

That characterization of direct participation, it has been argued, is too broad and a “global outlier.”<sup>35</sup> The *Manual* also still provides for the duty to take “feasible precautions,” not “all feasible precautions.”<sup>36</sup> The omission of the word “all” has been decried as “lowering . . . the standard dangerously [to] understate[] the extent to which IHL requires parties to a conflict to take all of the precautions that are reasonable under the circumstances to safeguard civilian lives.”<sup>37</sup> General Counsel Kress noted upon the revised *Manual*’s release that “[a]cting lawfully is an imperative that is fundamentally consistent with, and furthers, military success in the defense of our Nation. The Department will continue to update the *Manual* to provide DoD personnel with the best possible resource for understanding and complying with the law of war.”<sup>38</sup>

#### INTERNATIONAL CRIMINAL LAW

##### *The United States Takes Actions to Combat International Fentanyl Trafficking* doi:10.1017/ajil.2023.70

As drug overdoses have taken more and more lives, reaching record levels in 2022, the U.S. government has prioritized efforts to combat the international trafficking of fentanyl and other synthetic opioids and their precursors.<sup>1</sup> The Department of Justice has announced multiple indictments of foreign fentanyl manufacturers and traffickers, the Department of the Treasury has designated for sanctions dozens of individuals and entities involved in the illicit drug trade, the Department of Homeland Security has devoted increased resources to identify and seize fentanyl at the southwest border, and the Department of State has engaged in bilateral and multilateral diplomacy to enlist other states in the fight against fentanyl, including through the establishment of a global coalition to counter synthetic drugs.<sup>2</sup> With most fentanyl and related drugs and precursors entering the United States sourced from China, by way of Mexico, U.S. actions have focused on Chinese chemical companies and Mexican drug cartels. Fentanyl’s devastating impact and growing domestic political salience has also made it an important issue in U.S. relations with China and Mexico.<sup>3</sup> These international actions

<sup>35</sup> Jacobs and Durbin Letter, *supra* note 8, at 3.

<sup>36</sup> See Law of War Manual, *supra* note 1, at 190, 192 (Secs. 5.2.3, 5.2.3.1).

<sup>37</sup> Jacobs and Durbin Letter, *supra* note 8, at 4.

<sup>38</sup> See Krass, *supra* note 3.

<sup>1</sup> See Jon Kamp, *Drug Overdose Deaths Topped 100,000 Again in 2022*, WALL ST. J. (May 17, 2023), at <https://www.wsj.com/articles/drug-overdose-deaths-topped-100-000-again-in-2022-37cd1709>.

<sup>2</sup> See White House Press Release, Fact Sheet: Biden-Harris Administration Announces Strengthened Approach to Crack Down on Illicit Fentanyl Supply Chains (Apr. 11, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/11/fact-sheet-biden-harris-administration-announces-strengthened-approach-to-crack-down-on-illicit-fentanyl-supply-chain> [<https://perma.cc/EVQ4-2S4T>] [hereinafter Strengthened Approach Fact Sheet]; White House Press Release, Fact Sheet: Biden-Harris Administration Continues Progress on Fight Against Global Illicit Drug Trafficking (Nov. 16, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/16/fact-sheet-biden-harris-administration-continues-progress-on-fight-against-global-illicit-drug-trafficking> [<https://perma.cc/RQ9W-UFA6>]; U.S. Dep’t of Homeland Security Press Release, Fact Sheet: DHS Is on the Front Lines Combating Illicit Opioids, Including Fentanyl (Dec. 22, 2023), at <https://www.dhs.gov/news/2023/12/22/fact-sheet-dhs-front-lines-combating-illicit-opioids-including-fentanyl> [<https://perma.cc/2FCA-Q7NG>].

<sup>3</sup> See Brian Spegele & Charles Hutzler, *U.S. Weighs Potential Deal with China on Fentanyl*, WALL ST. J. (July 24, 2023), at <https://www.wsj.com/articles/u-s-weighs-potential-deal-with-china-on-fentanyl-276af69b>; Brian

supplement a wide range of domestic measures taken by the Biden administration to respond to the “overdose epidemic.”<sup>4</sup>

Fentanyl is a synthetic opioid developed in 1959 that was initially used as an intravenous anesthetic.<sup>5</sup> A controlled substance,<sup>6</sup> since the late 1970s dealers have illicitly sold drugs laced with fentanyl and fentanyl analogues.<sup>7</sup> Synthetic drugs’ advantages compared to plant-based drugs have led to the former’s proliferation over the past decade. Producers can easily, quickly, and covertly manufacture fentanyl and other synthetic drugs due to the availability of the ingredients, equipment, and chemical and pharmacological knowledge and the little space required to set up laboratories; smugglers can transport the highly concentrated drugs with relative ease in small packets; distributors and dealers can sell the drugs for less than \$1 a pill.<sup>8</sup> Fentanyl is nearly fifty times more potent than heroin and one hundred times more potent

Spegele & Julie Wernau, *Sour U.S.–China Relations Feed the Fentanyl Crisis*, WALL ST. J. (Dec. 22, 2022), at <https://www.wsj.com/articles/fentanyl-crisis-fed-by-flow-of-chinese-chemicals-to-mexican-cartels-11671722056>; David Pierson, Edward Wong & Olivia Wang, *U.S. Raises Pressure on China to Combat Global Fentanyl Crisis*, N.Y. TIMES (July 7, 2023), at <https://www.nytimes.com/2023/07/07/world/asia/us-china-fentanyl.html>; White House Press Release, Joint Statement from Mexico and the United States on Shared Efforts to Combat Illicit Fentanyl, Disrupt Arms Trafficking, and Humanely Manage Migration (July 25, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/25/joint-statement-from-mexico-and-the-united-states-on-shared-efforts-to-combat-illicit-fentanyl-disrupt-arms-trafficking-and-humanely-manage-migration> [<https://perma.cc/FVR2-ZHFD>]; U.S. Customs and Border Protection, CBP Strategy to Combat Fentanyl and Other Synthetic Drugs (Oct. 2023), at <https://www.cbp.gov/sites/default/files/assets/documents/2023-Oct/cbp-fentanyl-strategy.pdf> [<https://perma.cc/B23Q-2AUC>].

<sup>4</sup> See, e.g., White House Press Release, White House ONDCP Statement on New Sanctions Against Sinaloa Cartel Fentanyl Suppliers and Colombian Clan del Golfo Leader (Sept. 26, 2023), at <https://www.whitehouse.gov/ondcp/briefing-room/2023/09/26/white-house-ondcp-statement-on-new-sanctions-against-sinaloa-cartel-fentanyl-suppliers-and-colombian-clan-del-golfo-leader> [<https://perma.cc/B34Q-SHUS>]; White House Press Release, Fact Sheet: In Continued Fight Against Overdose Epidemic, the White House Releases National Response Plan to Address the Emerging Threat of Fentanyl Combined with Xylazine (July 11, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/11/fact-sheet-in-continued-fight-against-overdose-epidemic-the-white-house-releases-national-response-plan-to-address-the-emerging-threat-of-fentanyl-combined-with-xylazine> [<https://perma.cc/U7YG-6TJG>]; White House Press Release, Fact Sheet: White House Releases 2022 National Drug Control Strategy that Outlines Comprehensive Path Forward to Address Addiction and the Overdose Epidemic (Apr. 21, 2022), at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/21/fact-sheet-white-house-releases-2022-national-drug-control-strategy-that-outlines-comprehensive-path-forward-to-address-addiction-and-the-overdose-epidemic> [<https://perma.cc/96P8-9YUZ>].

<sup>5</sup> See U.S. Drug Enforcement Administration, Drug Fact Sheet: Fentanyl (Apr. 2020), at [https://www.dea.gov/sites/default/files/2020-06/Fentanyl-2020\\_0.pdf](https://www.dea.gov/sites/default/files/2020-06/Fentanyl-2020_0.pdf) [<https://perma.cc/79D6-N46X>] [hereinafter Drug Fact Sheet: Fentanyl].

<sup>6</sup> See 21 USC § 812; 21 CFR Pt. 1308.

<sup>7</sup> See Kavita Babu, *What Is Fentanyl and Why Is It Behind the Deadly Surge in US Drug Overdoses?*, UMASS CHAN MEDICAL SCHOOL NEWS (May 10, 2022), at <https://www.umassmed.edu/news/news-archives/2022/05/what-is-fentanyl-and-why-is-it-behind-the-deadly-surge-in-us-drug-overdoses> [<https://perma.cc/6DBJ-Q2D9>]; Centers for Disease Control and Prevention, The Facts About Fentanyl, at <https://www.cdc.gov/stopoverdose/fentanyl/index.html> [<https://perma.cc/4DRB-LLBJ>].

<sup>8</sup> See UN Office on Drugs and Crime, Contemporary Issues on Drugs, World Drug Report 2023, at 12–13 (2023), at [https://www.unodc.org/res/WDR-2023/WDR23\\_Booklet\\_2.pdf](https://www.unodc.org/res/WDR-2023/WDR23_Booklet_2.pdf) [<https://perma.cc/V2E5-RRZB>]; U.S. Dep’t of the Treasury Press Release, Treasury Targets Large Chinese Network of Illicit Drug Producers (Oct. 3, 2023), at <https://home.treasury.gov/news/press-releases/jy1779> [<https://perma.cc/EFJ8-AHY5>] [hereinafter Chinese Drug Producers Designated]; Nick Miroff, *U.S. Charges Chinese Companies, Executives with Fentanyl Crimes*, WASH. POST (Oct. 3, 2023), at <https://www.washingtonpost.com/national-security/2023/10/03/fentanyl-china-mexico-us/>; Josh Katz, Margot Sanger-Katz & Eileen Sullivan, *Some Key Facts About Fentanyl*, N.Y. TIMES (Oct. 5, 2023), at <https://www.nytimes.com/2023/10/05/upshot/fentanyl-opioids-mexico-explainer.html>.

than morphine, making it both addictive and extremely dangerous.<sup>9</sup> Drug producers often lace drugs, like cocaine, with fentanyl or create counterfeit pills.<sup>10</sup> Fatal fentanyl overdoses have risen in recent years, and the drug is now a leading cause of death in the United States for persons aged 18–49.<sup>11</sup> The Centers for Disease Control and Prevention estimates that around 78,000 people died from synthetic opioid overdose in the twelve months ending June 2023.<sup>12</sup>

The U.S. synthetic drug crisis has international roots.<sup>13</sup> The main illicit fentanyl supply chain currently runs from China to the United States through Mexico.<sup>14</sup> China produces the bulk of fentanyl precursors and sells them to “narcotics traffickers in the United States, dark web vendors, virtual currency money launderers, and Mexico-based criminal organizations such as the Sinaloa Cartel and the Jalisco New Generation Cartel.”<sup>15</sup> As Deputy Attorney General Lisa O. Monaco explained, “drug traffickers and money launderers . . . obtain precursor chemicals—largely from China—for the manufacture of synthetic drugs, manufacture [the] drugs in Mexico, move those drugs into the United States, and collect, launder, and transfer the proceeds of drug trafficking.”<sup>16</sup> Entities from China thus initiate the drug trade through manufacturing and exporting precursors, and Mexican cartels continue the process by producing synthetic opioids and smuggling them into the United States. Consequently, the United States has sought Chinese and Mexican assistance to curb the illicit operations that stock the U.S. synthetic drug market.<sup>17</sup> China’s enforcement

<sup>9</sup> See Drug Fact Sheet: Fentanyl, *supra* note 5.

<sup>10</sup> See Nick Miroff, Scott Higham, Steven Rich, Salwan Georges & Erin Patrick O’Connor, *Cause of Death: Washington Faltered as Fentanyl Gripped America*, WASH. POST (Dec. 12, 2022), at <https://www.washingtonpost.com/investigations/interactive/2022/dea-fentanyl-failure>.

<sup>11</sup> See Drug Fact Sheet: Fentanyl, *supra* note 5; U.S. Dep’t of State Press Release, United States Sanctions Sinaloa Cartel Fentanyl Traffickers and Colombian Clan del Golfo Leader (Sept. 26, 2023), at <https://www.state.gov/united-states-sanctions-sinaloa-cartel-fentanyl-traffickers-and-colombian-clan-del-golfo-leader> [<https://perma.cc/W4NP-6F2M>] [hereinafter Sinaloa Cartel Sanctioned].

<sup>12</sup> See Centers for Disease Control and Prevention, National Center for Health Statistics, Provisional Drug Overdose Death Counts, at <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> [<https://perma.cc/4XVG-8TC2>] (accessed Dec. 12, 2023).

<sup>13</sup> U.S. Dep’t of Justice Press Release, Justice Department Announces Eight Indictments Against China-Based Chemical Manufacturing Companies and Employees (Oct. 3, 2023), at <https://www.justice.gov/opa/pr/justice-department-announces-eight-indictments-against-china-based-chemical-manufacturing> [<https://perma.cc/3M9Z-ZELA>] [hereinafter DOJ Charges Chinese Entities].

<sup>14</sup> Until 2019, fentanyl was primarily imported directly from China through the mail. Changes in Chinese law “resulted in Chinese companies rerouting to Mexico and India’s emergence as a new production site.” Ana Swanson & Keith Bradsher, *U.S. Presses China to Stop Flow of Fentanyl*, N.Y. TIMES (Nov. 15, 2023), at <https://www.nytimes.com/2023/11/15/business/economy/biden-xi-fentanyl.html>.

<sup>15</sup> Chinese Drug Producers Designated, *supra* note 8.

<sup>16</sup> U.S. Dep’t of Justice Press Release, Justice Department Announces Charges Against Sinaloa Cartel’s Global Operation (Apr. 14, 2023), at <https://www.justice.gov/opa/pr/justice-department-announces-charges-against-sinaloa-cartel-s-global-operation> [<https://perma.cc/G6WQ-87TV>] [hereinafter DOJ Charges Sinaloa Cartel].

<sup>17</sup> See, e.g., Statement of Todd D. Robinson Assistant Secretary of State for International Narcotics and Law Enforcement Affairs Before the Senate Foreign Relations Committee [on] “Countering Illicit Fentanyl Trafficking” (Feb. 15, 2023), at [https://www.foreign.senate.gov/imo/media/doc/f4597c23-de04-fa71-e612-bbc49b6826c/021523\\_Robinson\\_Testimony.pdf](https://www.foreign.senate.gov/imo/media/doc/f4597c23-de04-fa71-e612-bbc49b6826c/021523_Robinson_Testimony.pdf) [<https://perma.cc/WVT6-Y2W3>]; Gerry Shih, *China Offers Broad Opioid Curbs Promised to Trump*, WASH. POST (Apr. 1, 2019), at [https://www.washingtonpost.com/world/asia\\_pacific/china-offers-broad-opioid-curbs-promised-to-trump/2019/04/01/e5062716-5456-11e9-a047-748657a0a9d1\\_story.html](https://www.washingtonpost.com/world/asia_pacific/china-offers-broad-opioid-curbs-promised-to-trump/2019/04/01/e5062716-5456-11e9-a047-748657a0a9d1_story.html); Pierson, Wong & Wang, *supra* note 3; U.S. Dep’t of Justice Press Release, Joint Statement from Mexico and the United States on Shared Efforts to Combat Illicit Fentanyl, Disrupt Arms Trafficking, and Humanely Manage Migration (July 25, 2023), at <https://www.justice.gov/opa/pr/joint>

of its controls on synthetic drug exports and its cooperation with U.S. law enforcement authorities have decreased since 2020 as part of the broader deterioration of U.S.-Chinese relations.<sup>18</sup>

In addition to bilateral measures, the United States has increasingly employed multilateral diplomacy to curtail the international supply of synthetic opioids. At the UN Commission on Narcotic Drugs, the United States has repeatedly pushed to add fentanyl analogues and precursors to the already listed fentanyl in the schedules and tables of the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substance, and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.<sup>19</sup> In 2017, at the urging of the United States, the Commission for the first time voted to control two fentanyl precursors.<sup>20</sup> And in 2022, the Commission voted to control three additional precursors, two synthetic opioids, and a synthetic stimulant.<sup>21</sup> There are dozens of fentanyl and fentanyl-related drugs now listed.<sup>22</sup> Listing the drugs triggers requirements on treaty member states to control these substances.<sup>23</sup> At the Commission's sixty-sixth session in March 2023, Rahul Gupta, Director of the White House Office of National Drug Control Policy, noted that “[b]etween the use of illicit fentanyl in the United States, tramadol [an opioid] in Africa, captagon [an amphetamine] in the Middle East and Europe, nitazenes [an opioid] in Europe and North America, and methamphetamine and synthetic cannabinoids in nearly every region . . . the proliferation of illicit synthetic drugs has created a global, shared problem that poses an urgent threat to the health and safety of all Member States.”<sup>24</sup> He called for “a global coalition of countries dedicated to driving solutions to this new threat.”<sup>25</sup>

statement-mexico-and-united-states-shared-efforts-combat-illicit-fentanyl-disrupt-arms [https://perma.cc/G3MM-F2MD]; U.S. Dep’t of State, Joint Statement: U.S.-Mexico High Level Security Dialogue 2023 (Oct. 13, 2023), at <https://www.state.gov/joint-statement-u-s-mexico-high-level-security-dialogue-2023> [https://perma.cc/A9HT-VWD7].

<sup>18</sup> Pierson, Wong & Wang, *supra* note 3.

<sup>19</sup> Strengthened Approach Fact Sheet, *supra* note 2.

<sup>20</sup> See Commission on Narcotic Drugs, Report on the Sixtieth Session, 39, UN Doc. E/2017/28 (2017) (Decisions 60/12-60/13); see also White House Press Release, At Urging of U.S., UN Commission Acts Against “Precursor” Chemicals Used to Produce Illicit Fentanyl (Mar. 16, 2022), at <https://www.whitehouse.gov/ondcp/briefing-room/2022/03/16/at-urging-of-u-s-un-commission-acts-against-precursor-chemicals-used-to-produce-illicit-fentanyl> [https://perma.cc/HA5W-AZ4N].

<sup>21</sup> See Commission on Narcotic Drugs, Report on the Sixty-Fifth Session, 21–22, UN Doc. E/2022/28 (2022) (Decisions 65/1-65/6).

<sup>22</sup> See International Narcotics Control Board, List of Narcotic Drugs Under International Control (62nd ed., July 2023), at [https://www.incb.org/documents/Narcotic-Drugs/Yellow\\_List/62nd\\_edition/Yellow\\_List\\_62\\_edition\\_not\\_edited\\_22\\_08\\_2022.pdf](https://www.incb.org/documents/Narcotic-Drugs/Yellow_List/62nd_edition/Yellow_List_62_edition_not_edited_22_08_2022.pdf); International Narcotics Control Board, List of Precursors and Chemicals Frequently Used in the Illicit Manufacture of Narcotic Drugs and Psychotropic Substances Under International Control (20th ed., Jan. 2023), at [https://www.incb.org/documents/PRECURSORS/RED\\_LIST/2023/RedList\\_20th\\_edition\\_E.pdf](https://www.incb.org/documents/PRECURSORS/RED_LIST/2023/RedList_20th_edition_E.pdf).

<sup>23</sup> UN Office on Drugs and Crime, International Drug Control Conventions, at [https://www.unodc.org/unodc/en/commissions/CND/Mandate\\_Functions/Scheduling.html](https://www.unodc.org/unodc/en/commissions/CND/Mandate_Functions/Scheduling.html) [https://perma.cc/7W4E-JHBP].

<sup>24</sup> White House Press Release, Remarks as Prepared for Delivery by Dr. Rahul Gupta – the U.S. National Statement for the 66th Session of the Commission on Narcotic Drugs in Vienna, Austria (Mar. 13, 2023), at <https://www.whitehouse.gov/ondcp/briefing-room/2023/03/13/remarks-as-prepared-for-delivery-by-dr-rahul-gupta-the-u-s-national-statement-for-the-66th-session-of-the-commission-on-narcotic-drugs-in-vienna-austria> [https://perma.cc/AP77-772B].

<sup>25</sup> *Id.*

Several months later, in July, the United States launched a Global Coalition to Address Synthetic Drug Threats at a ministerial-level meeting.<sup>26</sup> Participants agreed that the new coalition would “strengthen the coordinated global response to the international public health and safety challenges posed by synthetic drugs through international cooperation to drive comprehensive, balanced, evidence-based, and effective actions at the national and international levels, in accordance with applicable international law.”<sup>27</sup> Following up, the United States hosted an outreach event in September 2023 on the margins of the seventy-eighth session of the UN General Assembly.<sup>28</sup> In his remarks, Secretary of State Antony J. Blinken explained that the coalition’s working groups will focus on “preventing the illicit manufacture and trafficking of synthetic drugs and their chemical precursors, detecting emerging drug threats, and promoting public health solutions.”<sup>29</sup> He also announced three steps the United States will take to further the goals of the Coalition: (1) name an envoy who will “work[] with countries around the world to confront this global threat”; (2) introduce a resolution in UN General Assembly that “highlight[]s the global health and security threat of synthetic drugs and urging international action to address them”; and (3) partner with technology companies to “find[] ways to deny criminals access to online platforms to market dangerous drugs, as well as developing tools to help those seeking treatment options for substance use disorders.”<sup>30</sup> The coalition numbers 120 states (including Mexico, but not China) and the European Union.<sup>31</sup> On December 18, 2023, the General Assembly adopted a resolution, co-sponsored by the United States, on “Enhancing action at the national, regional and international levels to address the global public health and security challenges posed by synthetic drugs.”<sup>32</sup>

These multilateral diplomatic initiatives have been supplemented by U.S. law enforcement actions against individuals and organizations. Compared to prior years, the Justice Department in 2023 more actively pursued persons, groups, and corporations involved in the international trade of synthetic drugs and precursors than it had previously. In April 2023, the Department announced federal charges against Sinaloa Cartel leaders and other members of the organization in indictments in New York, Illinois, and the District of

<sup>26</sup> U.S. Dep’t of State, Global Coalition to Address Synthetic Drug Threats, at <https://www.state.gov/globalcoalition> [<https://perma.cc/J4BW-6WDG>].

<sup>27</sup> Ministerial Declaration on Accelerating and Strengthening the Global Response to Synthetic Drugs (July 7, 2023), at <https://www.state.gov/ministerial-declaration-on-accelerating-and-strengthening-the-global-response-to-synthetic-drugs> [<https://perma.cc/MYX4-EGHF>].

<sup>28</sup> U.S. Dep’t of State Press Release, Summary of the Side Event on “Addressing the Health and Security Threats of Synthetic Drugs Through Global Cooperation” (Sept. 18, 2023), at <https://www.state.gov/summary-of-the-side-event-on-addressing-the-health-and-security-threats-of-synthetic-drugs-through-global-cooperation> [<https://perma.cc/G4C6-K4U9>].

<sup>29</sup> U.S. Dep’t of State Press Release, Secretary Antony J. Blinken at the Addressing the Public Health and Security Threat of Synthetic Drugs through Global Cooperation Event (Sept. 18, 2023), at <https://www.state.gov/secretary-antony-j-blinken-at-the-addressing-the-public-health-and-security-threat-of-synthetic-drugs-through-global-cooperation-event> [<https://perma.cc/HWN4-EFY9>].

<sup>30</sup> *Id.*

<sup>31</sup> See Participating Countries of the Global Coalition to Address Synthetic Drug Threats (Oct. 5, 2023), at <https://www.state.gov/participating-countries-of-the-global-coalition-to-address-synthetic-drug-threats> [<https://perma.cc/V2VB-XKSA>].

<sup>32</sup> GA Res. 78/131 (2023); UN Press Release, General Assembly Adopts Raft of Resolutions, Including on Synthetic Drugs, Intercultural Dialogue, in Effort to Complete Work by Year’s End (Dec. 18, 2023), at <https://press.un.org/en/2023/ga12574.doc.htm> [<https://perma.cc/9KUT-B434>].

Columbia.<sup>33</sup> Mexico, with U.S. encouragement (including visits by Secretary Blinken and Secretary of the Treasury Janet L. Yellen), has increased its efforts to combat fentanyl trafficking.<sup>34</sup> In September, it extradited Ovidio Guzmán López, a leader of the Sinaloa Cartel, to the United States in connection with fentanyl importation charges.<sup>35</sup> In June, the Justice Department announced the first indictments against Chinese entities and individuals involved in the synthetic drug trade.<sup>36</sup> These included charges against a Chinese biotech company and three of its executives and employees on charges of fentanyl trafficking, fentanyl precursor importation, and money laundering. In separate indictments, four Chinese companies and six individuals were charged with crimes arising from “criminal conspiracies . . . to manufacture and distribute fentanyl in the United States.”<sup>37</sup> Another set of indictments against Chinese entities for the production and distribution of synthetic drugs came in October.<sup>38</sup> Drug Enforcement Administration Administrator Anne Milgram stated that “Chinese chemical companies are fueling the fentanyl crisis in the United States by sending fentanyl precursors, fentanyl analogues, xylazine, and nitazenes into our country and into Mexico.”<sup>39</sup> The Treasury Department has also sanctioned both Chinese and Mexican participants in the fentanyl supply chain pursuant to Executive Order 14,059 on Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade.<sup>40</sup> In 2023, the Office of Foreign Assets Control sanctioned dozens of individuals and entities located in China and Mexico.<sup>41</sup> In December, the

<sup>33</sup> See DOJ Charges Sinaloa Cartel, *supra* note 16.

<sup>34</sup> See Santiago Pérez, *Treasury’s Janet Yellen Visits Mexico as Part of Anti-Fentanyl Offensive*, WALL ST. J. (Dec. 6, 2023), at <https://www.wsj.com/politics/treasury-janet-yellen-visits-mexico-as-part-of-anti-fentanyl-offensive-0e49799f>; Zolan Kanno-Youngs & Eileen Sullivan, *Blinken Travels to Mexico Amid Rising Tension Over Border, Drug Trafficking*, N.Y. TIMES (Oct. 4, 2023), at <https://www.nytimes.com/2023/10/04/world/americas/blinken-mexico-border.html>.

<sup>35</sup> See U.S. Dep’t of Justice Press Release, Son of Joaquin Guzman Loera aka “El Chapo” Arraigned on Federal Criminal Charges Following his Extradition from Mexico to the United States for International Drug Trafficking (Sept. 18, 2023), at <https://www.justice.gov/opa/pr/son-joaquin-guzman-loera-aka-el-chapo-arraigned-federal-criminal-charges-following-his> [https://perma.cc/KW73-HH DU].

<sup>36</sup> See U.S. Dep’t of Justice Press Release, Justice Department Announces Charges Against China-Based Chemical Manufacturing Companies and Arrests of Executives in Fentanyl Manufacturing (June 23, 2023), at <https://www.justice.gov/opa/pr/justice-department-announces-charges-against-china-based-chemical-manufacturing-companies> [https://perma.cc/AEY8-6QYK].

<sup>37</sup> *Id.*

<sup>38</sup> See DOJ Charges Chinese Entities, *supra* note 13.

<sup>39</sup> *Id.*

<sup>40</sup> See Exec. Order 14,059, 86 Fed. Reg. 71,549 (Dec. 15, 2021).

<sup>41</sup> See U.S. Dep’t of the Treasury Press Release, Treasury Sanctions Three Fentanyl Traffickers Contributing to the U.S. Opioid Crisis (Jan. 30, 2023), at <https://home.treasury.gov/news/press-releases/jy1229> [https://perma.cc/KV7C-5DEH]; U.S. Dep’t of the Treasury Press Release, Treasury Sanctions China- and Mexico-Based Enablers of Counterfeit, Fentanyl-Laced Pill Production (May 30, 2023), at <https://home.treasury.gov/news/press-releases/jy1507> [https://perma.cc/V8F6-49VK]; U.S. Dep’t of the Treasury Press Release, Treasury Sanctions Illicit Fentanyl Network Run by Key Sinaloa Cartel Family Members (July 12, 2023), at <https://home.treasury.gov/news/press-releases/jy1607> [https://perma.cc/7ALL-AQVS]; U.S. Dep’t of the Treasury Press Release, Treasury Sanctions Drug Traffickers Operating Across Europe and North America (July 19, 2023), at <https://home.treasury.gov/news/press-releases/jy1629> [https://perma.cc/Z4BT-RP8N]; U.S. Dep’t of the Treasury Press Release, Treasury Targets Sinaloa Cartel Fentanyl Trafficking Operations and a Colombian Cartel Leader (Sept. 26, 2023), at <https://home.treasury.gov/news/press-releases/jy1763> [https://perma.cc/6KA4-NV8H]; Chinese Drug Producers Designated, *supra* note 8; U.S. Dep’t of the Treasury Press Release, Treasury Sanctions Sinaloa Cartel Network Flush with Illicit Fentanyl on Southwest Border (Nov. 7, 2023), at <https://home.treasury.gov/news/press-releases/jy1887> [https://perma.cc/29RJ-T4YL]; U.S. Dep’t of the Treasury Press Release, Secretary Yellen Announces Treasury Sanctions Against New Generation of Violent Drug

Treasury Department announced the launch of a Counter-Fentanyl Strike Force “to marshal Treasury’s resources and expertise in a coordinated and streamlined operation to combat the trafficking of illicit fentanyl.”<sup>42</sup>

Earlier, in September, President Joseph R. Biden, Jr. identified China as a “major drug transit or major illicit drug producing country” because it was a “major . . . source. . . of precursor chemicals used to produce illicit drugs significantly affecting the United States.”<sup>43</sup> A Chinese Foreign Ministry spokesperson responded that “[t]his is a malicious smear against China. . . . [I]ncompetence and ineffective control is the true cause of the pervasive drug problem in the US, and the fundamental solution is to reduce domestic demand.”<sup>44</sup> In November, President Biden and Chinese President Xi Jinping announced a deal that would result in a Chinese crackdown on fentanyl chemical manufacturers.<sup>45</sup> Following the agreement, China’s National Narcotics Control Commission, signaling stronger enforcement, issued a notice “remind[ing] relevant enterprises and the general public [that] when they are engaged in business activities to comply with relevant national laws and regulations at all times to prevent illegal crimes related to the production, trafficking, smuggling of narcotic drugs, psychotropic drugs, and drug-making substances.”<sup>46</sup> According to the White House, China “has [also] begun taking law enforcement action against Chinese synthetic drug and chemical precursor suppliers.”<sup>47</sup> In exchange, the Commerce Department removed the Chinese Ministry of Public Security’s Institute of Forensic Science of China from the Export Administration Regulations Entity List, resolving a longstanding Chinese grievance.<sup>48</sup> Even if China is able to clamp down, though,

Trafficking Beltrán Leyva Organization (Dec. 6, 2023), at <https://home.treasury.gov/news/press-releases/jy1952> [<https://perma.cc/JCF6-N7GW>].

<sup>42</sup> U.S. Dep’t of the Treasury Press Release, U.S. Treasury Launches Counter-Fentanyl Strike Force (Dec. 4, 2023), at <https://home.treasury.gov/news/press-releases/jy1946> [<https://perma.cc/38JJ-FNN8>].

<sup>43</sup> White House Press Release, Memorandum on Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2024 (Sept. 15, 2023), at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/09/15/memorandum-on-presidential-determination-on-major-drug-transit-or-major-illicit-drug-producing-countries-for-fiscal-year-2024> [<https://perma.cc/78W8-TJ2B>].

<sup>44</sup> Ministry of Foreign Affairs of the People’s Republic of China Press Release, Foreign Ministry Spokesperson Mao Ning’s Regular Press Conference on September 18, 2023 (Sept. 18, 2023), at [https://www.mfa.gov.cn/eng/xwfw\\_665399/s2510\\_665401/2511\\_665403/202309/t20230918\\_11144632.html](https://www.mfa.gov.cn/eng/xwfw_665399/s2510_665401/2511_665403/202309/t20230918_11144632.html) [<https://perma.cc/KX4X-VS3C>].

<sup>45</sup> See White House Press Release, Fact Sheet: Biden-Harris Administration Continues Progress on Fight Against Global Illicit Drug Trafficking (Nov. 16, 2023), at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/16/fact-sheet-biden-harris-administration-continues-progress-on-fight-against-global-illicit-drug-trafficking> [<https://perma.cc/CC6D-PW4N>] [hereinafter Biden-Harris Administration Continues Progress]; Swanson & Bradsher, *supra* note 14.

<sup>46</sup> National Narcotics Control Commission, 国家禁毒委员会办公室发布通告 提醒相关企业和个人谨慎销售可制毒物品 (Nov. 16, 2023), at <https://mp.weixin.qq.com/s/ZhbYujlwr28E7k6MJjC66Q> [<https://perma.cc/28LU-36W2>] (translation by Google Translate); see also Alan Rappeport, *U.S. Moves to Crack Down on Money Behind Fentanyl Trade*, N.Y. TIMES (Dec. 4, 2023), at <https://www.nytimes.com/2023/12/04/business/fentanyl-mexico-china-treasury.html>.

<sup>47</sup> Biden-Harris Administration Continues Progress, *supra* note 45.

<sup>48</sup> See 88 Fed. Reg. 80,131 (Nov. 17, 2023); Rappeport, *supra* note 46. The Department had previously accused the Institute of being “implicated in human rights violations and abuses in the implementation of China’s campaign of repression, mass arbitrary detention, forced labor and high-technology surveillance against Uighurs, Kazakhs, and other members of Muslim minority groups in the Xinjiang Uighur Autonomous Region.” 85 Fed. Reg. 34,503, 34,504 (June 5, 2020).

laboratories in other countries, such as India, will seek to satisfy the U.S. demand for fentanyl and other synthetic drugs.<sup>49</sup>

USE OF FORCE, ARMS CONTROL, AND NON-PROLIFERATION

*The United States and Bahrain Sign Comprehensive Security Integration and Prosperity Agreement*

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On September 13, 2023, the United States and the Kingdom of Bahrain signed the Comprehensive Security Integration and Prosperity Agreement (C-SIPA).<sup>1</sup> Characterized by the White House as a “binding international agreement,” but not a “treaty,”<sup>2</sup> C-SIPA seeks to “bolster Middle East regional security, stability, and prosperity by enhancing deterrence and defense integration and interoperability.”<sup>3</sup> The agreement provides security assurances to Bahrain, an important U.S. military partner in the region, beyond those presently given to its neighbors, though not as strong as those included in mutual defense pacts. For years, Arab Gulf states, including Bahrain, have sought security guarantees from the United States against the threats posed by Iran and its proxies, such as the Houthis. Complex negotiations with Saudi Arabia in particular, encompassing normalization of ties with Israel among other issues, have been ongoing in an attempt to consolidate a broad U.S.-backed regional security order to deter Iran.<sup>4</sup> C-SIPA is all-but-acknowledged as a prototype for possible future agreements with Saudi Arabia, the United Arab Emirates, and other states, with this goal in mind. At the signing ceremony, U.S. Secretary of State Antony J. Blinken hinted at this, commenting: “We’re looking forward to using this agreement as a framework for additional countries that may wish to join us in strengthening regional stability, economic cooperation, and technological innovation.”<sup>5</sup>

<sup>49</sup> David Ovalle & John Hudson, *China Vows to Crack Down on Fentanyl Chemicals. The Impact is Unclear*, WASH. POST (Nov. 19, 2023), at <https://www.washingtonpost.com/health/2023/11/19/china-fentanyl-crackdown>.

<sup>1</sup> U.S. Dep’t of State Press Release, *Comprehensive Security Integration and Prosperity Agreement* (Sept. 13, 2023), at <https://www.state.gov/comprehensive-security-integration-and-prosperity-agreement> [<https://perma.cc/JUN5-FBFE>] [hereinafter C-SIPA].

<sup>2</sup> The White House explicitly disclaimed that C-SIPA would require Senate approval. See White House Press Release, *Background Press Call by a Senior Administration Official to Preview the Bahraini Crown Prince and Prime Minister Salman bin Hamad Al Khalifa’s Visit to the White House* (Sept. 13, 2023), at <https://www.whitehouse.gov/briefing-room/press-briefings/2023/09/13/background-press-call-by-a-senior-administration-official-to-preview-the-bahraini-crown-prince-and-prime-minister-salman-bin-hamad-al-khalifas-visit-to-the-white-house> [<https://perma.cc/2QJG-3B35>] [hereinafter Background Press Call].

<sup>3</sup> C-SIPA, *supra* note 1, Art. I(2).

<sup>4</sup> See Mark Mazzetti, Ronen Bergman, Edward Wong & Vivian Nereim, *Biden Administration Engages in Long-Shot Attempt for Saudi-Israel Deal*, N.Y. TIMES (June 17, 2023), at <https://www.nytimes.com/2023/06/17/us/politics/biden-saudi-arabia-israel-palestine-nuclear.html>; Dan Williams & Aziz El Yaakoubi, *Israel Says It’s Building Regional Air Defence Alliance Under U.S.*, REUTERS (June 20, 2022), at <https://www.reuters.com/world/middle-east/israel-says-building-regional-air-defence-alliance-under-us-2022-06-20>.

<sup>5</sup> U.S. Dept of State Press Release, *Secretary Antony J. Blinken and Bahraini Crown Prince and Prime Minister Salman bin Hamad Al Khalifa at a Security Integration and Prosperity Agreement Signing Ceremony* (Sept. 13, 2023), at <https://www.state.gov/secretary-antony-j-blinken-and-bahraini-crown-prince-and-prime-minister>