasons mentioned

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3, at 433; M. Cherif Bassiouni, *Draft Statute: International Criminal Tribunal*, 15 NOVA L. REV. 373 (1991) [hereinafter *Bassiouni: Draft Statute*]; M. Cherif Bassiouni, *The Penal Characteristics of Conventional International Criminal Law*, 15 CASE W. RES. J. INT'L L. 27, 33-35 (1983); Michael P. Scharf, *The Jury is Still Out on the Need for an International Criminal Court*, 1991 DUKE J. COMP. & INT'L L. 135 (1991); Patel, *supra* note 102; Zagaris, *supra* note 102, at 719-20, 742, 744; *A World Court for Drug Lords*, N.Y. TIMES, Aug. 1, 1992, at A22; Robert Dickson, *Libya Case Shows Need for Terrorism Court*, N.Y. TIMES, Apr. 24, 1992, at A34; Judith Miller, *Moroccan King, A Friend of U.S., Rejects Hard Line Toward Libya*, N.Y. TIMES, Mar. 2, 1992, at A7 (stating that King Hassan II proposed an international criminal court to handle the terrorist cases against two Libyan citizens).

125. See Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988) (codified at scattered sections of 18 U.S.C.) (containing language granting President and Senate initiative to investigate establishment of international criminal court, as well as strengthening reporting and monitoring requirements for financial institutions); see also ABA REP., *supra* note 124, at 4 (advising formation of international criminal court). This impetus may stem from criticism the United States has received from the international community for its extraterritorial abductions of international drug traffickers and terrorists. See Abraham Abramovsky, *Extraterritorial Abductions: America's "Catch and Snatch" Policy Run Amok*, 31 VA. J. INT'L L. 151 (1991) (describing how Camarena investigation and abduction of Alvarez-Machain and others by U.S. agents violated traditional theories of extraterritorial jurisdiction).

126. H.R.J. Res. 66, 101st Cong., 1st Sess. § 2 (1989); ABA REP., *supra* note 124, at 4. The preamble refers to existing conventions involving air transportation, narcotic drugs, and genocide. *Id.*



above.<sup>127</sup> This would allow nations to circumvent the dilemma of whether to use force to capture a wanted criminal in possible violation of national law, U.N. Charter norms, and international human rights.<sup>128</sup> Such a court would also provide for a fair and neutral forum in which to try accused criminals when it is not clear that the requested state—which under current extradition treaties may choose prosecution instead of extradition—would zealously or adequately prosecute them.<sup>129</sup> This problem of the requested state's inadequate prosecution is exacerbated when the accused wields power and influence in the requested state or where the requested state lacks sufficient evidence to prosecute effectively.

An international criminal court would also be useful where two or more states have concurrent jurisdiction and cannot agree on the correct forum state. Thus, where the accused has committed several distinct offenses in two or more states that constitute concerted criminal activity, an international criminal court would more effectively consolidate all the charges in one forum.<sup>130</sup> An international criminal court could also be used by states which do not have any extradition treaties. Such a court would not offend the pride of a nation which chose not to enter such treaties.

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127. See *supra* notes 103-23 and accompanying text (discussing problems of international law enforcement).

128. ABA REP., *supra* note 124, at 7. The arrest and seizure of Manuel Noriega exemplifies the international illegality of such seizures. See generally Christopher A. Donosa, Note, *Protecting National Interests: The Legal Status of Extraterritorial Law Enforcement by the Military*, 41 DUKE L.J. 867 (1992) (explaining leeway of U.S. President to use military force to effect an extraterritorial arrest). But see Abramovsky, *supra* note 125 (arguing that extraterritorial abduction by use of force violates international law and provokes noncooperation from other nations). A recent example of this is the U.S. abduction and U.S. trial of Alvarez-Machain, which created tension and mistrust between the U.S. and Mexico. *United States v. Alvarez-Machain*, 112 S. Ct. 2188 (1992) (holding that if an extradition treaty does not prohibit abduction, then a forcibly abducted person can be legally tried in the U.S.); see also Tim Golden, *Mexico Says It Won't Accept Drug Aid From U.S.*, N.Y. TIMES, July 26, 1992, at A14; Linda Greenhouse, *High Court Backs Seizing Foreigner for Trial in U.S.*, N.Y. TIMES, June 16, 1992, at A1. The United States' resort to kidnapping undoubtedly grew out of the frustration with extradition procedures. See Abramovsky, *supra* note 125, at 163 n.53 (explaining proper method under international law of gaining jurisdiction over such a criminal). It should be noted that under *Alvarez-Machain*, however, such abductions are not illegal according to U.S. law.

129. See *supra* note 108 and accompanying text (discussing lack of commitment to current treaties).

130. Patel, *supra* note 102, at 733.

An international criminal court would also facilitate the discovery and evaluation of evidence located in different nations.<sup>131</sup> Such a court would encourage international cooperation through the establishment of a uniform international criminal code with a list of international crimes and punishments, and rights for the accused which all signatory nations would follow.<sup>132</sup>

Lastly, an international criminal court would provide a structural vehicle by which a nation could pursue a decision to prosecute suspected individuals, without that nation having to resort to unilateral actions to enforce its prosecutorial decisions. While the United States' building of a coalition to apply pressure upon Libya by way of U.N.-imposed economic sanctions<sup>133</sup> is encouraging, such an approach was possible in this instance only because of the relative strength of the United States, in contrast to the weakness of Libya. Such an ad hoc approach may not be possible in other cases where the balance of power is not so decided. Economic sanctions proposed and supported by an international criminal court or armed intervention by an international agency would provide a fair and neutral approach to the problem of a nation's lack of cooperation and would not rely solely on one nation's superior economic or military prowess.

#### B. *Structure and Jurisdiction of an International Criminal Court*

The structure of an international criminal court can be modeled after the 1951 U.N. Draft Statute for an international criminal court.<sup>134</sup> There have also been other draft statutes and proposals since 1951. The most recent proposals include drafts by the American Bar Association,<sup>135</sup> Professor M. Cherif Bassiouni<sup>136</sup> and Faiza Patel, who proposed a draft for an inter-

131. *Id.* at 736.

132. BASSIOUNI, DRAFT CODE, *supra* note 1, at 41-59; NYSBA REP., *supra* note 124, at 6.

133. *See supra* note 4 and accompanying text (describing failure of U.S. efforts to rally international pressure against Libya).

134. *See supra* note 20 and accompanying text (discussing 1951 U.N. Draft Statute).

135. ABA REP., *supra* note 124.

136. *See* BASSIOUNI, DRAFT CODE, *supra* note 1, at 215-52; Bassiouni, *Draft Statute*, *supra* note 124.

national narcotics court.<sup>137</sup>

The most detailed of these recent drafts is the one set forth by Professor Bassiouni. Professor Bassiouni postulates an international criminal court that has jurisdiction over a number of crimes listed in his proposed international criminal code.<sup>138</sup> The court would consist of twelve judges of separate nationality sitting in panels of three.<sup>139</sup> There would also be a Procuracy divided into administrative, investigative, and prosecutorial divisions and a Secretariat to perform administrative functions, prepare budgets, and publish annual reports.<sup>140</sup> There would also be a standing Commission with one representative from each state-party to mediate disputes between state-parties, to propose international instruments to enhance the functions of the court, and to facilitate compliance with the 1988 U.N. Convention.<sup>141</sup>

The draft allows anyone to file a complaint with the Procuracy (prosecutor) against a natural person for any one of the enumerated crimes or for the Procuracy to initiate such a complaint itself.<sup>142</sup> The Procuracy would then investigate the complaint and determine whether to proceed.<sup>143</sup> The Prosecutorial Division of the Procuracy would then have the power to issue arrest warrants, subpoenas, injunctions, and search warrants, as well as other warrants and orders in order to assist in the development of a case.<sup>144</sup> Before proceeding to trial, the court must find that the case is reasonably founded in

137. Patel, *supra* note 102, at 737-46.

138. See BASSIOUNI, DRAFT CODE, *supra* note 1, at 115-77 (listing 22 international crimes, including crimes of aggression, war crimes, anti-humanity crimes, racial crimes, terrorist crimes, drug offenses, as well as numerous other crimes and offenses); see also Bassiouni, *Draft Statute*, *supra* note 124, at 391.

139. BASSIOUNI, DRAFT CODE, *supra* note 1, at 236-38; see *supra* Bassiouni, *Draft Statute*, *supra* note 124, at 408-10 (providing that Judges could not be of same nationality and would be elected in brackets of four-year, six-year, and eight-year terms with four judges for each term).

140. BASSIOUNI, DRAFT CODE, *supra* note 1, at 239-40; Bassiouni, *Draft Statute*, *supra* note 124, at 411-12.

141. BASSIOUNI, DRAFT CODE, *supra* note 1, at 241-42; Bassiouni, *Draft Statute*, *supra* note 124, at 413-14.

142. BASSIOUNI, DRAFT CODE, *supra* note 1, at 226-28; Bassiouni, *Draft Statute*, *supra* note 124, at 396-98.

143. BASSIOUNI, DRAFT CODE, *supra* note 1, at 226-28; Bassiouni, *Draft Statute*, *supra* note 124, at 396-98.

144. BASSIOUNI, DRAFT CODE, *supra* note 1, at 229; Bassiouni, *Draft Statute*, *supra* note 124, at 399.

fact and law and that adjudication would be fair and reasonable.<sup>145</sup> If the court finds the case can proceed, the case would then be heard by a Chamber of three judges.<sup>146</sup> The court would deliberate after hearing the case and render a verdict and a sentence from which both sides would have a right to appeal.<sup>147</sup> If the defendant's guilt is found and upheld, the court could then call upon any state-party to impose the sentence.<sup>148</sup>

During the course of the proceedings, the accused would be entitled to certain basic rights including the presumption of innocence, procedural rights to confront witnesses and present evidence, the right to a speedy trial, the right to question the legality of the obtainment of the evidence, the right to remain silent, the right to counsel, the right to know the charges, and the right to question whether the charges are supported by reasonable grounds.<sup>149</sup> The defendant would also have the right to be present at and to participate in the proceedings, as well as to have counsel present.<sup>150</sup>

The American Bar Association Task Force on an International Criminal Court provides for a similar structure.<sup>151</sup> Unlike Professor Bassiouni's proposal, the American Bar Association Task Force favors a system of concurrent jurisdiction that depends upon the consent of both the state where the crime is allegedly committed and the state of which the accused is a national.<sup>152</sup> The Task Force also sets forth four alternatives

145. BASSIOUNI, DRAFT CODE, *supra* note 1, at 229; Bassiouni, *Draft Statute*, *supra* note 124, at 399.

146. BASSIOUNI, DRAFT CODE, *supra* note 1, at 231-32; Bassiouni, *Draft Statute*, *supra* note 124, at 402-03.

147. BASSIOUNI, DRAFT CODE, *supra* note 1, at 233-34; Bassiouni, *Draft Statute*, *supra* note 124, at 404-06 (stipulating that prosecutor can appeal only questions of law while defendant can appeal questions of fact as well as law).

148. BASSIOUNI, DRAFT CODE, *supra* note 1, at 235; Bassiouni, *Draft Statute*, *supra* note 124, at 407.

149. BASSIOUNI, DRAFT CODE, *supra* note 1, at 245-47; Bassiouni, *Draft Statute*, *supra* note 124, at 417-19.

150. BASSIOUNI, DRAFT CODE, *supra* note 1, at 245; Bassiouni, *Draft Statute*, *supra* note 124, at 417.

151. ABA REP., *supra* note 124.

152. *Id.* at 12. One member of the Task Force disagrees and proposes that only the nation where the crime is alleged to have been committed need ask the Court to exercise its jurisdiction since many nations condone and sometimes encourage lawlessness. *Id.*

for the scope of an International Criminal Court.<sup>153</sup> The three possibilities are jurisdiction along the lines proposed by Professor Bassiouni (an international criminal code), jurisdiction limited to international drug trafficking and other international crimes in which there is widespread agreement on the need for their prosecution and punishment, and jurisdiction limited to crimes over which each state would be willing to give the court jurisdiction.<sup>154</sup>

The Task Force provides for judges to be elected by the state-parties.<sup>155</sup> It also provides for an independent prosecutor's office with subpoena powers and mutual legal assistance treaties to ensure the cooperation of the member states.<sup>156</sup> The Task Force further provides for an investigatory magistrate to perform functions similar to those of a U.S. grand jury.<sup>157</sup>

The Task Force leaves to the states the negotiation of the necessary contents of an indictment, the role of the judges and the prosecutors, the rights of the defendants, the admissibility of evidence, the voting procedures for the judges, and other aspects of trial procedure.<sup>158</sup> The Task Force also provides for certain rights for the accused, including the right to interrogate witnesses and inspect evidence, to adduce oral and other evidence, to receive the court's assistance in obtaining relevant material, to be heard by the court, and to decline to testify and have no negative inferences drawn from the failure to testify.<sup>159</sup> It also gives the International Criminal Court the power to issue arrest warrants, to require the presence of witnesses, and to impose sentences specified in a schedule of penalties listed in the court's statutes.<sup>160</sup> The sentence would be served in the country where the offense was committed.<sup>161</sup>

A third proposal, provided by Ms. Faiza Patel, is for the

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153. *Id.* at 14.

154. *Id.* at 14-15.

155. *Id.* at 17.

156. *Id.* at 19.

157. *Id.* at 20.

158. *Id.* The Task Force also mentions the Nuremberg Trials as a practical guide for resolving these issues. *Id.*

159. *Id.* at 22.

160. *Id.* at 22-23. The penalties imposed would be severe but would not include the death penalty. *Id.*

161. *Id.* at 23.

creation of an international narcotics court.<sup>162</sup> This court would have jurisdiction when the state where a person accused of an international narcotics offense is located requests that such person be brought under the jurisdiction of the court.<sup>163</sup> The court would then apply the law of the state where the alleged offense was committed.<sup>164</sup> Ms. Patel's proposal mainly adopts Professor Bassiouni's International Criminal Code.<sup>165</sup>

Ms. Patel's court would consist of fifteen judges with chambers of three.<sup>166</sup> Each state-party would nominate two judges for a four-year term and the judges would take turns serving.<sup>167</sup> There would also be an Office of the Prosecutor General consisting of an administrative division, an investigative division, and a prosecutorial division.<sup>168</sup> Also, a Committee of Parties would be the main administrative body of the court with a member representative from each party.<sup>169</sup> The Committee would appoint judges and the Prosecutor General, as well as create a budget for the court.<sup>170</sup>

Under this proposal a state-party would notify the Prosecutor General of its intention to send the accused before the court.<sup>171</sup> The Prosecutor General would then review the evidence and decide whether there is a reasonable basis to believe that the accused has committed a crime.<sup>172</sup> If the Prosecutor General were to decide that there was sufficient evidence, then he or she would bring the case to the attention of the President of the Court, who would then conduct a preliminary hearing to determine whether *prima facie* evidence exists.<sup>173</sup> This proposal also provides for the parties' full cooperation with the court's requests and judicial proceedings, and with the execution of sentences.<sup>174</sup>

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162. Patel, *supra* note 102.

163. *Id.* at 741.

164. *Id.* at 742-43.

165. See generally BASSIOUNI, DRAFT CODE, *supra* note 1; Bassiouni, *Draft Statute*, *supra* note 124.

166. Patel, *supra* note 102, at 739.

167. *Id.* at 739-40.

168. *Id.* at 743.

169. *Id.* at 744.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* at 742, 744.

174. *Id.* at 742, 745. For purposes of the execution of sentence, the Court shall

The actual structure of an international criminal court would obviously be negotiated by the various civil law and common law nations and would probably be very similar to the above-mentioned proposals. It would no doubt include rules of procedure and evidence, the structure of the panels of judges,<sup>175</sup> and rights for the accused as well as the victim.<sup>176</sup> What would arguably be the more difficult issue to be resolved is the scope of the court's criminal jurisdiction, and its means of obtaining this jurisdiction.

As previously mentioned, it would be more feasible for an International Criminal Court to have jurisdiction over international crimes such as drug trafficking, terrorism, and certain economic crimes where wide-spread international agreement exists on the need to cooperate in prosecution.<sup>177</sup> Such jurisdiction would circumvent or, at the very least, minimize the problems encountered previously by avoiding jurisdiction over crimes perceived as political or crimes involving "aggression."<sup>178</sup>

The other question remaining is whether the consent of both the accusing nation and the nation harboring the accused would be necessary for the International Criminal Court to maintain jurisdiction. Requiring the consent of the nation harboring the accused would present some of the same problems that weaken extradition.<sup>179</sup> Influential narcotics traffickers and terrorists could intimidate the nation and prompt it to deny International Criminal Court jurisdiction and instead have a sham trial or no trial domestically. On the other hand, however, if the International Criminal Court is granted jurisdiction

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give preference to the party of which the convicted person is a national and then to the party in the territory of which the offense was committed. *Id.* at 745.

175. There would be no right to a jury due to the international nature of the case and the impracticability of obtaining jurors.

176. The prosecutor can be a separate international prosecutor—such as Professor Bassiouni's Prosecutor General—or can be the prosecutor the complaining nation chooses to prosecute the case. The better alternative would be to have an independent prosecutor who would be more able to appear objective and gain the trust of all of the nations involved.

177. *See supra* note 1 (illustrating international concurrence of such a court's jurisdiction over certain traditional international crimes).

178. *See supra* notes 20-35 and accompanying text (describing attempts to create drafts for an international criminal court).

179. *See supra* notes 103-23 and accompanying text (describing current inadequacies in international law enforcement).

without such a nation's consent, the problem arises over how to compel a recalcitrant nation to surrender the accused.

A solution to such a problem is the application of economic sanctions. The United Nations is currently applying economic sanctions against Libya in order to force Libya to surrender the two suspects which the United States has indicted for the Lockerbie bombing.<sup>180</sup> The International Criminal Court (which presumably will be part of the United Nations or affiliated with it)<sup>181</sup> could use the U.N. Security Council as a means of enforcing its decisions. When a nation refuses to cooperate, the appropriate official could go to the U.N. Security Council and request that economic sanctions be applied to encourage cooperation. Furthermore, should economic sanctions prove ineffective—as was the case with Iraq after Iraq invaded Kuwait—then a U.N. or International Criminal Court police force could enter the nation, arrest, and remove the accused.

Such a police force would consist of law enforcement officials supplied by each nation. The number provided by each nation could be on a voluntary basis or proportionate to the size or wealth of the nation. With the important exception that such a police force would have the ability and power to enter a nation and remove wanted persons where authorized to do so by the United Nations, the police force could function in much the same way as, or in conjunction with, Interpol.<sup>182</sup>

While it can be argued that a situation such as the one with Libya can be handled just the way it is currently being handled, without an international criminal court, this is so only so long as the United States maintains its current status as the only major world power. History teaches us that a nation can be a ma-

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180. *See supra* note 4 (describing U.N. sanctions against Libya).

181. U.N. CHARTER art. 18. An international criminal court formally incorporated as a part of the United Nations would require a vote of two-thirds of the member nations. *Id.*

182. Interpol (the International Criminal Police Organization) is an international organization consisting of delegates from the participating nations whose aims are to ensure and promote cooperation between all criminal police authorities and to establish and develop all institutions which will assist in preventing and suppressing crimes. MICHAEL FOONER, *INTERPOL: ISSUES IN WORLD CRIME AND INTERNATIONAL CRIMINAL JUSTICE* 185 (1989) (construing THE CONSTITUTION OF INTERPOL arts. 2(a)-(b) (stating the aims of Interpol)).



for world power for only so long.<sup>183</sup> The United States should take advantage of its current status to set up a more stable world order which would survive after its power of supremacy declines. Such an ad hoc approach as with Libya is not a feasible long-term solution for dealing with nations which do not cooperate in efforts of international law enforcement. A long-term solution requires the establishment of an international structure with the trust and faith of the international community.

While such a measure may seem drastic, the alternative is to have an international community where nations may choose to harbor persons accused of serious and sometimes heinous crimes. These international criminals would then be able to evade justice and continue their alleged lawless and harmful activities. The United States should use its current position of strength to promote the creation of such a court. This opportunity, which currently exists, may not exist again for centuries to come.

While it may also be difficult to have a sufficient number of nations agree to such an arrangement, it is certainly worth the effort. Such an international criminal court would unify the international community to more effectively combat serious international crime. Such a court could also expand over time to adjudicate a wider array of international crimes, including for instance, environmental pollution, human rights violations, genocide, and even warfare.<sup>184</sup>

### *CONCLUSION*

There is currently an opportunity to take a major step toward a more orderly international community with greater respect for the law. The international community must do more to prevent the ravaging local effects of international crimes. Education, although necessary to combat drug abuse, alone is not enough. An international effort is needed to curb the production and world-wide distribution of these drugs. While the

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183. See generally PAUL KENNEDY, *THE RISE AND FALL OF THE GREAT POWERS: ECONOMIC CHANGE AND MILITARY CONFLICT FROM 1500 TO 2000* (1987) (analyzing powerful nations' expansion and subsequent retrenchment, hypothesizing that hegemony can be maintained for only so long).

184. See BASSIOUNI, *DRAFT CODE*, *supra* note 1, at 41-59 (proposing list of crimes that international criminal court should have jurisdiction over).

1988 U.N. Convention initiated such an international effort, it has proved ineffective,<sup>185</sup> due mainly to the enormous amounts of wealth and influence possessed by the international drug traffickers and by nations' economic reliance upon drug crops.<sup>186</sup> Unfortunately, a more binding, concerted, and forceful effort is needed. An international criminal court, fully empowered with strict enforcement capabilities, is the international community's best response. Such a court could also prosecute terrorists who often go unpunished for the heinous crimes they commit. It could also have jurisdiction over various economic crimes, including money laundering, to better combat such crimes in a rapidly expanding and complex international economic community ripe with opportunities for fraud and deceit.

The time has arrived for an international criminal court. The 20th century has seen a tremendous growth in international organizations which attempt to establish a more orderly and peacefully coexistent international community. As the international community becomes more integrated, so too does the level of international crime increase. Unless this problem is brought under control, the international community will become more lawless and less orderly. An international criminal court with the ability to enforce its decisions would curb and reduce the growing level of international crime. It would provide a means for nations to combat the scourge of today's international crimes and help bring about a more orderly world with greater respect for the law.

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185. See *supra* notes 103-23 and accompanying text (describing inadequacies of current system of international law enforcement).

186. *Id.*; see also Michael Wines, *Drug War to Widen on Same Budget*, N.Y. TIMES, Feb. 28, 1992, at A9 (reporting that Peru's President, Alberto K. Fujimori, has stated that in order to curb production of coca, a large influx of money is needed to allow people growing the coca to change to a different crop). Furthermore, to offset the devastating effects a powerful international criminal court would have on nations which are producing drugs and to some extent rely on their drug crops for economic stability, there would have to be a significant amount of financial and technical assistance in order to help them change to other crops. This assistance would also reduce the likelihood of a relapse to drug crops by any of these nations.