Drugs: Towards a Post-Prohibitionist Paradigm

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If an international regime is a »series of explicit and implicit principles, norms, rules, and decision procedures around which the expectations of actors tend to converge in a specific area of international relations«,[1] then an international regime against drugs has indeed been established, shaped by prohibitionist policies. This regime has been led by the United States, has not been challenged by the European Union nor contested by emerging powers around the world, has been assimilated by Latin America, and has been internalized by the United Nations. The global anti-narcotics regime is long-standing, but its current shape has been evolving since the 1960s and is based on the conventional dynamics of national security: a regime conducted primarily at the national level, which is intrinsically repressive, centered on controlling narcotics supply and drug trafficking, imposed through pressures and threats, and complemented by minor concessions.

Official discourses tend to call for dialogue and agreement among states to meet the challenge of drugs, as well as a mixture of punishments and palliative measures and a balance between measures on narcotics supply and demand, while emphasizing the importance of implementing comprehensive policies. The specific measures applied in a majority of countries show that the global regime against drugs gradually took root during the 1990s. However, the proliferation of the orthodox approach to drugs cannot be taken as an indication of its adequacy.

The Current Regime: Counterproductive, Unfair, and Harmful

In fact, this regime increasingly lacks legitimacy, credibility, and symmetry. The gradual erosion of its legitimacy derives from the fact that,

1. Stephen D. Krasner (1983): »Structural Causes and Regime Consequences: Regimes as Intervening Variables,« in Stephen D. Krasner (ed.), *International Regimes*. Ithaca: Cornell University Press: 2.

while nations are supposed to »play by the rules,« they do not comply with them entirely and seek to avoid established prescriptions and obligations. The erosion of credibility is the consequence of strategies and tactics which are not perceived as effective in achieving their goals. The lack of symmetry is derived from the fact that the costs and benefits associated with the preservation of the regime are not seen as fairly distributed among the participants.

While being critical toward the international drug regime most so-called »peripheral« countries are in something of a strategic impasse which prevents them from abandoning the regime. This impasse is characterized by the following dynamics: (i) at a certain point, whether by conviction or convenience, these countries are enrolled in the »war on drugs«; (ii) however, they do not have sufficient societal support for government policies on drugs, due to public distrust of the state, indulgence of drug trafficking due to the profits it generates, or apprehension in the face of the violent confrontations that the crusade against drugs involves; (iii) independently of the latter and over time the international community (led by the United States and implemented by the UN) started to conceptualize drug trafficking as a threat linked to both organized crime and transnational terrorism; and (iv) consequently, if peripheral states opt out, they risk being labeled renegades in the »wars« against drugs and terrorism, and so are forced to continue with this sterile crusade, with less and less support from the citizenry, less domestic legitimacy, and higher external demands. Thus, prohibition is reproduced, determining the cognitive map with which the elites operate in powerful and weak states alike. The impasse is, indeed, a trap from which exit is unlikely in the foreseeable future.

In the particular case of Latin America, the region has never abandoned the »war on drugs« and has assimilated, to the fullest, the international anti-drug regime. Its concrete implementation involves the adoption and enforcement of a catalog of distinctive public policies: (i) the eradication of illicit crops; (ii) the disbanding of drug trafficking groups; (iii) the militarization of the fight against drugs; (iv) the criminalization of the entire domestic chain embodying the narcotics business; (v) the extradition of nationals (in particular to the United States); and (vi) the rejection of any pro-drug legalization initiatives.

The results of the destruction of crops have been negative, harmful, and paradoxical. They have been negative because they did not alter the power of traffickers or improve social and economic conditions in the

areas in which they have been applied; nor have they had an impact on the availability, quality, or price of drugs. They have been harmful because they have created a vicious circle. A combination of factors – deforestation to establish illicit crops, pressure due to the forced eradication of plantations, spraying chemicals by air and hand, breaking down the rural subsistence economy, violent persecution of the rural poor (farmers and indigenous people), lack of marketable alternative crops, sporadic and generally repressive state presence, transfer of illicit crops to other areas, and restarting the cycle – has culminated in a perverse situation in which the incentives to continue running illegal plantations have been reinforced. Thus, the narcotics business in Latin America has become more lucrative, virulent, and expansive. These policies have been paradoxical because, in some cases, they have led to greater political mobilization and strengthened traditionally less powerful social and domestic groups, while in others, they have facilitated the growth of armed groups. For example, the coca growers' movement in Bolivia became actively organized in the 1980s after its rejection of the forced eradication of illicit crops. In the case of Colombia, Washington's drug policy – which included, among other measures, the chemical eradication of illicit crops – helped to strengthen the Revolutionary Armed Forces of Colombia (FARC). To some extent, Washington's insistence on the eradication policies, despite their poor performance, contributed to Evo Morales' (2005–2010) rise to power in Bolivia and the continuing influence of the FARC in certain geographical areas.

In parallel, the dismantling of drug trafficking groups became an important pillar of Latin American policy. The pursuit of »drug barons« was, in general, fairly marginal in the 1970s and erratic in the 1980s, but has been central since the 1990s. Increased emphasis on the pursuit, detention, and killing of key players in drug trafficking was particularly prominent in some countries, such as Colombia in the 1990s and Mexico in the first decade of the twenty-first century. This involves tactics ranging from imprisonment and death to domestic trials and extradition to foreign countries.

The multiple effects of this policy in terms of violence and corruption are plain. The attempt to dismantle drug trafficking networks has tended to exacerbate the drugs problems and a whole corollary of problems associated with it. In contrast, the results of the campaign to crush drug trafficking have been mediocre. The confluence of such factors as increasing contacts among international criminals; the high level of consump-

tion of psychoactive substances in the United States (with high and stable levels of use), Europe (the fastest growing market), and South America (now the third-largest consumer in the world); the shift from marijuana to cocaine at the hemispheric level; and social deterioration and state weakness have made the Caribbean Basin a fertile territory for the expansion of drug trafficking. Meanwhile, rising crime in the Caribbean and Central America has had ruinous social, political, economic, and institutional effects there.

In addition, the militarization of the fight against drugs has become, with few exceptions – Argentina, Chile, and Uruguay – standard policy in Latin America. What began as temporary and episodic involvement under the supervision of the police and/or specialized security forces was transformed into a sustained effort by the armed forces. The »war on drugs« in the 1980s became a national security issue, both for the United States and for several countries in Latin America, as a result of which its militarization became overwhelming. From that moment on, the difference between military and police activities became blurred. After 9/11 and the rise of the so-called »new threats« – the alleged amalgamation of evils, including international terrorism, organized crime, drug trafficking, and weapons of mass destruction proliferated by private agents – Washington no longer saw a difference between internal security and external defense and demanded that the armies of the area become »crime fighters«.[2]

It is also noteworthy that the »securitization« of the issue of drugs facilitated its militarization and, in a recent development stage, the privatization of security. In Latin America, Colombia is the most dramatic example. Indeed, US companies such as DynCorp operate in that country as a subcontractor of the State Department and as part of Plan Colombia. Moreover, the Colombian government confirmed the recruitment of retired Israeli military officers, allegedly hired for the identification and arrest of the FARC leadership.[3] In short, an armed conflict is under way that has become both internationalized and privatized.

However, in all cases in which the fight against drugs has become militarized in the region, the results were unfortunate in the institutional

2. See Kristin Roberts (2008): »US Sees Latin American Armies as Crime Fighters,« available at: www.boston.com/news/world/latinamerica/articles/2007/10/03/us_sees_latin_american_armies_as_crime_fighters/(last accessed on June 8, 2008).
3. See »De Tel Aviv a Tolemaida,« available at: www.semana.com/wf_InfoArticulo.aspx?idArt=105405 (last accessed on February 15, 2009).

field and unproductive in combating the problems. The effect of military involvement in counternarcotics operations has had a negative impact on civilian-military relations, human rights, and corruption. The active and direct role of the military in the tasks of eradication, interdiction, prosecution, and dismantling networks did not lead to a promising advance in the direction of eliminating or even reducing the drug phenomenon. Every once in a while, depending on the country that implements this strategy and the context in which it operates, momentous triumphs are announced, based on the initial advantages of a repressive military deployment. Nevertheless, after a few years, comparing the historical and existing situations and the proliferation of multiple front lines of combat against narcotics shows that these advances were largely pyrrhic victories. In the process, the armed forces became »addicted« to the »war on drugs«.

Concomitantly, the Latin American countries have criminalized every link of the drug business' internal chain. One aspect that has recently drawn attention and aroused expectations is asset laundering. Its significance has increased due to the potential use of this mechanism by terrorist groups. In the case of Caribbean island countries the governments of the area, pressed by the OECD, have sought to implement steady policies against money laundering. However, implementing more rigorous anti-money laundering measures, the decline of regional tourism, the US pressure for nations to take drastic action against terrorism, the advance of corruption, and the destabilizing effects of globalization have combined to put the Caribbean in the midst of a whirlwind. In South America, countries have also enacted stricter rules against money laundering. However, the achievements have been disappointing. An assessment of national reports to the Financial Action Task Force area (GAFISUD) – that is, the intergovernmental organization dedicated to »combat money laundering and terrorist financing« – shows that, except for Colombia, the rest of the region has very poor rates of seizure, arrest, and conviction. Governments pledge to tackle money laundering categorically but, as in other regions, the results have been meager.

The extradition of nationals has also been an important pillar of public policies against narcotics. This practice was expected to produce a number of effects. First, the burden imposed by the rise of drug trafficking on the region's weak judicial systems could be reduced and those systems strengthened. Furthermore, legal partnerships would enhance the effectiveness of attempts to dismantle the drug trade and both the threat and the effective implementation of this instrument would serve as

a deterrent to people planning to enter the business. In addition, effective use of this mechanism would produce positive effects by reducing the availability, increasing the price, and reducing the purity of illicit psychoactive substances in those countries with greater demand for drugs.

However, the application of extradition policies achieved only mixed success. Undoubtedly, countries that have actively implemented this mechanism have substantially improved their relations with the United States. Nevertheless, the specific effects on the fight against drugs have been insubstantial: drug dealers have not been deterred (there is always someone willing to replace extradited, imprisoned, or eliminated bosses); justice has not become more effective (except symbolically), and the impact on demand (availability, price, and purity) has been nil.

Spreading Doubts

The approach to narcotics in Latin America has followed the parameters and prescriptions of the international anti-drug regime and, to a large degree, it has been costly, futile, and unproductive. The gradual exhaustion of the international anti-drug regime is evident in the case of Latin America, but it is even more profound elsewhere in the world. The paradigm underpinning this regime needs to be questioned.

In the specific area of drugs, a number of developments are taking place, some encouraging and others disturbing. In Europe, recent experience seems to point to some successes: for example, in 2001 Portugal adopted a law decriminalizing all drugs and the results look promising.[4] Europeans tend to take a less militant position on prohibitionism and are more likely than Americans to enter into a new dialogue on drugs.[5] Non-state actors in various countries are developing, with some success, alternative harm reduction measures. Organizations active in this area include the European Coalition for Fair and Effective Drug Policies. It should also be emphasized that, at the local level, less punitive practices are observed when compared to those designed and implemented at the national level.

4. On this, see Glenn Greenwald (2009): *Drug Criminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies.* Washington DC: Cato Institute.
5. Rick Steves (2009): »Drug Policy in the European Union«, available at: www.ricksteves.com/about/pressroom/activism/drugpolicy.htm (last accessed on September 15, 2009).

In Latin America, recently, the 17-member Latin American Commission on Drugs and Democracy, created by former Presidents César Gaviria, Fernando Henrique Cardoso and Ernesto Zedillo, found that the »war on drugs« is a »lost war«, imposing immense costs of all kinds on the region.[6] There has been an increase in the number of cases – either through parliamentary legislation or court decisions – in which the possession of drugs for personal use has been decriminalized. The perception that a substantial policy shift is needed seems to be spreading: disappointment and helplessness rather than conviction and belief have led to the expansion of public debate on the subject.

In the United States, the past three presidents (Bill Clinton, George W. Bush and Barack Obama) have confessed to taking illegal psychoactive substances at some point in their lives and were voted in as president nevertheless. In turn, an estimated 40 percent of the population is alleged to have tried marijuana, putting it in third place, behind alcohol and tobacco, in terms of recreational use. Furthermore, it is legalized for medicinal purposes in 14 states,[7] containing more than 30 percent of the country's population. It should be underscored that President Obama's administration has decided to reverse its predecessor's practice and determined that federal prosecutors would not focus on the arrest of people who use or provide marijuana for medical purposes.[8] Recently, mainstream magazines such as »Foreign Policy«, »National Review«, and »Time« dedicated their covers to the topic of drug legalization. Also, the current »drug czar«, Richard Gil Kerlikowski, has promised to abandon the language of the »war on drugs«. Furthermore, Congressman Eliot Engel (Democrat, New York),[9] who chairs the Foreign Affairs Subcommittee on Western Hemispheric Affairs, in early 2009 proposed the creation of a Hemispheric Drug Commission to re-assess policy on this issue in the face of the undeniable failure of existing strategies.

6. See the report prepared by the Committee (including three presidents): www.tribunalatina.com/es/downloads2/declaracion_comision_drogas_y_democracia2009.pdf (last accessed on September 10, 2009).
7. See Gene Healy (2009): »Change and Hope on Drug Policy?,« in: *DC Examiner* (March 24) and www.norml.org/index.cfm?Group_ID=6331 (last accessed on September 15, 2009).
8. See »Obama ya no castigará el uso de marihuana con fines medicinales,« in *Clarín* (October 20, 2009): 22.
9. See www.eltiempo.com/mundo/euycanada/eu-podria-dar-un-timonazo-en-lucha-contra-las-drogas-tras-25-anos-de-una-guerra-no-muy-fructifera_6354351–1 (accessed October 20, 2009).

Russia decriminalized personal drug use in 2004 and the alarming rise of AIDS has led to a series of health policies based on the criterion of damage reduction. With regard to Africa, there is increasing concern – for example, at the UN – that drug consumption is causing serious difficulties of various kinds, and it is crucial to address the complex current problems in order to avoid unmanageable future tragedies. Asia generally maintains a strongly punitive stance towards drugs. However, since 1996 the Asian Harm Reduction Network has been operating with increasing visibility and reach. There are also areas set aside for the legal cultivation of poppies (for example, in India, which has a »credible record of regulating its licit opium«, according to the State Department).[10] However, the resounding fiasco of military intervention in Afghanistan is manifested, among other things, in the issue of drugs. The production and trading of opium and heroin have been extremely beneficial for a range of actors, including both state functionaries and non-state organizations, domestic and foreign, armed and unarmed. In light of this, there is growing international awareness that the more prolonged the war and the more of a quagmire it becomes, the more the business of illegal psychoactive substances will expand.

Widespread frustration and fatigue characterize public perceptions in the vast majority of states regarding government policies to address the drug phenomenon. Furthermore, conventional discourse on this subject has generally run out of steam among the majority of political parties in recent decades and unilateralism as a way of »imposing« consent in the fight against drug trafficking is increasingly being sidelined. Citizen initiatives of various kinds, innovative individual approaches, increasing interest on the side of legislative bodies in more original ideas, alternative proposals from non-governmental organizations, and the gradual and progressive global recognition of the urgency of collective solutions to address global problems have combined to increase the pressure for a more enlightened and realistic exchange of ideas on drugs issues.

In various national contexts a broad and eclectic range of voices – political conservatives, pro-market economists, social progressives, philosophic libertarians, legal reformers, and ideological radicals – are increasingly speaking out against current anti-drug policy: they do not form a coalition but they agree, departing from a broad range of conceptual, political, and partisan stances, on the demerits of prohibition.

10. See www.whitehouse.gov/the_press_office/Presidential-Determiniation-regarding-major-illicit-drug-transit/(last accessed on September 20, 2009).

Principles of an Alternative Drug Regime

A new set of principles must be established in order to overcome the complete disregard which characterizes the prevailing anti-drug regime. One such principle is that measures stemming from one regime must not collide with other international regimes, such as human rights, the environment, small arms control, and so on. What is important is to avoid anti-narcotics policies that increase human rights violations, environmental degradation, and weapons proliferation.

The structural problems that have allowed the drug trade to flourish have not been overcome, either in developed or peripheral countries. A better anti-drugs strategy needs to be linked to good public policy on justice, equity, health, human rights, education, and employment. The issue of drugs is just a symptom of something deeper and more complex. Therefore, it is important to keep the problem of narcotics in proportion. A new approach must start with the recognition that the drug issue is not just a criminal phenomenon which must be totally eliminated by stricter application of coercive measures, but is shaped by various social, political, cultural and economic forces.

A new approach should be guided by the spirit of harm reduction and a modulated regulation strategy, in accordance with the specific damage caused in each case. This involves disaggregating the current set of illegal psychoactive substances – because not all drugs are the same – and designing distinct regulatory regimes. Furthermore, it is necessary to identify regulatory mechanisms of various kinds along the production chain, from demand to supply. Therefore, it is essential that the drug issue is individually addressed as a public health issue in the main consumption centers, and as a problem of uneven development in the production and trafficking centers.

Perhaps the most worrying aspect of the drug problem is its association with the rise of organized transnational crime. Indeed, the advance of organized crime undermines democracy, weakens the rule of law, facilitates corruption, increases social injustice, and imposes direct and indirect costs on the economy. Clearly, the advance of organized crime must not be tolerated, but it is important to recognize that it is the prohibitionist regime which is at its origin. This recognition might accelerate the move towards a post-prohibitionist regime, now that the current regime is more and more losing its credibility and support.