

Lincoln Memorial University - Duncan School of Law

From the Selected Works of Melanie M. Reid

2013

West Africa, the EU's Mexico: Extraditions and Drug Prosecutions in the EU could be the Answer

Melanie M. Reid, *Lincoln Memorial University - Duncan School of Law*



Available at: https://works.bepress.com/melanie_reid/8/

ARTICLES

WEST AFRICA, THE EU'S MEXICO: EXTRADITIONS AND DRUG-TRAFFICKING PROSECUTIONS IN THE EU COULD BE THE ANSWER

*Melanie Reid**

An emerging cocaine route connects South America and Europe by way of West Africa and has pushed West African authorities to a critical enforcement juncture. Although the region's drug industry is still in its infant stages, its continued growth will likely produce entrenched organized crime networks similar to the kind now active in Mexico. As the primary destination for drugs smuggled through West Africa, the European Union ("EU") is inextricably linked to these developments, much like the United States in relation to Mexico's drug conflicts. Although officials in the EU and West African nations are committed to fighting drug smuggling, their success in doing so has been limited thus far. This Article explores the obstacles to more effective drug enforcement efforts between the EU and its West African counterparts, compares the West African situation to that of Mexico, and suggests a strategy for arresting the growth of the West African drug trade through EU extradition and enforcement efforts aimed at high-level traffickers.

I.	INTRODUCTION.....	2
II.	THE DRUG SITUATION IN WEST AFRICA AND OBSTACLES FACED	3
III.	THE CURRENT METHODS EMPLOYED BY THE EU AND THE UN IN WEST AFRICA.....	7
IV.	WHAT CAN BE LEARNED FROM MEXICO	10
V.	ADDITIONAL PROPOSAL: PROSECUTE AND EXTRADITE.....	11

* Assistant Professor of Law, Lincoln Memorial University-Duncan School of Law. The author would like to thank Yardley Sawyer for her invaluable research assistance and Bob Reid and Pat Laflin for their comments. This article came out of my presentation at the University of Birmingham Law School's Institute of European Law Third Conference on European Law & Policy in Context. Many thanks to all who attended the EU/West Africa workshop session.

*We need to take action now before the grip of the criminal networks linked to the trafficking of illicit drugs tightens into a stranglehold on West African political and economic development. That can only [be] achieved through a strong, well-coordinated and integrated effort led by West African states with the strong backing of the international community. In particular, the region needs more help from those countries that are producing and consuming these drugs.*¹

—Kofi Annan

I. INTRODUCTION

Just as Mexico and its drug problems are in the United States' backyard, West Africa creates a similar concern for the European Union ("EU"). The drug consumption rates in Europe have doubled or tripled in the last several years.² Europe must react to the potential disaster stirring in West Africa. West Africa is slowly coming to a critical crossroads in its struggle against the violent drug trafficking within its borders. Once organized crime networks firmly establish themselves in West Africa as the Sinaloa Federation and Los Zetas have done in Mexico, bitter rivalries and violent skirmishes will soon follow as organizations attempt to take over transit territories and small landing strips that they have set up throughout West Africa. Drug trafficking in West Africa is still in its infancy, but the region will soon join the ranks of veteran drug-fighting nations like Mexico and Colombia.

This Article looks at the relatively new cocaine route, from South America to West Africa to Europe, and explores the drug trafficking complexities confronting West Africa today. Part II examines the obstacles local West African governments and the EU must overcome in their mutual desire to combat smuggling, drug crime, and violence in West Africa. Part III discusses what is currently being done by the EU in West Africa—e.g., primarily sending experienced law enforcement to train West African law enforcement agencies, providing equipment and coordinating joint intelligence and seizure operations, etc. Part IV explores what West Africa can learn from Mexico's struggle against illegal drugs. Mexico has a strong central government which has taken a tough stance against drug traffickers and has deployed military troops throughout the region to combat drug cartels. Lastly, Part V suggests that the EU should place a greater emphasis on extraditing top West African organized crime leaders to Europe for prosecution, use additional law enforcement tools such as informants and wiretaps to prosecute these leaders effectively, and create stronger money laundering controls to eliminate drug traffickers' financial power.

¹ Kofi Annan, *Save West Africa from the Drugs Barons: Trafficking Is Endangering the Fragile Democracies of This Vulnerable Region*, OBSERVER, Jan. 28, 2012, at 41.

² *The Cocaine Trail: How West Africa Is Harmed by Europe's Coke Habit*, ECONOMIST (June 9, 2010), <http://www.economist.com/node/16316336>.

II. THE DRUG SITUATION IN WEST AFRICA AND OBSTACLES FACED

Drugs like cocaine and heroin are widely produced in Colombia, Bolivia, and Peru.³ As the United States' consumption rates of these illicit drugs have decreased, European consumption rates have increased. In reaction to the change in demand, drug cartels have begun sending these drugs through Brazil to West Africa and then to Europe. Approximately a quarter to two-thirds of the cocaine that travels from South America to Europe passes through West African countries.⁴ Smuggling of illegal drugs through West Africa has increased dramatically in the last few years. The United Nations Office on Drugs and Crime ("UNODC") estimates that at least fifty tons of cocaine pass through West Africa on their way to Europe every year.⁵ In 2002, total drug seizures in West Africa were less than 100 kilograms; by 2009, the seizures increased to nearly 6,500 kilograms.⁶ West African countries such as Senegal,⁷ Liberia, Guinea-Bissau,⁸ Sierra Leone, Mali, Benin, Burkina Faso, Togo, Nigeria, the Gambia⁹ and Ghana have become the preferred transit route for international drug cartels to smuggle narcotics into Europe.¹⁰

Specifically, the drugs are flown out of South America in small planes, stored in commercial fishing vessels or cargo ships,¹¹ or even placed in submarines destined for the Cape Verde Islands.¹² Up to 150 tons of cocaine are estimated to pass through the region per year.¹³ In West Africa, planes land on small landing strips throughout the region, and ships pass through ports relatively undetected.¹⁴ The shipments are divided into smaller units, repackaged, and either swallowed by couriers¹⁵ who fly to Europe from international airports such as Dakar, Senegal or Accra, Ghana, or transported by truck or carried overland into southern Europe.¹⁶ There are no

³ *A Look at Major Drug-Producing Countries*, USA TODAY (Feb. 29, 2008, 8:03 PM), http://usatoday30.usatoday.com/news/washington/2008-02-29-4071798322_x.htm.

⁴ *West Africa and Drug Trafficking*, AFR. ECON. DEV. INST., http://africaecon.org/index.php/africa_business_reports/read/70 (last visited June 11, 2012).

⁵ *West Africa Coast Initiative*, U.N. OFFICE ON DRUGS AND CRIME [hereinafter UNODC], <http://www.unodc.org/westandcentralafrica/en/west-africa-coast-initiative.html> (last visited Nov. 1, 2012).

⁶ *Id.*

⁷ *Senegal Enhances the Capacity of Dakar Airport to Intercept Illicit Drugs*, UNODC (Oct. 26, 2011), <http://www.unodc.org/unodc/en/frontpage/2011/October/senegal-enhances-airport-interception-techniques-and-information-sharing-against-trafficking.html>.

⁸ Since Guinea-Bissau was formerly a Portuguese colony, Guineans do not need visas to enter Portugal, which makes the movement of drugs even easier. The cocaine trade in Guinea-Bissau is about \$2 billion per year, which is almost twice the Guinea-Bissau GDP. *West Africa and Drug Trafficking*, *supra* note 4.

⁹ In 2010, law enforcement seized two tons of cocaine worth over one billion dollars in the Gambia. *The Cocaine Trail*, *supra* note 2.

¹⁰ Claudia Zeisel, *West Africa Is Hub for International Drug Trafficking*, DEUTSCHE WELLE (Jan. 3, 2012), <http://www.dw.de/west-africa-is-hub-for-international-drug-trafficking/a-15776001-1>.

¹¹ James Traub, *Africa's Drug Problem*, N.Y. TIMES MAG., Apr. 11, 2010, at MM42.

¹² Zeisel, *supra* note 10; see also *West Africa Drugs Trafficking "Increasingly Sophisticated"*, BBC NEWS (June 21, 2011, 12:20 AM EST), <http://www.bbc.co.uk/news/world-africa-13852399>.

¹³ *The Cocaine Trail*, *supra* note 2.

¹⁴ Rose Skelton, *Why West Africa Cannot Break Its Drug Habit*, BBC NEWS (June 21, 2010, 2:57 AM EST), www.bbc.co.uk/news/10324206.

¹⁵ *Drug Crime Poses Serious Threat to West Africa, Warns UN Official*, U.N. NEWS SERVICE (Oct. 28, 2008), <http://www.un.org/apps/news/story.asp?NewsID=28738&Cr=Drug&Cr1=West+Africa>. The majority of the air couriers come from Guinea, Mali, Nigeria, and Senegal. *Id.*

¹⁶ Traub, *supra* note 11; Zeisel, *supra* note 10.

“cartels” in West Africa, but many of the major South American drug trafficking organizations have representatives there. There are also professional middlemen who link up the South American crews with West African support staff. Russians, Ukrainians, Dutch, Lebanese and Moroccans are believed to be acting as middlemen and agents on the ground in West Africa.¹⁷ Nigerians, who have created international criminal networks that are known to disperse the drugs once in Africa, now work directly with drug producers in Latin America.¹⁸ West African criminal networks have also established factories in countries such as Guinea that are capable of producing heroin, cocaine, and ecstasy.¹⁹ Violence has so far been minimal because West African traffickers are, in general, not especially violent. Many are professional criminals who dabble in varied criminal activity and profess no allegiance to anything besides money.²⁰

There are several factors that contribute to West Africa’s vulnerability to becoming a narco-state: (1) instability of many of the West African governments; (2) small police forces and limited resources available to conduct counternarcotics operations; (3) corruption at all levels of government; (4) widespread poverty in West Africa which creates a breeding ground for new recruits; (5) weak judicial and prison systems currently in place; (6) weak financial controls designed to eliminate money laundering; and (7) the possibility of terrorist links to drug trafficking organizations.

Francisco Thoumi, a Colombian economist, once stated: “Profitable illegal economic activity requires not only profitability, but also weak social and state controls on individual behavior . . . [and] a society where government laws are easily evaded and social norms tolerate such evasion.”²¹ Many West African countries are plagued by coups and attempted coups. An unstable political situation is created from the effects of a number of civil conflicts during the last decade.²² War and rapid social change have left large populations displaced.²³ Conflict remains a serious threat in the region. Between 1998 and 2005, thirty-five armed groups were active in ten West African countries: Ivory Coast, the Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal and Sierra Leone.²⁴ Most of these West African countries were former French, British and Portuguese colonies that only gained independence in the 1960’s and 1970’s and have seen great political upheaval and civil unrest since becoming independent.²⁵ For this reason, individual EU

¹⁷ Skelton, *supra* note 14.

¹⁸ *Id.*

¹⁹ *UN Denounces Guinea “Drug Labs”*, BBC NEWS (Aug. 6, 2009, 3:44 PM EST), <http://news.bbc.co.uk/2/hi/africa/8188581.stm>.

²⁰ See Stephen Ellis, *West Africa’s International Drug Trade*, 108 AFR. AFF. 171, 188 (2009).

²¹ *West Africa and Drug Trafficking*, *supra* note 4 (quoting Thoumi).

²² *Regional Programme Framework: The Problem of Drug and Organized Crime in West and Central Africa*, UNODC, <http://www.unodc.org/westandcentralafrica/en/regional-programme-framework.html> (last visited June 11, 2012). According to the UNODC, “[s]ince 2000, the region has seen ten *coups d’état* or attempts to such, three civil wars, and the assassination of one President.” *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Although the Portuguese were the first to arrive in West Africa and establish the great slave trade routes between Africa, Europe, and the New World, the French later became predominant in this part of Africa. Stephen Wooten, *The French in West Africa: Early Contact to Independence*, UNIV. PA. AFR. STUDIES CTR., http://www.africa.upenn.edu/K-12/French_16178.html (last visited Nov. 1, 2012).

countries such as the United Kingdom, France, Spain, and Portugal obviously have longstanding ties to the region and work closely with West African governments. In order to counter the growing drug trafficking and border smuggling, West African countries need to create strong, central governments capable of making the tough decisions necessary to wage the war on drugs.

Corruption is overwhelming at all levels of government as traffickers have recruited police, military, and government officials to cooperate in their criminal enterprises.²⁶ An example is illustrative: "In 2009, a few months after the death of Guinea's President Lansana Conte, laboratories and precursor chemicals used to make ecstasy were found in the capital, Conakry, with a street value of about \$154 million. Ousmane Conte—son of the late president—admitted to being involved."²⁷ In 2010, Mauritania's police commissioner and liaison officer to the International Criminal Police Organization ("INTERPOL") was sentenced to seven years in prison for "not acting on a crime brought to his attention" when five Mauritians and one French citizen attempted to build a desert runway to import cocaine and then send hundreds of kilograms of cocaine to Europe disguised as a fish shipment.²⁸ That

The French colonies included what is known today as Benin, Burkina Faso, Ivory Coast, Guinea, Mali, Mauritania, Niger, Senegal (also controlled by Great Britain), and Togo. *Id.* The French were responsible for building the ports, railroads, schools and Catholic missions in these countries. *Id.* During the 1940s these colonies became French territories with representation in the French parliament. In the 1960s, France agreed to allow these territories to become fully independent. *Id.* The Portuguese colonized what is known today as Cape Verde and Guinea-Bissau. Katherine Schulz Richard, *The Portuguese Empire: Portugal's Empire Spanned the Planet*, ABOUT.COM GEOGRAPHY (Apr. 21, 2011), <http://geography.about.com/od/historyofgeography/a/The-Portuguese-Empire.htm>. The Portuguese were known for treating their colonists horribly, and only a small minority received an education. KEVIN SHILLINGTON, *HISTORY OF AFRICA* 399 (1989). By the time of independence, only a quarter of the population in Cape Verde could read and only 5% of Guinea-Bissau's. *Id.* But in 1926 Portugal had become a rightist dictatorship which regarded the colonies as an economic frontier, to be developed in the interest of Portugal and the Portuguese. Richard, *supra*. Frequent famine, unemployment, poverty, and the failure of the Portuguese government to address these issues caused resentment. *Id.* And the Portuguese dictator Antonio de Oliveira Salazar was not about to give up his colonies as easily as the British and French had given up theirs. *Id.* After World War II, Portugal was intent to hold on to its former colonies, called overseas territories since 1951. *Id.* Although most former African colonies gained independence by 1964, the Portuguese still held on. *Id.* Consequently, following the Pijigutie Massacre, the people of Cape Verde and Guinea-Bissau fought one of the longest African liberation wars. *Id.* After the fall of the fascist regime in Portugal in April 1974, widespread unrest forced the new Portuguese government to negotiate with opposition forces. On July 5, 1975, Cape Verde and Guinea-Bissau finally gained independence from Portugal. *Id.* Great Britain controlled the countries that are now known as the Gambia, Ghana, Nigeria, and Sierra Leone. Ehiedu E.G. Iweriebor, *The Colonization of Africa*, SCHOMBURG CTR. FOR RESEARCH IN BLACK CULTURE, <http://exhibitions.nypl.org/africanaage/essay-colonization-of-africa.html> (last visited June 11, 2012). All these colonies became independent by the 1960s. Wendy McElroy, *West Africa and Colonialism, Part 3*, FREEDOM DAILY (Dec. 1, 2004), <http://www.fff.org/freedom/fd0412f.asp>. The British colonies, just like the French colonies, were treated well, and as a result there was significant progress in social, economic, and educational development. Liberia was established by citizens of the United States as a colony for former slaves. Between 1821 and 1847, by a combination of purchase and conquests, the American Colonization Society developed the colony of Liberia, which was declared independent in 1847. For an overview of these developments, see generally TOM W. SCHICK, *BEHOLD THE PROMISED LAND: A HISTORY OF AFRO-AMERICAN SETTLER SOCIETY IN NINETEENTH-CENTURY LIBERIA* (1980)

²⁶ Zeisel, *supra* note 10. In a country such as Guinea-Bissau, where institutions such as the navy, customs office, and the army are making money off the drug trade. *Id.*

²⁷ Skelton, *supra* note 14.

²⁸ *UN Denounces Guinea "Drug Labs"*, *supra* note 19.

same year, soldiers in Guinea-Bissau overthrew the army chief of staff whom Western officials had viewed as a bulwark in the fight against drug trafficking.²⁹ The bottom line is “[w]hen you pay high-ranking officials who are in a position of responsibility low salaries, what you get is corruption.”³⁰

A small police force with limited resources can do little to penetrate organized criminal networks. In Guinea-Bissau, the head of the Judiciary Police, Lucinda Ahukarie, stated that she only has 204 policemen and a handful of firearms with which to investigate the illegal drug trade.³¹ According to the UNODC, police “often lack basic equipment, such as vehicles, gasoline, communications technology, handcuffs, and even office supplies.”³² Law enforcement in West Africa is severely restrained by the lack of knowledge and resources available to properly collect information on organized crime.³³

However, policing and investigation in West Africa tend to be reactive rather than proactive, resulting in a waste of resources in a region where national budgets for law enforcement agencies are far from sufficient. Further, many countries have very fragmented law enforcement structures, in which large numbers of agencies work with little coordination, if any.³⁴

The rivalries among law enforcement agencies are well-known. Presumably, these rivalries create a breakdown in intelligence sharing and national communication.³⁵ According to the UNODC, “[i]n many countries, arbitrary arrests, political detentions and human rights abuses are commonplace.”³⁶ The judicial and prison systems are ill-equipped to handle full-scale narcotics prosecutions and corresponding sentences. Courts lack basic equipment, few magistrates are available, prisons are overcrowded, and many accused await trial for several years before getting their day in court.³⁷ According to Antonio Maria Costa, Executive Director of the UNODC, “prosecutors and judges lack the evidence or the will to bring to justice powerful criminals with powerful friends.”³⁸

With an increase in the drug trade comes an increase in drug consumption among the West African population. West Africa is experiencing a continuous increase in injection drug use—specifically, cocaine and heroin use.³⁹ Impoverished West Africans are vulnerable to criminal networks promising them cash or product for their courier services.⁴⁰ There is also a risk that drug traffickers may connect with

²⁹ Traub, *supra* note 11.

³⁰ Skelton, *supra* note 14 (quoting Alioune Tine, president of the Dakar-based African Assembly for the Defense of Human Rights).

³¹ *Id.*

³² UNODC, COCAINE TRAFFICKING IN WEST AFRICA: THE THREAT TO STABILITY AND DEVELOPMENT (2007), available at http://www.unodc.org/documents/data-and-analysis/West%20Africa%20cocaine%20report_10%2012%2007.pdf.

³³ *West Africa Coast Initiative*, *supra* note 5.

³⁴ *Id.*

³⁵ *Id.*

³⁶ UNODC, REGIONAL PROGRAMME FRAMEWORK, *supra* 22.

³⁷ *Id.*

³⁸ *Drug Crime Poses Serious Threat*, *supra* note 15.

³⁹ *Regional Programme Framework*, *supra* note 22.

⁴⁰ Traub, *supra* note 11.

other criminal elements or terrorist groups and further destabilize the region. Although there is no evidence that al-Qaeda's North African wing, al-Qaeda in the Islamic Maghreb, is conducting drug trafficking operations, the group has been known to provide intermediary services in return for money.⁴¹ Unfortunately, if drug trafficking organizations and terrorist cells "use the same pipelines, the same illicit structures and exploit the same state weaknesses,"⁴² there is a possibility the two will continue to work together just as the Revolutionary Armed Forces of Colombia (FARC) has closely associated itself with many Colombian drug cartels.⁴³

III. THE CURRENT METHODS EMPLOYED BY THE EU AND THE UN IN WEST AFRICA

Several countries and organizations which are interested in combating drug trafficking in West Africa include the EU, the United Nations ("UN"), specifically the UNODC, the United States, and the West African regional organization known as the Economic Community of West African States ("ECOWAS"). Several of these organizations have devised their own strategies to assist the region. For example, ECOWAS, established in 1975, was initially formed to promote "trade, cooperation, and self-reliance in West Africa as a means towards economic cooperation, integration and development."⁴⁴ ECOWAS created a regional action plan from 2008 to 2011⁴⁵ that centered around the allocation of an adequate national budget to prevent and combat illicit drug trafficking. The plan included strategies to increase effective law enforcement through national and regional cooperation, strategies to adopt competent legal frameworks throughout the region, and solutions to decrease drug consumption and associated health and security problems in the region.⁴⁶ The UNODC responded by creating its own multi-year strategy from 2010 to 2013 with an objective "to contribute to and support the efforts of the Member States in West Africa, as well as those of regional organizations and the civil society, to respond to evolving health and human security threats, and to promote the rule of law and good governance."⁴⁷

The EU has supported the ECOWAS regional action plan by passing the West Africa Regional Indicative Program 2008-2013, which allocated 119 million euros to support regional stability and to fund counternarcotics programs.⁴⁸ The EU's strategy focuses on "building law enforcement and judicial capacities at a national

⁴¹ *West Africa Drugs Trafficking "Increasingly Sophisticated"*, *supra* note 12.

⁴² Traub, *supra* note 11.

⁴³ *Id.*

⁴⁴ *Regional Programme Framework*, *supra* note 22.

⁴⁵ *Regional Action Plan to Address the Growing Problem of Illicit Drug Trafficking, Organised Crimes and Drug Abuse in West Africa 2008–2011*, UNODC, <http://www.unodc.org/westandcentralafrica/en/ecowasresponseactionplan.html> (last visited Nov. 2, 2012) ("Regional Action Plan is derived from the ECOWAS Political declaration on Drug Trafficking and Other Organized Crimes in West Africa and African Union Action Plan.").

⁴⁶ *Id.*

⁴⁷ *Regional Programme Framework*, *supra* note 22.

⁴⁸ EUROPEAN COMMUNITY-WEST AFRICA: REGIONAL STRATEGY PAPER AND REGIONAL INDICATIVE PROGRAMME 2008–2013, at 49 (2008), available at http://ec.europa.eu/development/icenter/repository/Scanned_r10_rsp_2007-2013_en.pdf.

and regional level with the help of ECOWAS.”⁴⁹ The EU budgeted 18 to 22 million euros between 2009 and 2011 to “fight against illicit trafficking and organized crime along the cocaine routes of trafficking from Latin America and the Caribbean through West Africa.”⁵⁰ The European Commission also contributed 2 million euros to a Justice Reform Program implemented by the UNODC, which has “already achieved progress in terms of infrastructure, training and equipment for the competent authorities of Guinea-Bissau.”⁵¹

In February 2009, the United States Drug Enforcement Administration (“DEA”), the Brazilian federal police, and the Colombian National Police announced that they would send “additional personnel to West Africa to help . . . cope with the tidal wave of drugs, which would increase the number of policemen patrolling.”⁵² In 2008, the United States also established an African Command (“AFRICOM”), which is now one of six Defense Department regional military headquarters, responsible for providing U.S. military support to U.S. government policy in Africa, which includes providing military-to-military relationships with thirty-eight African nations.⁵³ The AFRICOM mission states that it intends to “strengthen[] the defense capabilities of African states and regional organizations and, when directed, conduct[] military operations, in order to deter and defeat transnational threats and to provide a security environment conducive to good governance and development.”⁵⁴ AFRICOM has provided training and equipment to local law enforcement groups in West Africa.⁵⁵

The State Department also implemented the West Africa Cooperative Security Initiative (“WACSI”), a five year 60 million dollar assistance program designed to strengthen West African law enforcement and judicial branches.⁵⁶ The State Department’s goal is to organize these programs and “ensure buy-in from the West African governments themselves, structure them to be mutually supportive, and regionalize them, where possible.”⁵⁷

In a nutshell, these countries and organizations have taken several measures to combat drug transportation throughout the West Africa region by: (1) engaging in joint EU/UN/local law enforcement operations to seize drugs and drug-related proceeds; (2) conducting operations to tighten border controls; (3) creating training programs for local law enforcement; (4) initiating socio-economic development in the region; and (5) attempting to create consumer awareness of the danger and

⁴⁹ Answer Given by Mr. Barrott on Behalf of the Commission, EUR. PARL. DOC. P-7066/2008 (2009).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *West Africa and Drug Trafficking*, *supra* note 4 (“There were only about 70 policemen responsible for more than 2 million people before then.”).

⁵³ *Fact Sheet: United States Africa Command*, U.S. AFR. COMMAND PUBLIC AFFAIRS OFFICE (May 24, 2012), <http://www.africom.mil/getArticle.asp?art=1644>.

⁵⁴ *Id.*

⁵⁵ Traub, *supra* note 11.

⁵⁶ *Countering Narcotics Threats in West Africa: Hearing Before the Caucus of Int’l Narcotics Control*, 112th Cong. 4–5 (2012) [hereinafter *Hearing*] (statement of Sen. Dianne Feinstein, Co-Chairman, Caucus of Int’l Narcotics Control).

⁵⁷ *Hearing*, *supra* note 56, at 22, 23 (statement of Sen. Chuck Grassley, Co-Chairman, Caucus of Int’l Narcotics Control).

impact of drug addiction in the EU—though these last two are still in a nascent stage.⁵⁸

In terms of actual operations carried out in the region, as opposed to merely providing funding and training to local law enforcement, several European countries have deployed ships into international waters to intercept vessels carrying drugs from West Africa to Europe similar to the United States' deployment of the Coast Guard to patrol the Caribbean waters.⁵⁹ Some of the largest seizures have been made by European law enforcement agencies operating in international waters.⁶⁰

Under the ECOWAS regional plan, the UNODC and INTERPOL have created Transnational Crime Units ("TCU" or "TCUs") to "enhance national and international coordination" and to "enable intelligence-based investigations."⁶¹ These TCUs are trained and equipped to fight transnational organized crime, coordinating their activities internationally with the help of INTERPOL.⁶² In theory, through a particular TCU, national and international cooperation is centralized into one inter-agency unit which, in turn, should enhance the effectiveness of law enforcement operations.⁶³

The TCU, operating within the Guinea-Bissau Judicial Police, has been investigating drug trafficking and organized crime cases in Guinea-Bissau since 2010.⁶⁴ The TCU in Guinea-Bissau collaborates with TCU units in Liberia and Sierra Leone.⁶⁵ In October 2011, INTERPOL "launched the operation of a joint airport interdiction task force based in Dakar, a major air traffic hub in West Africa."⁶⁶ The interdiction task force was part of INTERPOL's Airport Communication Project ("AIRCOP"),⁶⁷ which was designed to improve airport intelligence and information sharing among twenty countries in Latin America, the Caribbean, Africa, and Europe. These task forces can access INTERPOL's international databases and CENcomm—a secure system of communications managed by the World Customs Organization—which increases the degree of communication and cooperation between the source, transit, and destination countries of drug trafficking.⁶⁸

The EU and the UNODC agree that strong involvement by the local authorities is critical to combat smuggling and cross-border crimes. An EU-funded anti-drug

⁵⁸ There must be a greater investment in drug prevention and treatment in Europe. According to Antonio Maria Costa, head of the UNODC, "Europeans now understand that they should not buy blood diamonds, or clothes made by slaves working in sweatshops. Yet models and socialites who wouldn't be caught dead wearing a fur coat flaunt their cocaine use in public." *Europe's Cocaine Curse*, UNODC (Nov. 15, 2007), <http://unodc.org/unodc/en/frontpage/europes-cocaine-curse.html>.

⁵⁹ UNODC, *supra* note 32, at 7.

⁶⁰ *Id.*

⁶¹ *West Africa Coast Initiative*, *supra* note 5.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *The Cocaine Gateway: West Africa and Drug Trafficking*, UNODC (Oct. 27, 2011), http://www.unodc.org/unodc/en/frontpage/2011/October/the-cocaine-gateway_-west-africa-and-drug-trafficking.html.

⁶⁵ *Id.*

⁶⁶ *Senegal Enhances the Capacity of Dakar Airport*, *supra* note 7.

⁶⁷ *Id.*

⁶⁸ *Id.*

operation called COCAIR was carried out through thirty international airports in West and Central Africa and Brazil by the World Customs Organization, INTERPOL, the UNODC, and local law enforcement.⁶⁹ This operation led to increased airport checks and helped raise awareness that the airport control services at many of these airports were weak.⁷⁰ For example, between November 28 and December 4, 2011, one operation (“COCAIR III”) resulted in forty-five drug seizures and seizure of drug trafficking proceeds of nearly 3 million euros.⁷¹

All of these measures are steps in the right direction to assist West Africa in gaining control over drug traffickers and organized criminal networks.⁷²

IV. WHAT CAN BE LEARNED FROM MEXICO

Under the former President Felipe Calderon’s administration, Mexico deployed its military across the region to combat and dismantle drug cartels.⁷³ The military troops worked alongside state and federal law enforcement to maintain a presence throughout Mexico and instill a sense of security.⁷⁴ By using the military, Mexico has taken the fight to the cartels, but at a price.⁷⁵ As the cartel balance of power has been disrupted by the military or by cartels fighting each other for control, violence has increased as new groups scramble to fill the resultant power vacuum.⁷⁶ In fact, the death toll in Mexico in 2011 exceeded what had been an unprecedented number the previous year, with civilians caught in the crossfire between law enforcement and the cartels, and the cartels against each other.⁷⁷ Violence will certainly be reduced if one cartel becomes dominant throughout the country or if law enforcement softens its hard-line tactics in several regions.⁷⁸ However, as long as smuggling corridors

⁶⁹ Press Release, European Comm’n, European Union Strengthens Anti-Drug Operations on Cocaine Route in West Africa (Feb. 13, 2012), *available at* ec.europa.eu/europeaid/news/documents/ip_cocair_en.pdf

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² However, as Flemming Quist, a senior law enforcement advisor at the UNODC office in Dakar, Senegal, stated, “We can keep on pumping in training and equipment, but if we don’t solve corruption, it’s not going to achieve the full affect [sic].” Traub, *supra* note 11.

⁷³ Aimee Rawlins, *Mexico’s Drug War*, COUNCIL ON FOREIGN RELATIONS (Dec. 13, 2011), <http://www.cfr.org/mexico/mexicos-drug-war/p13689>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ In fact, many smaller drug trafficking organizations have been subsumed by the Sinaloa Federation, which controls much of western Mexico, and Los Zetas, which controls much of western Mexico. *Polarization and Sustained Violence in Mexico’s Cartel War*, STRATFOR GLOBAL INTELLIGENCE, (Jan. 24, 2012) (subscription required; on file with author).

⁷⁷ *Id.*

⁷⁸ It remains unclear what long term stance the new Mexican President Enrique Peña Nieto will take. However, this past December, “Peña Nieto laid out a plan before Mexico’s National Council on Public Security that he would focus more on reducing crimes against ordinary citizens – such as murder, kidnapping, and extortion -- than pursuing the leaders of violent drug cartels. Peña Nieto and members of his cabinet were also critical of the previous administration’s policies, which resulted in a drawn out war against cartels that has left tens of thousands dead.” Jordan Fabian, *Mexican President Enrique Peña Nieto Outlines New Drug War Plan*, ABC NEWS (December 18, 2012), http://abcnews.go.com/ABC_Univision/News/mexico-president-enrique-pena-nieto-charts-drug-war/story?id=18007154.

exist and profit margins remain lucrative, drug trafficking organizations will inevitably fight to assume control over distribution rights. The price tag in human suffering and public funding for the war on drugs is no small matter. One must ask why Calderon would sacrifice so many innocent lives and financial resources to combat drug trafficking in Mexico since the violence only increased since he took office in 2006.⁷⁹ The struggle goes on without an obvious diminution of drug trafficking. So why should West Africa follow in Mexico's footsteps and attempt to impose a strong police solution to its drug trade problems when such a stance has not succeeded in Mexico? What Calderon attempted to achieve in Mexico is to assert the rule of law and order and to create a strong central state capable of protecting the rights of all citizens. The drug cartels are clearly enemies of the state and must be defeated. Although Mexico has not vanquished the drug cartels, and complete victory remains elusive, the ultimate goal is clearly worth pursuing.

And while Mexico has had a strong central government and a powerful military which can take the fight directly to the drug cartels, West African countries are in a weak state with little police or military presence. In West Africa, drug trafficking is in its infancy—strong, organized cartels are only slowly taking control. As various criminal networks rise, so too will the violence. It is only a matter of time before West African drug trafficking is as sophisticated as the cartel operations in Mexico. West Africa can choose to look away and perhaps maintain low levels of violence while the drug cartels grow in numbers and strength, or it can choose to look to Mexico under the Calderon administration as a model and begin to confront the drug trade while it is still within its ability to do so. West African countries should embrace the assistance provided by their EU neighbors and collaborate with the UNODC, INTERPOL, and AFRICOM. While training and additional equipment will not solve all of West Africa's problems, the aid will bring the region one step closer to stabilizing itself and establishing the rule of law. These bilateral agreements can also call for providing West Africa with guidance and training to modernize and overhaul its judicial system—similar to what the United States offers Mexico via the Merida Initiative.⁸⁰

V. ADDITIONAL PROPOSAL: PROSECUTE AND EXTRADITE

ECOWAS, the EU, and the UN have begun to make strides in setting up a proper framework to allow for effective investigations and seizures in the region. However, all investigations and seizures are ineffective when the investigation is not carried forward into a prosecution. How effective is a drug trafficking law without an accompanying penalty? Drug seizures can only go so far. It appears that at this juncture, the judicial systems in West Africa are not at the point at which they could support the types of high-level prosecutions required to effectively disrupt and dismantle the organized crime networks within its borders. For example, in 2006, the Guinea-Bissau Judiciary Police tracked three Colombian traffickers to a house and

⁷⁹ Rawlins, *supra* note 73.

⁸⁰ U.S. DEP'T OF STATE, THE MERIDA INITIATIVE: EXPANDING THE U.S./MEXICO PARTNERSHIP (2012), available at <http://www.state.gov/documents/organization/187329.pdf>.

seized 674 kilograms of cocaine.⁸¹ The drugs were taken to the public treasury for storage and eventual destruction; the Colombians were held at police headquarters.⁸² Both the drugs and Colombians disappeared soon thereafter.⁸³ If, in fact, TCUs that operate in countries such as Guinea-Bissau, Sierra Leone, and Liberia investigate narcotics trafficking cases with a nexus to EU Member States, then these law enforcement entities need prosecutors capable of bringing forward a case. Therefore, it is up to Member States in the EU that have strong, firmly established legal systems to support these investigations that West Africa is incapable of prosecuting. West African countries must punish or extradite drug traffickers, and the EU must be willing to take the lead and begin extraditing high-level members of these West African cartels.

Extradition is a powerful tool which can strike fear in drug traffickers who typically believe they are immune from the law. The United States has long made extraditions a key weapon in its arsenal to counter international drug trafficking. Extradition is a strong deterrent. Drug kingpins can no longer buy their way out of trouble. The foreign criminal understands American justice and that a conviction means spending years, or even a lifetime, away from their friends and family and the comforts of home. The United States began to make a dent in the Colombian drug war when it began extraditing members of various Colombian cartels to the United States to face prosecution in the 1990s.⁸⁴ Today, the United States via the DEA maintains close ties to Sensitive Investigative Units (“SIU”) throughout South America, which are similar to the TCUs established in West Africa. The DEA’s Sensitive Investigative Unit program provides funding for vetted units with trusted foreign counterparts in Mexico, Afghanistan, Panama, and Guatemala.⁸⁵ The SIUs have also branched out into Ghana and will soon be in Nigeria.⁸⁶ The DEA has offices in Nigeria, Ghana, Egypt, South Africa, and Kenya with plans to open another office in Dakar, Senegal.⁸⁷ SIU teams are trained by the DEA on “the initiation and development of narcotics investigations, surveillance techniques, pharmacology, intelligence collection and analytical methods, tactical safety, interviewing, drug identification, asset forfeiture and financial investigations, undercover operations, operational planning and an overview of current international trafficking trends and situations.”⁸⁸ The SIU teams allow for the creation of regional

⁸¹ Traub, *supra* note 11.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ 1 BUREAU FOR INT’L NARCOTICS AND LAW ENFORCEMENT AFFAIRS, U.S. DEP’T OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT [INCSR]: DRUG AND CHEMICAL CONTROL 206 (2010), available at <http://www.state.gov/documents/organization/137411.pdf> (“During 2009, there were 186 extraditions to the United States [from Colombia]. Since December 1997, when Colombia revised its domestic law to permit the extradition of Colombian nationals, 1,041 individuals have been extradited to the United States, including 975 since President Uribe assumed office in 2002.”). [Note: Staffer flagged my putting the vol. number before the institutional author, but I think it has to go there.]

⁸⁵ S. REP. NO. 112–078, at 58 (2012).

⁸⁶ *Hearing, supra* note 56, at 4 (statement of Sen. Dianne Feinstein, Co-Chairman, Caucus of Int’l Narcotics Control).

⁸⁷ *Id.* at 26.

⁸⁸ *DEA International Training*, U.S. DRUG ENFORCEMENT ADMIN., <http://www.justice.gov/dea/ops/Training/IntTraining.shtml> (last visited Oct. 7, 2012).

working relationships between the United States and local law enforcement throughout the region.⁸⁹

SIU teams investigate and work towards putting a case together on select top drug trafficking targets for prosecution in the United States. Statutes such as 21 U.S.C. § 959 (“Section 959”), allow federal prosecutors to charge high level cartel members in foreign countries with drug trafficking crimes in the United States, even though these members might never have stepped foot in the United States. Prosecutors must merely prove that the accused intended or knew that the drugs would be unlawfully imported “into the United States or into waters within a distance of twelve miles of the coast of the United States.”⁹⁰ While Section 959 could apply to traffickers in Mexico or Colombia who intend to send drugs to the United States, it is much more difficult for federal prosecutors to prove that drugs in West Africa were meant for the United States as their final destination. Despite the difficulties, in 2010 Liberia deported seven people to the United States charged with conspiracy to import cocaine.⁹¹ The seven had attempted to bribe top Liberian officials to protect large cocaine shipments and to establish transit points for the exportation of cocaine.⁹² In another case, federal prosecutors in New York indicted three Malian men who had agreed to transport drugs across the desert for the terrorist group, al Qaeda in the Islamic Maghreb. The indicted men also provided the group with gasoline and food.⁹³ In that instance, federal prosecutors could use 21 U.S.C. § 960a, which contains no United States territorial nexus requirement.

The EU can use the United States/SIU concept as a model in developing its own international narcotics trafficking prosecutions and requests for extradition. Unfortunately, the EU has made little effort to extradite those who are most responsible for the constant flow of drugs within its borders.⁹⁴ Drug trafficking is an international problem, and drug traffickers in today’s world are highly mobile; however, the issue is still perceived in terms of sovereignty, national interests, and national security. Rather than a national or regional strategy, a world strategy is needed to preserve world order with “the security goals of preservation, deterrence, restoration, rehabilitation and reconstruction (of all societies comprising the world community).”⁹⁵ Extradition plays a large role in achieving world order and should be used to a greater extent to combat international narcotics trafficking. Article 36 of the Single Convention on Narcotic Drugs of 1961⁹⁶ imposes on signatories a duty to

⁸⁹ *Id.*

⁹⁰ 21 U.S.C. § 959 (2006).

⁹¹ *Liberia Sends Seven to US on Cocaine-Smuggling Charges*, BBC NEWS (June 2, 2010, 5:49 AM EST), <http://www.bbc.co.uk/news/10212671>.

⁹² *Id.*

⁹³ Traub, *supra* note 11.

⁹⁴ In the last ten years, there has been only one extradition from West Africa (Ghana) to the United Kingdom for conspiracy to supply Class A drugs. E-mail from Amanda Shiels, Home Office, to author (July 16, 2012, 10:53 EST) (on file with author). Class A drugs include ecstasy, LSD, heroin, cocaine, crack, magic mushrooms, and amphetamines (if prepared for injection). *Drugs and the Law*, HOME OFFICE, <http://www.homeoffice.gov.uk/drugs/drug-law/> (last visited Nov. 2, 2012).

⁹⁵ M. CHERIF BASSIOUNI, *INTERNATIONAL EXTRADITION* 34 (5th ed. 2007) (quoting Professor McDougal).

⁹⁶ United Nations Convention on Narcotic Drugs, *opened for signature* Mar. 25, 1961, 520 U.N.T.S. 151.

punish, prosecute, and extradite offenders,⁹⁷ and Article 22 of the Convention on Psychotropic Substances of 1971⁹⁸ provides for extradition and a duty to punish offenders.⁹⁹ Articles 6 and 7 of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances¹⁰⁰ also impose a duty to extradite and providemutual legal assistance.¹⁰¹ There is an international duty to impose individual responsibility, and according to one of the leading scholars of international extradition, M. Cherif Bassiouni, extradition has grown in importance as states have increasingly “sought to control different types and forms of international and transnational criminality.”¹⁰² Different schools of thought believe extradition can either “further international cooperation in the prevention and control of international and transnational criminality” or “protect individual human rights and preserve a lawful process in international relations.”¹⁰³ With extradition treaties firmly in place, West Africa will begin to impose order and establish the rule of law and democratic governance within its own boundaries.

Extradition can be based on a treaty, on reciprocity,¹⁰⁴ or on comity.¹⁰⁵ The requesting state must properly assert jurisdiction over the subject matter and the accused; the jurisdictional claim must be contemplated by a treaty or reciprocity or comity, and the claim must arise under international law as applied by the requesting state (or the national law of the requested state).¹⁰⁶ EU Member States can easily apply international narcotics trafficking laws as set forth in the three UN Conventions,¹⁰⁷ and they must ensure that they establish extradition treaties with their West African neighbors and that their own laws provide for prosecution of foreign nationals in foreign countries and extradition requests.

Europe has two legal authorities concerning extradition—those created by the Council of Europe and those of the EU.¹⁰⁸ The Council of Europe agreed to a series of multilateral treaties, beginning with the 1957 European Extradition Convention, with the purpose of fostering uniformity among Member States of the Council of Europe.¹⁰⁹ These treaties have served as a model for bilateral treaties between European and other countries.¹¹⁰ The EU, which has twenty-seven Member States,

⁹⁷ BASSIOUNI, *supra* note 94, at 982.

⁹⁸ United Nations Convention on Psychotropic Substances, *opened for signature* Feb. 21, 1971, 1019 U.N.T.S. 175.

⁹⁹ BASSIOUNI, *supra* note 94, at 982.

¹⁰⁰ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *opened for signature* Dec. 20, 1988, 1582 U.N.T.S. 95.

¹⁰¹ BASSIOUNI, *supra* note 94, at 982.

¹⁰² *Id.* at 36.

¹⁰³ *Id.* at 37.

¹⁰⁴ In the absence of a treaty, reciprocity means that the offense must be mutually recognized as extraditable by both states. *Id.* at 501.

¹⁰⁵ *Id.* at 41, 501.

¹⁰⁶ *Id.* at 485.

¹⁰⁷ U.N. Convention on Narcotic Drugs, *supra* note 95; U.N. Convention on Psychotropic Substances, *supra* note 97; U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *supra* note 99.

¹⁰⁸ BASSIOUNI, *supra* note 94, at 14.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

established the European Arrest Warrant (“EAW”) on June 13, 2002.¹¹¹ The EAW requires each Member State to automatically recognize arrest warrants issued by any of the Member States.¹¹²

There are no extradition treaties in the African system; however, the recent African Union Convention on Preventing and Combating Corruption contains a provision on extradition, which models corresponding UN conventions.¹¹³ No multilateral extradition currently exists between the African States.¹¹⁴ The EU and the West African countries could rely upon the UNODC’s own model extradition treaty proposal, complete with its own manual, which was drafted in 2004.¹¹⁵

EU Member States should establish extradition treaties with all of the West African countries with the understanding that drug trafficking is a serious international crime that must be punished, and that the EU is serious about prosecuting those who are most responsible for the instability, organized crime, and drug abuse in the region. Member States must also create drug statutes with jurisdictional provisions to support these types of extraditions.

In 2004, the Council of the European Union issued a Council Framework Decision establishing minimum drug trafficking statutory standards all Member States needed to take in their respective countries.¹¹⁶ The Council argued that adopting minimum rules that all Member States must follow would “allow a common approach at European Union level to the fight against such trafficking.”¹¹⁷ Each Member State had to include some sort of crime on the books related to “the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs.”¹¹⁸ These crimes must be punishable by a “maximum of at least between one and three years of imprisonment” and “a maximum of at least between 5 and 10 years of imprisonment” if “(a) the offence involves large quantities of drugs; (b) the offence either involves those drugs which cause the most harm to health, or has resulted in significant damage to the health of a number of persons.”¹¹⁹

Article 8 dealt with jurisdiction:

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 2 and 3 where: (a) the offence is committed in whole or in part within its territory; (b) the offender is one of its nationals . . .

¹¹¹ *Id.* at 15.

¹¹² *Id.* at 16.

¹¹³ *Id.* at 24.

¹¹⁴ *Id.*

¹¹⁵ MODEL LAW ON EXTRADITION (U.N. Office on Drugs and Crime 2004).

¹¹⁶ Council Framework Decision 2004/757/JHA, Laying Down Minimum Provisions on the Constituent Elements of Criminal Acts and Penalties in the Field of Illicit Drug Trafficking, 2004 O.J. (L 335) 8 (EU).

¹¹⁷ *Id.*

¹¹⁸ *Id.* art. 2(1)(a).

¹¹⁹ *Id.* art. 4

2. A Member State may decide that it will not apply, or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) where the offence is committed outside its territory.

According to Article 8, the Member States would not have jurisdiction over foreign nationals in West Africa who are coordinating the transportation of large drug shipments into Europe. The foreign national must commit part of the offense in the Member State in order to be prosecuted by that state. There is no jurisdictional provision in the EU Council's Framework Decision providing for an EU state to prosecute and extradite a foreign national living and conducting illegal business in West Africa with the intention of sending drugs to the EU. This must be changed.

In 2009, the European Commission, which was required to assess the implementation of the Framework Decision, reported that since the decision was set forth in 2004, "[t]here has thus been little progress in the alignment of national measures in the fight against drug trafficking."¹²⁰ While some Member States already had a number of the provisions in place, others had not amended their existing laws where the Framework Decision required it.¹²¹

Every EU Member State has its own set of drug trafficking laws. The United Kingdom criminalizes drug trafficking, which is defined under the Drug Trafficking Act of 1994 as "doing or being concerned in any of the following, whether in England or Wales or elsewhere": (1) "producing or supplying a controlled drug"; (2) "transporting or storing a controlled drug"; (3) "importing or exporting a controlled drug"; (4) "manufacturing or supplying [a controlled drug]"; or (5) "using any ship for illicit traffic in controlled drugs."¹²² It is unclear whether the term "elsewhere" would encompass the transportation activities of a Nigerian drug trafficker in Guinea-Bissau en route to Britain. Britain's Extradition Act 2003 became effective in January 2004 and covers extraditions to and from United Kingdom. Only five West African countries—Sierra Leone,¹²³ Liberia,¹²⁴ Ghana,¹²⁵ Nigeria,¹²⁶ and the Gambia,¹²⁷—have an extradition agreement with the United Kingdom.¹²⁸

¹²⁰ *Report from the Commission on the Implementation of Framework Decision 2004/757/JHA*, at 3, 11, COM (2009) 1661 final (Dec. 10, 2009). The EU Commission assessed the effectiveness of this agreement and found that Cyprus, Spain, Greece, Italy, Malta, and the UK had not complied with the obligations under the agreement.

¹²¹ *Id.* at 11.

¹²² Drug Trafficking Act, 1994, 13 Eliz., c. 37, § 1 (Eng.).

¹²³ Bilateral Extradition Treaty, U.S.-U.K., Dec. 22, 1931, 1931 U.S.T. LEXIS 60.

¹²⁴ Succession of States in Respect of Bilateral Treaties: Study Prepared by the Secretariat, [1970] 2 Y.B. Int'l L. Comm'n 102, U.N. Doc. A/CN.4/229.

¹²⁵ Bilateral Extradition Treaty, *supra* note 122.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ HOME OFFICE, DRUG STRATEGY 2010: REDUCING DEMAND, RESTRICTING SUPPLY, BUILDING RECOVERY: SUPPORTING PEOPLE TO LIVE A DRUG FREE LIFE (2010), available at <http://www.homeoffice.gov.uk/publications/alcohol-drugs/drugs/drug-strategy/drug-strategy-2010?view=Binary>. The UK's 2010 Drug Strategy report stated:

As signatories to all three United Nations drug conventions, and through our membership of the UN Commission on Narcotic Drugs (the supervisory body for the Conventions), we will work together with our international partners, such as the European Union and the Group of Eight (G8), to encourage coordinated responses

Article 222-34 to 222-43-1 of France's Penal Code specifically deals with drug trafficking.¹²⁹ §Articles 222-35 and 222-36 state that "the unlawful production or manufacture of drugs is punished by twenty years' criminal imprisonment and a fine of € 7,500,000," and "the unlawful import or export of drugs is punished by ten years' imprisonment and a fine of € 7,500,000." Articles 113-6 and 113-7 makes clear that "French criminal law is applicable to any felony committed by a French national outside the territory of the French Republic" or "committed by a French or foreign national outside the territory of the French Republic, where the victim is a French national at the time the offence took place." Article 113-2 states that "French Criminal law is applicable to offences committed beyond territorial waters, when international conventions and the law provide for this." Thus, it is possible French criminal law would apply to those in West Africa with the intent to import drugs into France as long as France interprets the international UN narcotics conventions as saying so (or they consider a French drug abuser as a victim of a West African drug trafficker).

The Criminal Code in Spain was completely revamped in 2010,¹³⁰ and drug trafficking is covered primarily in Articles 368 and 371.¹³¹ Article 368 states:

[T]hose who carry out acts of cultivation, preparation or trafficking, or who otherwise favour or facilitate the unlawful consumption of toxic drugs, narcotics or psychotropic substances, or who possess them for those purposes, shall be punished with imprisonment from three to six years and a fine of one to three times the value of the drug the offence concerns, if they are substances or products that cause serious damage to health, and of imprisonment from one to three years and a fine from one to two times the amount in the remaining cases.

Article 371 states:

[W]hoever manufactures, transports, distributes, trades or possesses equipment, materials or substances listed in Table I and Table II of the United Nations Convention, done at Vienna on 20th December 1988, against illegal traffic in narcotic drugs and psychotropic substances, and any other products added to the aforesaid Convention or that may be included in future Conventions ratified by Spain being aware that they shall be used for the unlawful cultivation, production or manufacture of

to the illicit drugs trade and unlock international resources to support our priorities. The UK values the work of the United Nations Office on Drugs and Crime (UNODC) which plays a unique role, providing technical co-operation projects which help Member States counteract illicit drugs, crime and terrorism. We will continue to work closely with them to support this work. We will make more effective use of all of the Government's capabilities overseas, including our diplomatic and military assets, to strengthen co-operation and join up our capacity with international partners to disrupt traffickers at source or in transit countries. We will also work with partners to tackle corruption and strengthen governance.

Id. at 17; see also *Extradition from the UK: Extradition Act 2003—Part 2*, HOME OFFICE, <http://www.homeoffice.gov.uk/police/extradition-intro11/extrad-part-2/> (last visited Nov. 17, 2012).

¹²⁹ C. PEN. arts. 222-34–222-43-1 (Fr.).

¹³⁰ *The Spanish Criminal Code Reform*, ENCOD BULLETIN 75, May 1, 2011, <http://www.encoded.org/info/ENCOD-BULLETIN-75.html>.

¹³¹ C.P. arts. 368, 371 (Spain).

toxic drugs, narcotics or psychotropic substances, or for those purposes, shall be punished with a sentence of imprisonment from three to six years and a fine of one to three times the value of the goods or items concerned.

The Spanish criminal code makes no mention of whether these drug trafficking statutes apply to those outside Spain working to transport drugs into Spain.¹³² Therefore, it is possible to argue that foreign traffickers in West Africa should be included in those prosecuted for transporting narcotics mentioned at the UN Convention.

In conclusion, it is unclear why the EU shies away from requesting extradition. The EU attacks the West African networks by making arrests and seizures in their home countries. It also provides support to law enforcement agencies in West Africa so that those agencies can make arrests there. West Africa is simply not equipped to prosecute these high-level criminals. Drug trafficking is an internationally recognized crime against world order, and the EU could provide for effective and fair prosecutions. By requesting these extraditions and punishing the guilty, the EU can assist in establishing the rule of law on a worldwide basis. The criminal codes in EU Member States like the United Kingdom, France, and Spain are sufficiently vague that they could attempt to capture foreign nationals in West Africa in their prosecutorial nets. But the EU and its Member States should change their laws to specifically provide for extradition. Member States should create laws similar to 21 U.S.C. §§ 959 and 960a in order to have the extraterritorial tools necessary to extradite. Although the United States does not have clear jurisdiction and cannot directly intervene, the United States can assist the EU and West Africa by focusing on common West African drug trafficking organizations and facilitating the timely exchange of intelligence. West Africa rarely extradites drug traffickers to the United States. The EU is in a better position to prosecute and request extradition of traffickers residing close to its borders. West Africa must also be open to extradition treaties with EU Member States and be willing to punish or extradite offenders. If prosecutions and extraditions do not become a reality in the near future, the dire situation in West Africa will only get worse.

The EU may consider utilizing some of the tools the United States uses successfully in a number of its international narcotics trafficking cases. While many European countries may use wiretapping to great advantage, the use of informants appears to be relatively uncommon. The United States favors both practices. Perhaps the use of informants in international cases is less widespread in the EU due to noteworthy logistical problems—e.g., witness safety is a huge issue in international narcotics cases. Witnesses against drug traffickers fear for their families' and their own lives, since they will more likely than not be living in the same country as the trafficker's family and close associates. Many foreign witnesses demand significant amounts of money and permanent visas to the prosecuting country in exchange for their cooperation.¹³³ Despite these disadvantages, an informant may be the only way to infiltrate a particular criminal network, and the only way to gather concrete evidence through surreptitious audio or video recordings. Due to the complexities

¹³² *Id.* arts. 368, 371.

¹³³ It is not uncommon for informants to receive monetary compensation. While rare, some informants—in Colombia in particular—have received payouts in the millions of dollars.

and possible complications that may arise in these types of cases, EU prosecutors should set high standards that must be met prior to consideration of extradition. Ideally, an evidentiary package would include: (1) select intercepted wiretap calls of the defendant that include unequivocal discussions about a drug shipment intended for the EU (plus positive voice identification); (2) a cooperating witness or undercover agent who recorded the meetings and telephone calls; (3) a drug seizure with numerous authenticated photographs and a complete drug analysis report; (4) a voluntary post-arrest statement, and (5) evidence collected at the time of arrest or during the search of the home or office.

Although ECOWAS monitors money laundering throughout the region,¹³⁴ stronger money laundering and money transfer rules and regulations must be put in place. While traffickers tend to route drugs through the weakest states, they also take advantage of the stronger ones—such as Senegal and Ivory Coast—for logistics and money laundering.¹³⁵ In 2010, Guinea-Bissau Air Force chief Ibraima Papa Camara and former Navy chief Jose Americo Bubo Na Tchuto were named “drug kingpins.” Pursuant to the United States Drug Kingpin Act, this finding bars U.S. citizens from doing business with Camara and Na Tchuto and imposes financial sanctions on them as well.¹³⁶ The EU could create similar financial controls, which would effectively cut off top drug traffickers’ from their money sources and thereby strangle their overall operations.

There is undoubtedly substantial work to be done. The EU, ECOWAS, the United States (primarily via the DEA), the TCUs, and local law enforcement are only beginning to scratch the surface of the extensive drug trade in West Africa. Although there has been some tangible success, it will be many years before anyone sees a strategic impact of these joint counter-narcotics efforts there.

¹³⁴ Traub, *supra* note 11.

¹³⁵ *Id.*

¹³⁶ *US Names Two Guinea-Bissau Military Men “Drug Kingpins”*, BBC NEWS (Apr. 9, 2010, 5:50 AM EST), <http://news.bbc.co.uk/2/hi/africa/8610924.stm>.