

Drug Control Policy: What the United States Can Learn from Latin America

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Since the 1912 signing of the Hague Opium Convention—the agreement that formally established narcotics control within international law—the United States has established itself as the dominant actor in determining drug control policies around the world. A chief architect of the international drug control regime, Washington has done its best to ensure that all subsequent international conventions obligate countries to adapt their domestic legislation to criminalize virtually all acts related to the illicit market in controlled substances, with the important exception of drug consumption. The predominant focus on prohibition and criminalization has been exported to Latin America, where the vast majority of the cocaine and heroin consumed in the United States originates. (While the heroin consumed in the United States comes from Colombia, Afghanistan supplies 90 percent of the opium poppy for heroin consumption in the rest of the world.)

Since the launching of the Andean Initiative in 1989, the United States has used its political and economic muscle to help ensure regional compliance with repressive drug control policies. Those countries that cooperate have been rewarded handsomely with economic assistance and trade benefits, while those that do not have faced sanctions and potentially the stigma of being labeled international pariahs. Countries across the region have thus been quick to comply with U.S. dictates, eradicating coca and poppy crops (the raw materials for cocaine and heroin), adopting harsh drug laws featuring extraordinarily long prison terms and mandatory minimum sentences, and involving security forces in both domestic and international interdiction efforts.

But recently the U.S. influence on drug control policies in Latin America has been waning. Debate on drug policy in the region is heating up and some countries are

beginning to experiment with alternative approaches that seek to limit the size of illicit drug markets while minimizing the associated harms—and at the same time comply with international human rights standards. Across the hemisphere, frustration is growing with the failure of present policies to contain the drug trade, especially as those same policies exact an exorbitantly high social cost, including rising rates of drug consumption, overcrowded prisons, and burgeoning organized crime and related violence.

A recent report by the Washington Office on Latin America (WOLA) and the Transnational Institute (TNI) documents the impact of harsh drug laws on judicial and penitentiary systems. The emphasis placed on criminal sanctions has created overwhelming caseloads in the courts, the study found, and has contributed significantly to the region's prison overcrowding crisis. Harsh sanctions have led to the imprisonment of tens of thousands of people—mostly from the most disadvantaged and marginal sectors of society—for disproportionately long periods of time for small-scale drug offenses or simple possession. Yet their confinement has proven to be ineffective in controlling the drug trade, as low-level offenders are those most easily replaced. Paradoxically, many enter jail with no direct connections to drug organizations but eventually leave as part of organized criminal networks. The study revealed that even in Colombia—put forward by Washington as the model country for drug control—only two percent of those deprived of liberty for drug offenses appear to be major participants in drug trafficking networks.

The election of President Obama raised hopes that Washington would recognize the failure of present drug-control policies and the tremendous damage they have caused,

and change those policies accordingly. Those expectations, unfortunately, have not been met. After two years in office, the Obama administration has softened the drug war rhetoric, but the change in discourse has had little impact in the actual implementation of programs and policies. In short, for all practical purposes, the U.S. “war on drugs” is alive and well.

Shortly after being named to the post, Obama's chief drug policy official, Gil Kerlikowske, head of the Office of National Drug Control Policy (ONDCP), announced that he would not use the term “drug war” since a government should not wage war on its own people. Kerlikowske, formerly a police official, regularly emphasizes the need to treat drug consumption as a public health issue. In a welcome change, administration officials now talk about the need for greater emphasis on the problem of demand and problematic drug use. However, when it comes to budget allocations, the administration has yet to put its money where its mouth is. Maintaining long-standing spending ratios, approximately three-fifths of federal drug-control spending continues to go to supply-side programs, including domestic law enforcement, and only two-fifths to demand-related programs such as prevention and treatment.

Some necessary but modest changes have taken place with respect to domestic drug policy. On the campaign trail, Obama promised to undertake three initiatives related to drug policy: seek to remove the disparity in federal sentencing for crack and powder cocaine; reverse the federal government's tough stance on state medical marijuana laws; and end the ban on federal funding for needle exchange. He has met those promises to varying degrees. Of particular significance, the Fair Sentencing Act was signed into law in August 2010, reducing the sentencing disparity between

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crack and powder cocaine users from one hundred to one to eighteen to one. The law, however, represents only a first tentative step towards desperately needed sentencing reforms. Broader drug policy reforms at the domestic level remain elusive.

Even less progress is evident with regard to international drug-control programs. In Latin America, the Obama administration has continued to prioritize forced eradication of coca and poppy crops, including herbicide spraying, or fumigation. Plan Colombia is touted as a major success story, although the drug trade continues to flourish there despite the tremendous cost inflicted particularly on small farmers. Funding for that initiative is now winding down, as attention shifts to Mexico and Central America. Drug-related violence within Mexico and, most significantly, along the U.S. border ensures continued funding for the primary U.S. aid program, Plan Merida. It also ensures that U.S. drug policy towards that country will continue to be a hot button political issue. As Central America has emerged as a growing drug transit hub, and drug-related violence has escalated, particularly in Guatemala, the Obama administration has steadily increased anti-drug aid for the isthmus through the Central American Regional Security Initiative. In a visit to several Central American countries in early February 2011, U.S. Assistant Secretary for International Narcotics and Law Enforcement, William Brownfield, stated that the Obama administration is considering an anti-drug aid program exclusively for the region—what some are calling Plan Central America, ostensibly to replicate the “success” of Plan Colombia.

Perhaps nowhere is the continuity of a wrong-headed policy more evident than in Bolivia, which is implementing an independent coca-control policy, while

maintaining cocaine interdiction efforts. The Obama administration has continued down the path set by the Bush administration, issuing a “determination” in September 2009 that Bolivia had “failed demonstrably to make sufficient efforts to meet its obligations under international counternarcotics agreements.” Later that year, the administration refused to renew trade benefits suspended in 2008 in retaliation for the Bolivian government’s decision to expel the U.S. Ambassador who was perceived to be meddling in the country’s internal affairs. The administration has continued to “decertify” Bolivia every year since, and trade benefits remain suspended. For fiscal year 2012, the administration has proposed a 50 percent cut in anti-drug aid, to a mere \$10 million.

U.S. officials have also led the resistance to a Bolivian proposal to remove from the 1961 Single Convention on Narcotic Drugs a ban on the centuries-old indigenous practice of chewing coca leaves. In 2009, the President of Bolivia sent a letter to UN Secretary General, Ban Ki Moon, requesting the removal from the Single Convention of its requirement that “coca leaf chewing must be abolished within a 25 year period”—a period that ended in 1989. The inclusion of the ban on coca leaf chewing in the Single Convention was based on a racist report that failed to take into account the rights of indigenous cultures. Nonetheless, the U.S. government—fearful that any modifications to the conventions could open a Pandora’s box—rallied seventeen other countries to its side in opposing the Bolivian proposal. Its future now rests in the hands of the UN Economic and Social Council.

With Republicans now in control of the U.S. House of Representative, the Obama administration will likely be under increasing pressure to maintain the drug war status quo. Key Republicans are calling for

more military and police aid to fight drug production and transshipment, and to further militarize the U.S. border with Mexico. While the Republicans may not be able to deliver much more funding given their commitment to slash federal spending, they will no doubt continue to be wedded to present policy, increasing even further the growing disconnect between the region and Washington.

While debate in Washington on alternative approaches to the so-called “war on drugs” is at best incipient (though that is not necessarily true at the state level), debate across Latin America is beginning to flourish. A turning point came with the 2009 release of the report by the Latin American Commission on Drugs and Democracy, led by former presidents Fernando Henrique Cardoso (Brazil), César Gaviria (Colombia) and Ernesto Zedillo (Mexico). The report criticizes the taboo on public discussion of the drug issue, and calls for an opening of the debate and the recognition of the failure of present policies and their consequences. Sparking the most discussion were its recommendations to treat drug use as a public health issue and to evaluate the decriminalization of cannabis possession for personal use. Former president Gaviria recently stated, “the idea that total prohibition to resolve the problem of drug consumption has proven to be, over the last hundred years, a failure in all of the world.”

Since the release of the commission’s report, former Mexican president Vicente Fox has come out publicly in favor of outright legalization, as have noted dignitaries such as Peruvian author Mario Vargas Llosa. Perhaps most significantly, when asked his opinion on legalization, Colombian President Juan Manuel Santos stated: “On that issue I am not a fundamentalist. If the world considers that legalization is a

solution I would gladly go along with that. I can understand the benefits, and I can understand the arguments. But this has to be a multilateral approach.” All this is to say that while drug policy issues remain polemic in Latin America, a healthy debate is emerging in which increasing numbers of public intellectuals, public officials and ordinary citizens are speaking out in favor of alternative policies that could prove to be both more humane and more effective.

The decriminalization of drug consumption is perhaps the most widely discussed and enacted reform. In August 2009, the Argentine Supreme Court ruled that imposing criminal sanctions for the possession of small amounts of drugs for personal use is unconstitutional; legislation to that effect is presently pending. That same month, Mexico enacted legislation decriminalizing the possession of small quantities of drugs for personal use and mandating the provision of prevention and treatment programs. Brazil passed a law in 2006 that partially decriminalizes possession for personal use, replacing prison sentences with mandatory treatment and community service. Subsequently, in 2008, a São Paulo judge ruled that imposing sanctions for drug possession for personal use is unconstitutional. Brazilian authorities are working on legislation that would fully decriminalize possession for personal use.

These Latin American countries are closely monitoring the impact of drug law reform in Portugal, which decriminalized the use and possession of all illicit drugs in 2001. Ten years later, studies show that the fears of increased drug use, drug related crime and “drug tourism” did not materialize. On the contrary, studies show a significant decrease in problematic drug use, a corresponding increase in the number of people in treatment, a fall in the incidence of HIV/AIDS, and in the number of those

incarcerated on drug charges. Now widely accepted within the country, the new approach has facilitated the social reintegration of former problematic drug users. Portuguese officials also point out that the new strategy has allowed police to focus law enforcement efforts on drug trafficking organizations, rather than low-level offenders.

Some Latin American countries are also addressing the issue of excessive sentences established in national drug laws, which in most cases fail to distinguish adequately between low level offenders and major traffickers (all are subject to harsh mandatory minimums). In 2010, Brazil’s Supreme Federal Tribunal ruled that the application of alternatives to incarceration should be allowed for low-level drug offenders noting that judges should have the right to determine sanctions based on the conditions in individual cases.

Bolivia is also rewriting its notorious Law 1008, making penalties proportionate to the crime committed. And Ecuador is also drafting new legislation to replace its drug law, which is one of the harshest in the hemisphere. Presently, drug trafficking convictions result in a sentence of twelve to twenty-five years, even though the maximum penalty for murder is sixteen years. As the law fails to distinguish between levels of involvement in the drug trade (as is the case in Bolivia), a small-time dealer could end up with a longer sentence than a person convicted of murder. The Ecuadorian Ministry of Justice and Human Rights initially drafted what could become model drug legislation; however, it has run into political roadblocks and discouragingly, an about face in support from President Rafael Correa.

Increasingly, citizens in the western hemisphere are saying no to the war on drugs.

While the Obama administration has kept U.S. drug control policy towards Latin America on auto-pilot, some countries in the region are charting a different course, seeking to implement policies that are both more effective and in line with international due process and human rights standards. Indeed, there is much that the Obama administration could learn from its neighbors to the south when it comes to drug control policies. ■