

A breakthrough in the making?

Shifts in the Latin American drug policy debate

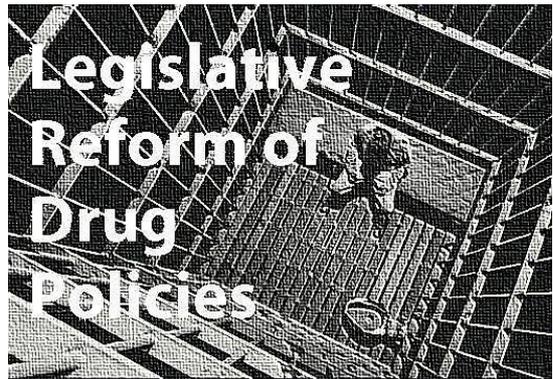
By Amira Armenta, Pien Metaal and Martin Jelsma ¹

Remarkable drug policy developments are taking place in Latin America. This is not only at the level of political debate, but is also reflected in actual legislative changes in a number of countries. All in all there is an undeniable regional trend of moving away from the 'war on drugs'. This briefing explains the background to the opening of the drug policy debate in the region, summarises the most relevant aspects of the ongoing drug law reforms in some countries, and makes a series of recommendations that could help to move the debate forward in a productive manner.

AFTER THE CARTAGENA SUMMIT

The high expectations of a high-level debate on current drug policy regimes in the Americas at the sixth Organization of American States (OAS) Summit in April 2012, in Cartagena, Colombia, were quickly tempered to a general approval that the topic had been discussed at this level at all. The summit's outcome can be called both a failure and a success: no alternatives to prohibition were discussed, but all agreed that the effectiveness of current strategies should be looked into. The OAS was mandated to undertake a study and discuss the gathered evidence for more effective alternative strategies in 2013.

The *International Conference of Ministers of Foreign Affairs and Heads of Specialized National Agencies against the World Drug Problem*, in Lima on 25 and 26 of June, will be the next opportunity for high level pol-



CONCLUSIONS & RECOMMENDATIONS

- Ensure that the OAS-mandated study on alternative drug policy options will be an honest and open-minded reflection on different models and strategies
- Support moves towards the legal regulation of the cannabis market and explore with a coalition of like-minded countries how best to resolve the legal conflict with the UN conventions
- Elaborate substance-specific proposals for managing different drug submarkets
- Experiment with harm reduction policy measures to reduce the level of drug-related violence
- Support the legal right to coca chewing and allow a licit coca market to develop in the whole region
- Secure civil society participation in the debate on drug policy reform
- Challenge provisions in the UN conventions that are obstacles to advancing with evidence-based reforms.

icy makers to discuss both the content and form of this evaluation or study. Another opportunity arises concurrently on the 26th, in New York, where there will be a thematic debate on 'Drugs and Crime as a Threat to Development' on the occasion of the UN International Day Against Drug Abuse and Illicit Trafficking, at the 66th Session of the United Nations General Assembly.

It was due to the insistence and efforts of Presidents Otto Pérez Molina (Guatemala) and Juan Manuel Santos (Colombia), and the extensive media attention in the run-up to the April Summit in Cartagena, that the issue was present at all on the agenda of the Summit. At last, some of the frustrations with U.S.-promoted drug control policies were on the table at the highest political level in the American hemisphere: the “genie was freed from the bottle”.² Behind closed doors and for Presidents and heads of delegations only, the “hot but hidden”³ issue was discussed on the Sunday afternoon, in “an open and frank manner”, according to the host President Santos.⁴

The emergence of an increasingly independent and assertive Latin America insisting on a change of direction in drug control policies reflects an important shift in its relationship with the United States.⁵ The demand for “democratization” of the debate and alternative policy options stems from the perception that Latin American societies pay a disproportionate price in lost lives, hijacked justice systems, abuses in overcrowded prisons, and displaced small farmers, because of the U.S.-led strategy that has prioritised stemming the supply of drugs over reducing its own demand. The U.S. Senate Caucus on International Narcotics Control acknowledged as much in its latest report, saying that “the United States must do significantly more to reduce our country’s demand for illegal drugs. Ultimately, it is drug consumption in the United States that fuels violence throughout Latin America and the Caribbean.”⁶ This is not to say that U.S. society hasn’t also paid a high price for repressive domes-

tic drug law enforcement, in terms of drug-related violence and overcrowded prisons.

DECISIONS AT CARTAGENA

Consensus was reached in Cartagena on a Mexican proposal to create an Inter American System against Organized Crime.⁷ Though closely related, the crime and drugs issues were treated separately. The Mexican President Calderón said that before the end of this year, each country will have designated a delegate for this centre. The leaders agreed to establish an information sharing system with the objective of strengthening international cooperation in the fight against transnational organised crime in its various manifestations. The Mexican Public Prosecutors’ Office (PGR) would be in charge of coordinating the new system and should convene the region’s countries representatives for its formal establishment later this year. Curiously, and as opposed to the drug policy issue, there still seems to be full consensus on how to tackle organised crime, as no signals were received that the current model of fighting organised crime is up for a revision.

In terms of drug policy, the Summit produced one communiqué expressing the intention to further discuss the topic at the special drugs summit to be held in Lima in June this year. The communiqué does not suggest any new approaches and only cautiously recognises the failure of current policies: “Mindful that, in confronting the vast resources and violent and corrupting effects of drug trafficking, simply combining uncoordinated efforts—even those that have been successful—has only had a limited impact on the world drug problem, and therefore it is necessary to identify effective measures on the basis of an integrated and balanced approach”.⁸ The statement was careful not to overstep already agreed language from previous UN and OAS declarations and resolutions.

The Cartagena Summit, however, did decide to mandate the OAS to “analyse the

current anti-drugs policy in the hemisphere and explore new approaches and alternatives to strengthen it and make it more effective”.⁹ The effort will be coordinated by a technical secretariat created inside the Inter-American Commission on Drugs Abuse (CICAD), overseen directly by the Secretary General of the OAS, José Miguel Insulza. At the latest annual meeting of CICAD in May 2012 and in the Summit Implementation Review Group meeting in Cochabamba early June, several details were discussed about the methodology and substance of the study.

The OAS study should provide an overview of drug-related problems in the Americas, and analyse both the successes and the ‘challenges’ (or ‘failures’) of the drug control strategies applied in the hemisphere thus far. According to Rafael Bielsa, head of

litical, and will present Presidents with a menu of policy options, rather than recommend any specific one, to be considered in the second quarter of 2013.

The study will address several policy areas involving drugs and most likely convene working groups along these lines: first, drugs and public health, including prevention and treatment; second, drugs and socio-economic development; third, the existing legal regimes and their alternatives; fourth, organised crime and security, including its financial infrastructure; and last, perspectives on the production and market of drugs, pharmaceuticals and precursors. The financing of the study and the selection and profile of the experts to be involved still needs to be defined. Some preferred to only involve experts of intergovernmental agencies, but others have suggested that countries can nominate experts for the different thematic working groups, including independent academics or experts from civil society or think tanks.

The fact that CICAD will be the main responsible agency for the evaluation can be problematic - even if other regional organisations, such as the Pan American Health Organisation (PAHO), the Inter American Development Bank (IDB), the Andean Development Corporation (CAF) are likely to become involved in the process, as well as the UN Office on Drugs and Crime (UNODC). The CICAD structure has traditionally been dominated by U.S. funding and policy perspectives. Given the history of U.S. predominance on the issue and the wish to develop a more independent Latin American vision on the future direction of drug policy, there should be an attempt to bring the debate to other regional Latin American political mechanisms as well, such as the Union of South American Nations (UNASUR) or the Community of Latin American and Caribbean States (CELAC), where priorities in drug policy can be discussed amongst Latin American countries without the dominant presence of the United States.

“ *We cannot eradicate global drug markets, but we can certainly regulate them as we have done with alcohol and tobacco markets. Drug abuse, alcoholism and tobacco should be treated as public health problems, not criminal justice issues. Our children and grandchildren demand from us a more effective drug policy, not a more ideological response.* ”

President Pérez Molina of Guatemala¹⁰

the national drugs coordination secretariat in Argentina (SEDRONAR) and President of CICAD during its May session, the study will also “explore options and scenarios for the development of new approaches to drug policy”.¹¹ An initial outline of the different scenarios to consider has been prepared already and will be presented in Lima on the 25th and 26th of June.¹² The final report is qualified as technical and not po-

A civil society forum that was organised in the days before the Cartagena summit also addressed drug policy issues, proposing several criteria that should be incorporated into the debate. The final declaration that was delivered to the Presidents mentioned the need to take drug consumption out of criminal law; sought proportionality of sentences in drugs offences; demanded a serious debate on alternative development strategies for illicit cultivation of drug-linked crops; and called for a full recognition of traditional uses of plants, such as coca leaf.¹³

US - LATIN AMERICA: A HISTORY OF TENSIONS

Latin America has a relatively long tradition of voicing its disagreement with drug control policies imposed by the United States, expressing its desire to cast aside the dogmatic model imposed by that country.¹⁴

The Mexican UNGASS initiative

In 1993 Mexico, one of the countries hardest hit by drug trafficking and the impact of the war on drugs, began to seek the necessary support to hold an international conference in the framework of the United Nations to discuss different aspects related to global drug policy. These included the need to review the classification of cannabis and coca under the drug conventions, options for decriminalisation, and harm reduction practices that some European countries were beginning to explore. Mexico suggested there were other ways to address the problem than those imposed by the United States. A letter to the UN Secretary General by the Mexican government regarding drug control caused quite a stir and set the tone for a special high-level General Assembly meeting to discuss the world drug problem in 1993. In the missive Mexico called for more attention to the demand side because "drug consumption is the driving force that generates drug production and trafficking". Moreover, it strongly criticised U.S. counter-narcotics

operations on Mexican territory and its unilateral certification mechanism. Mexico condemned "attempts to impose hegemony" and argued for a "balanced approach" in drugs control.

Several years later Mexico's initiative culminated in the 1998 UN General Assembly Special Session (UNGASS) on drugs. Manipulation by Washington blocked Mexico from presiding over this meeting, despite its predominant role in initiating the session. Unfortunately, the end result of the special session was largely a reconfirmation of the existing drug control framework, and backing for the rigid policies that were already in place, even though Mexico had questioned many aspects of it from the outset. The UN committed itself to a 'drug free world' by 2008. In the words of the session's president Mr Udovenko of Ukraine: "The drug problem cannot be wished away by good intentions and the international community must be prepared for a long and gruelling fight." Nevertheless, in the process running up to the conference, Mexico and Colombia in particular were able to broadly express their frustration regarding the inherent imbalances in the international drug control system, and several of the 'Northern responsibilities' became important elements in the 1998 UNGASS Political Declaration and Action Plan, such as demand reduction, money laundering, chemical precursors, synthetic drugs, and funding for alternative development.¹⁵

The Multilateral Evaluation Mechanism (MEM)

It was in the institutional framework of the Organization of American States (OAS) that Latin American nations continued to demonstrate their disagreement with the United States and attempted to advance in a different direction. One concrete step, once again initiated by Mexico, was the 1999 creation of the Multilateral Evaluation Mechanism (MEM), whose objective was to counter the unilateral evaluation of coun-

tries' performance in the drug certification process carried out by the U.S. annually. This has been an extremely politicised process under which, when the U.S. has tense relations with a country, it has often "de-certified" countries due to their lack of cooperation in drug control. This can lead to immediate sanctions like withholding development aid, credit and trade benefits.

While important as a strong expression of dissent with U.S. policies, the MEM has not managed to substitute the U.S. unilateral drug certification process, even though that was its main objective. Latin American countries, while far in the majority, never had sufficient political control over the OAS structure. The U.S., as the biggest donor country to the OAS and to its Inter-American Drug Abuse Control Commission (CICAD), basically has the last word.

“
We should perhaps analyse if, after decades and considering the results achieved so far, time has not arrived to start an open debate on the consistency and effectiveness of some of the provisions contained in the conventions.

”

Juan Manzur, Minister of Health of Argentina¹⁶

In fact, the director of CICAD is traditionally a U.S. official for that same reason. In that sense, the debate about alternatives to the war on drugs that emerged in the weeks leading up to and during the Sixth Americas Summit in April 2012 was of particular importance. For the first time, the U.S. was unable to prevent an overt display of dispute over U.S. drug policies within the OAS and was forced to accept opening up the debate to look at potential alternative policy options.

SECURITY CRISIS IN CENTRAL AMERICA

For decades militarisation has been part of the US- promoted policies to combat drugs supply. This policy has been particularly harmful in the transit countries of Mexico and Central America where deteriorating drug-related security problems have made some of them the most violent countries in the world. This explains why Central American countries, which have particularly suffered the excesses resulting from the war on drugs, have become so active in calling for reforms. In early 2012, Guatemalan President Otto Pérez Molina called for a robust debate on the war on drugs and put a set of alternative strategies on the table, including the option of a legally regulated market.

Manuel Zelaya, then President of Honduras, did the same in 2008 shortly after hosting the first SICA conference (Central America Integration System) on the causes of insecurity in the region. Zelaya, however, found little support for his proposals at the time and was then ousted in a coup in June 2009. A new regional security strategy was developed in the SICA framework and attempts were made to get international attention and donor support for its implementation. The strong correlation between the increasing violence, the drugs market and the war against it, led Costa Rican President Laura Chinchilla to present the outline of a funding mechanism based on a financial compensation scheme for drug seizures. She explained her proposal at an international donor conference in Guatemala in June 2011, organised to rally support for the regional security strategy.¹⁷ In December the security crisis in the region was discussed again in the context of the 'Mesoamérica' integration promoted by the Tuxtla Mechanism for Dialogue and Reconciliation. Apart from the eight SICA countries (Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Belize and the Dominican Republic), Tuxtla also includes the region's two big neighbours

Mexico and Colombia. At this forum the frustrations from SICA countries regarding the lack of donor support became intertwined with the Mexican debate on how to break its spiral of violence –in which President Calderón hinted at “market options” as a euphemism for regulation of drugs. It was reinforced by Colombian President Santos’ incipient call for opening the drugs debate.

This led to the adoption of a paragraph in one of the final documents calling on “consumption countries” to reduce the demand of drugs or to “explore all possible alternatives to eliminate the excessive criminal profits, including regulatory or market options aimed at that purpose”.¹⁸ In February 2012 the Group of Friends of the SICA Security Strategy met again in Washington, where it became clear that very little of the funding pledges made last year would actually be honoured. In the final declaration of the subsequent SICA summit in early March 2012 in Honduras, the presidents – in the presence of US vice-president Biden – then welcomed Pérez Molina’s proposal to further discuss alternative drug control strategies in Guatemala later that month.

Pérez Molina convened a “New Routes against Drugs Trafficking” special regional summit in Antigua, Guatemala, on the 24th of March 2012 to discuss urgent measures to reduce the rampant drug-related violence. He stated that current policies had been so ineffective that all options including the ‘depenalisation’ of drugs should be on the table. Newspapers and drug policy activists worldwide were quick to brand Pérez Molina’s initiative as a ‘call for legalisation’. The polarised framing of the proposals further fuelled political tensions within the region and resistance from the U.S., almost bringing the discussion to a stalemate even before it really began. The U.S. publicly stressed that they were open to discussing all options even though they were sure that depenalisation would only make things worse. Intensive diplomatic efforts were set in motion to prevent the

debate getting out of hand in the region, with a string of visits to the region from senior US officials.

All the Central American presidents had initially accepted the invitation, but when the day arrived only half of the leaders showed up in Antigua.¹⁹ Present at the meeting were the presidents of Costa Rica, Laura Chinchilla, and Panama, Ricardo Martinelli; several officials from other Central American countries; the ex-president of Colombia and member of the Global Commission on Drug Policy, César Gaviria; and representatives of the Pan-American Health Organisation (PAHO) and the Carter Center.

In Antigua, Pérez Molina presented four strategic options –not mutually exclusive– to consider. First, the intensification of interdiction efforts making use of the funding mechanism proposed by Costa Rica, through which the value of seized drug shipments would be reimbursed by the consuming-end destination country. The US, for example, would pay 50% of the US market price for any kilogram of cocaine intercepted in Guatemala, in compensation for the high social costs and law enforcement expenditure of drug control efforts in transit countries. Second, the establishment of a Central American Penal Court for drug trafficking offences with regional jurisdiction and its own prison system, to relieve the national criminal justice systems from the high burden of prosecution and incarceration for drug law offences. Third, the ‘depenalisation’ of the transit of drugs by the establishment of a corridor through which cocaine could flow unhindered from South to North America without destabilising the whole region in between. And finally, the creation of a legal regulatory framework covering production, trade and consumption of drugs, without providing further details about how such a regulated market would work or whether varying mechanisms for different drugs would be required.

A good debate apparently unfolded at the meeting regarding the phasing and further refinement of the various proposals. Pérez Molina, referring to the figure that 15% of the prison population in the region was incarcerated for drug consumption offences, also mentioned that depenalisation of consumption and possession of drugs could potentially alleviate prison overcrowding. The only agreement the attending presidents could reach was to continue the dialogue at upcoming meetings within the SICA framework and to add it to the agenda of the Cartagena OAS summit in April.

The Antigua meeting clearly showed that political agreement in favour of grand policy shifts in this field will not be easily found. But it definitely put the need for policy alternatives firmly on the political

“ *Many in our region have raised their voices in a critical reflection of the successes and failures of the strategies and actions that have come to fruition. In this regard, and as has been recognized by the international community, after more than a decade of commitments made by the General Assembly of the United Nations to address the world drug problem, the problem remains a challenge plagued by more failures than successes.* ”

Rafael Bielsa, President of CICAD²⁰

agenda and made it clear that the issue will not easily disappear either. In the words of President Chinchilla: “For Costa Rica the road—our road, at least—is not the war on drugs, because we have no army and we are not willing to be hooked onto that convoy of destruction, of militarism, of exorbitant expenditure, that distracts states from their

efforts toward social investment. That is why we say we need to search for alternatives. ... Costa Rica has already made progress in decriminalizing drug consumption that we believe is a question of public health, and not of criminal law.”²¹

DRUG LAW REFORM IN LATIN AMERICA

At the level of domestic drugs laws several Latin American countries have also begun to distance themselves from the warlike and punitive model imposed on them from the outside, that has had serious consequences for their criminal justice systems and society in general. The severe congestion of the judicial system and the overcrowding crisis in prisons resulting from the sometimes extremely severe law enforcement, is one of the main reasons behind these reform attempts, as is the disproportionality of sentences for drug offences. The reasoning of these countries is that more effective and fair solutions are needed for those involved in the drugs market than the existing ones, where penal repression is aimed at the most visible individuals, the consumers and small-time traders and cultivators.

Over the last decade the Latin American region has shown a cautious trend towards the decriminalization of consumption and possession of drugs for personal use. Several countries have also recently seen the appearance of particular proposals in favour of decriminalization of cannabis cultivation for personal use. Most recently the Government of Uruguay announced its plans for a regulated and controlled legalisation of cannabis, including its production and distribution under state control, for which a legislative proposal will soon be introduced.²² The various legislative proposals around these themes have generated an intense debate. In some cases this signifies reforms to existing drugs laws or their replacement with new laws, in other cases they seek to amend the penal codes or other legislative instruments that prescribe conduct related to the controlled drugs market.

The reforms that are currently underway are being driven from different areas and by various actors, including the judiciary, judges and prosecutors, and political sectors. Also civil society organizations of various countries have played a key role in the wording of requests for changes to laws and legal practice. Here are some examples of countries that are currently embarking on important reform processes.

Uruguay

Despite the fact that in Uruguay the consumption of illegal drugs and possession for personal use is not a punishable offence a significant number of people identified as consumers still end up in prison with substantial sentences.²³ Law 14.294 of 1974, that punishes drug trafficking and prohibits the cultivation of plants from which narcotics can be extracted, leaves to the discretion of the judges exactly how to apply in specific cases its article 31 that says that the “individual possessing a minimum quantity solely for personal use will be exempt from penalty.” As noted by the civil society groups that advocate legalization and decriminalization, the current law shows major contradictions and leaves the courts too much room for interpretation.

The National Drugs Board (JND) is in favour of an open debate on drugs policy at a global and regional level, as it considers the prohibition model a failure. The recently presented new security strategy of the government, 20th of June, also includes several dispositions that will alter judicial practice: most notably the proposal to legally regulate the cannabis market, for which a legislative proposal is being prepared. There exists already a legislative proposal that has unified three different reform projects, and is supported by a broad coalition of political parties, that is currently being discussed. Under this bill planting, cultivating, harvesting and selling any plant from which narcotic substances can be extracted remains prohibited. An individual, however, may plant, cultivate

and harvest in their home up to eight cannabis plants for their personal use and may carry up to 25 grams of marijuana. This bill for ‘self-cultivation’ aims to reduce the risks of criminalization and improve the quality of the substance and is currently being discussed in the Parliamentary Commission for Drugs and Addiction. If approved, it would also allow the establishment of cooperatives of cannabis users that would want to organise their ‘self-cultivation’ in a collective manner similar to the Spanish ‘social clubs’.²⁴ The bill was already close to get approval in both houses of Parliament, but will now probably have to be adapted to incorporate elements of the new governmental proposals for legal regulation.²⁵

Argentina

The debate on the reform of drug policy and the current law was boosted following a judgment of the Supreme Court in 2009, known as the ‘Fallo Arriola’ which declared punishment in cases of possession for personal use unconstitutional. Since then it has been looking for ways to resolve the tension created between the law and police and judicial practice, that continues to suppress possession for consumption. Some bills under debate go far beyond the simple restructuring of certain articles, and what they are actually proposing is to rewrite the drug policy.

In June of this year, in the Chamber of Deputies a debate began for reforms of the Narcotics Law 23.737 and the Penal Code. Initially there were eight different reform bills on the table, several of which also consider decriminalizing cannabis cultivation for personal consumption, currently punishable with imprisonment for one month to two years. A proposal for the ‘self-cultivation’ of cannabis seeks to distinguish between those who grow for commercial purposes and those who do so for personal consumption. It will be up to the judge’s discretion to determine which is the case. In the case of possession, the joint proposal that emerged out of negotiations between

several parties and has majority backing in Parliament, says that “there will be punishment of imprisonment of one to six years for those who possess narcotics, when the quantity and type of substances possessed and circumstances of time, place and manner suggest that possession is not for personal use.”²⁶

The reform proposals under discussion create exceptions and guarantees for the decriminalization of drug users and cultivation for personal use. They also propose the reduction of penalties for low-level drug trafficking offences, especially the category of couriers, often people in situations of marginalization and poverty. In short, the proposals seek to change the course of the country’s penal policy on the drugs issue, and in some of the bills, to replace the existing law with a new law.

“
Our proposal ... is to abandon any ideological position (whether prohibition or liberalisation) and to foster a global intergovernmental dialogue based on a realistic approach – drug regulation.
”

President Pérez Molina of Guatemala²⁷

Ecuador

The pardon granted by Ecuador's Constituent Assembly, in 2005, to the couriers (drug mules), is another example of a review of the effects of the law on individuals and society as a whole. As a measure to temporarily relieve prison overcrowding, over two thousand people were freed thanks to the pardon, under a number of strict conditions.²⁸ The clemency granted to the ‘mules’ has yielded positive results, with less than 1 percent relapsing into these types of crimes. The problem was that after the pardon prisons have filled up once

again because the law remained in force. From then on the country began a political process to reform the current Law on Narcotic Drugs and Psychotropic Substances (Law 108).

A new ‘Integral Organic Penal Code’ currently under negotiation in the National Assembly, proposes a comprehensive reform of all penal legislation and its implementation, including the drugs law and its sentences. The section entitled ‘Crimes for the production or trafficking of controlled substances’ consists of 13 articles, and provides for the decriminalization of consumers by setting thresholds for the controlled substances. It also creates the category of ‘micro-trafficking’, previously nonexistent, and a special article for couriers, with reduced sentences.

The reform in general tends to amend the disproportionate nature of the penalties and to emphasize the effectiveness of less repressive policies. In these changes the Government has to respect the principle retained in the new 2008 Constitution saying that the problem of drug consumption is a public health issue and, in reference to users, “in no case will criminalisation be permitted nor will persons’ constitutional rights be violated.”²⁹

Brazil

In Brazil too the change in drug laws aimed at decriminalizing possession of drugs for personal use is studied within the framework of a reform of the Penal Code. Consumption as such has been legal since 2006, but according to the Legal Commission of the Senate, the entity in charge of the study, the current law (Law 11.343/2006) is not clear with regard to this. The Commission suggests that the quantity established for personal use is the amount a person needs for 5 days use. Also included in the proposal is decriminalizing cultivation for personal consumption and lowering the maximum penalty for trafficking from 15 to 10 years. The Commission's recommendations

will be sent to the Senate for debate in June 2012.

At the same time, in the judicial field there have been some developments that reflect a shift in focus of the country's judicial reality. Recently, on May 10, 2012, the Supreme Federal Court classified as unconstitutional the preventive detention of a person suspected of drug crimes.³⁰ Within this mentality of change, many people in Brazil think that the mandatory preventive detention for drug offences currently in force is one of the most aberrant examples of discrimination in Brazilian law. Tens of thousands of people remain imprisoned for this reason, which has aggravated the overcrowding in the country's prisons.

Colombia

Drug use was decriminalized in Colombia with the ruling of the Constitutional Court in 1994, which states that the possession of a 'minimum dose' of drugs for personal use "can not be penalized" when it occurs "in the exercise of their personal rights, [and] the defendant did not affect others."³¹ In 2009 the Colombian government amended its Constitution by abolishing the aforementioned exception of 1994, once again penalizing consumption and possession for use as established by Law 30 of 1986 or the National Narcotics Act. Since the Supreme Court continues to uphold the minimum dose, in practice, a person arrested with drugs for personal use only gets an administrative penalty, not a criminal sanction. In addition, in July 2010, the Colombian government approved a Public Safety Act,³² which amended the Penal Code, imposing severe penalties on anyone caught carrying certain amounts of cannabis and cocaine. The minimum dose of cannabis was set at 20 grams. The government has submitted a new drug bill to Congress that proposes the reduction of the minimum dose of cannabis from 20 to 5 grams.

Despite these regressive moves to punitive schemes - a contrast to what is occurring in

other countries- Colombia is also showing strong trends that favour decriminalization and the view of the drugs issue as a health issue. In June this year the plenary of the House approved a bill in which the Colombian State recognizes that "the use, abuse and addiction to psychoactive substances, legal or illegal, is a public health matter." This bill would oblige the State to give specialized attention to problem drug users. Also, large sections of civil society and drug policy experts have argued against the criminalizing aspects of the new drugs law proposed by the government.³³ On the other hand, Congress is once again discussing a bill introduced by various political sectors (Liberal, Green and *Polo Democrático*) to decriminalize possession and consumption of minimum doses. And in April 2012 Congress began debating a draft bill to decriminalize the cultivation of cannabis, coca and opium poppy, an issue that had up until then been taboo; in the proposal the production and trafficking of drugs would remain illegal.³⁴ No less important is the fact that President Santos has openly questioned certain aspects of the global prohibition regime and domestically has supported the idea to treat the issue of drug consumption as a public health matter.

Mexico

In August 2009, Mexico introduced the Law against Drug Dealing ('*Narcomenudeo*'), which decriminalized possession of small amounts of drugs for personal use, meaning that they would no longer be subject to prosecution. The law was primarily intended to combat small-scale drug trafficking as part of a package to improve the security situation as a result of the exponential growth of organized crime, violence and the alarming increase in drug consumption in Mexico in previous years.³⁵

In the legal framework, the change introduced by this law was far more modest than was initially believed, and continues to emphasize criminalization and incarceration as the main solution to the drugs problem.

Instead of improving the legal status of drug users, the law serves instead to strengthen the legal powers of the police. The quantitative thresholds to distinguish between a user and a dealer are very low and do not usually adjust to fit the quantities circulating in the street. For example, a user can only possess half a gram of cocaine, while it is often sold on the street per gram. Because of this, the law has done very little in terms of the decriminalization of drug users and reducing arrests.³⁶ However, the law does have some positive aspects regarding the acceptance of decriminalization of consumption, and refocusing attention on public health issues could have an impact on reducing violence in local drug markets. Several bloody attacks on treatment centres in various parts of Mexico indicate that vulnerable users often end up suffering the consequences of the complex-

major business sectors calling for legal regulation.³⁹

CONCLUSIONS

The remarkable drug policy developments taking place in Latin America have reached the point of no return; the clear shift away from a ‘war on drugs’ approach has become irreversible in several countries. Of course, neither the opening of the political debate nor the implemented drug law reforms come out of the blue. A lot has been done these past years to arrive at this turning point. Historically there have been precedents of Latin American presidents calling for a debate on alternatives and of serious political tensions over the U.S. imposition of a militarised supply-focussed approach and its unilateral certification mechanism to discipline any dissent in the hemisphere. Those previous attempts to challenge hegemonic dogmas in fact led to the 1998 UNGASS and subsequent moderations in the international discourse introducing now broadly accepted but vague language about a ‘balanced and integrated approach’, more attention to ‘Northern’ responsibilities like demand reduction, precursor control, anti-money laundering measures and funding for alternative development.

At the time many public figures from Latin America signed a public letter to UN Secretary General Kofi Annan calling on him to ensure that the Special Session would be “a truly open and honest dialogue regarding the future of global drug control policies.” An impressive collection of signatories said that: “We believe that the global war on drugs is now causing more harm than drug abuse itself. ... Persisting in our current policies will only result in more drug abuse, more empowerment of drug markets and criminals, and more disease and suffering. Too often those who call for open debate, rigorous analysis of current policies, and serious consideration of alternatives are accused of ‘surrendering.’ But the true surrender is when fear and inertia combine to shut off debate, suppress criti-

“ *Someone has to be first, since we are losing the battle against drugs and crime on the continent. We have to find another way, although some consider it bold. Uruguay is a small country where you can do things more easily.* ”

President José Mujica of Uruguay³⁷

ity of gang wars for control of local drug markets and transit routes to the United States.

Although in market terms, according to a ‘guesstimate’ of the RAND Corporation, cannabis represent only 15 to 26 percent of the income of Mexican cartels,³⁸ the shift towards the decriminalization of cannabis in many US states could have a major impact on drug laws in Mexico and on the illicit market and the violence it generates in this country. Mexican civil society is increasingly demanding a radical change of course in the domestic drug war, including

cal analysis, and dismiss all alternatives to current policies.”⁴⁰

Among the signatories in June 1998 was Juan Manuel Santos, then President of the *Fundación Buen Gobierno* in Colombia, nowadays President of the country and again calling for an open debate. The recipient of the letter at the time, Kofi Annan, in 2011 joined the Global Commission on Drugs Policy initiated by ex-Presidents Fernando Henrique Cardoso (Brazil 1995-2002), Ernesto Zedillo (Mexico 1994-2000) and César Gaviria (Colombia 1990-1994, and OAS Secretary General 1994-2004). The Global Commission and its Latin American predecessor have played an important role in shifting the terms of the debate in the region.

The drugs UNGASS did bring more North-South balance to global drug control directives, but failed in terms of an honest evaluation of effectiveness and unintended consequences of existing policies and an open-minded exploration of possible alternative options for control. The establishment of the MEM mechanism in 1999 was another attempt to de-escalate drug policy tensions between the U.S. and Latin America, but it never replaced – as was originally intended- the controversial U.S. unilateral certification mechanism.

Both the UNGASS and the MEM in a sense served back then as safety valves to prevent the pressure for change from becoming explosive. For some, no doubt, the OAS/CICAD study now under way is meant to have a similar purpose: a political gesture to show that the reinvigorated discontent is taken seriously while trying to control the process sufficiently to prevent any radical departures from the current control model. As someone commented after the Cartagena summit: “since they could not arrive at a unanimous pronouncement on the drug issue, the presidents recommended that the Organization of American States, a recognized burial ground for sweeping initiatives of any kind, study the problem.”⁴¹

Bringing the Latin American drug policy debate to the next level requires a recognition that there is not just *one* solution for ‘the drug problem’ and that a more sophisticated range of policy responses will be required to reduce the levels of drug-related violence and drug-related health and social problems, while also alleviating overburdened justice systems and overcrowded prisons. This approach also needs to differentiate between the various drug submarkets, because cannabis, stimulants and narcotics all require their own tailored policy responses.

The Antigua and Cartagena summits clearly show that political agreement about grand policy shifts in this field will not be easily found. The most important step now is to find the proper settings and procedures to carry this debate forward in a productive manner and to prevent the OAS/CICAD becoming the predicted burial ground.

This requires a concerted effort to bring closer together the different levels and places of dissent that are all becoming more pronounced but appear to be largely disconnected. These include first the politicised call to open the debate on alternatives now spearheaded by Colombia and Guatemala (with considerable support in countries such as Costa Rica, Mexico and Honduras), triggered primarily by the drugs-crime nexus and the urgency to reduce uncontrollable levels of violence. Second, the more pragmatic drug law reforms well under way especially in Argentina, Uruguay, Brazil and Ecuador, based strongly on human rights arguments and the unmanageable burden placed on the criminal justice system. And third, the Bolivian initiative to defend its domestic coca market under international law on the basis of indigenous and cultural rights. All three of them clearly express the political urge to define a more independent Latin American response to the most relevant drug-related issues in the region.

More convergence between these different dynamics could make all the difference and create the political synergy required to sustain the momentum of reform and to ensure that the OAS/CICAD study proves to be more than a pressure valve. At the same time this could help to redirect some political energy towards other international venues and alliances to nurture and advance this debate. A global or hemispheric political consensus about the direction of drug policy reform is not yet anywhere in sight and it will be a waste of energy to focus now on finding such a new ‘Vienna consensus’. The final declarations resulting from this month’s General Assembly and Lima high-level events will predictably be bland and uninspiring.

To keep things moving forward productively at this point in time therefore also

“ *The only thing we’re proposing is that we address the issue, because up until now many countries, including the United States, have refused to do so. It’s been 40 years since the world got into this drug war, and I think we should analyze whether or not we’re doing the right thing.*

”

President Juan Manuel Santos of Colombia⁴²

requires more informal settings of policy dialogues and expert meetings to further elaborate and discuss a series of viable reform proposals. These forums can take the debate out of the unhelpful and oversimplistic dichotomy between ‘war on drugs’ versus ‘legalisation’, and take it away from tedious negotiations focussed on finding the politically most acceptable lowest common denominator instead of finding the best practical solution. Such meetings have already proven their usefulness in recent years for building up a critical mass

of like-mindedness and the required determination and courage to break away from the political safety so easily found in maintaining the status quo.

Rather than conceptual brainstorming, such meetings should be firmly rooted in current political realities in the region, the legal context of the UN treaty system including legitimate treaty reform options, and the many reform efforts already under way in Latin America with regard to decriminalisation and proportionality of sentences. Especially relevant issues for the agenda would be: (1) to think through and apply with urgency feasible harm reduction measures to reduce the level of drug-related violence; (2) to support Bolivia’s legal defence of the right to chew coca leaf and allow a legal coca market to develop in the whole region; (3) to support Uruguay’s intention to legally regulate the cannabis market and bring together a like-minded coalition of some Latin American and European countries to follow the example; and (4) to develop more detailed and tailored substance-specific proposals for regulating or managing the different other drug submarkets.

Several reforms can move forward making use of the legal latitude within the UN drugs control conventions; for others some of their provisions will have to be challenged.⁴³ It is significant therefore that this year – symbolically marking 100 years since the very first international drugs treaty was signed in 1912 – for the first time the treaty regime is fundamentally questioned by some of its Parties. Bolivia became the first country ever to denounce the 1961 Single Convention on Narcotic Drugs and to re-accede with a reservation making clear that it can no longer accept the unjustifiable ban the treaty imposes on the coca leaf and its traditional uses. Uruguay announced its intention to opt for a legal regulation of the domestic cannabis market, risking that such a step will bring the country in conflict with its international treaty obliga-

tions. And also for the first time, the need for treaty reform was spoken out loud during this year's CND session in Vienna by two other Latin American countries, Guatemala and Argentina. The Minister of Health from Argentina said in the closing plenary that "we should perhaps analyse if, after decades and considering the results achieved so far, time has not arrived to start an open debate on the consistency and effectiveness of some of the provisions contained in those treaties".⁴⁴

Latin America is clearly taking the lead on drug policy reform and it won't be easy to find a safety valve this time. A historical breakthrough is in the making.

NOTES

1. Martin Jelsma coordinates the Drugs & Democracy programme at the Transnational Institute (TNI). Amira Armenta and Pien Metaal are researchers with TNI.
2. Youngers, C., *Drug-Law Reform Genie Freed From Bottle at Summit of the Americas*, Foreign Policy in Focus, April 18, 2012. <http://www.fpif.org/blog/drug-law-reform-genie-freed-from-bottle-at-summit-of-the-americas>
3. Wyss, J., *At summit, drug talk likely to be hot but hidden*, The Miami Herald, 14 April 2012. http://www.miamiherald.com/2012/04/09/2747033_p2/at-summit-drug-talk-likely-to.html
4. FCH: *estrategia anticrimen tendrá carácter hemisférico*, El Universal, 16 de abril, 2012. <http://www.eluniversal.com.mx/primera/39256.html>
5. Sample, K., and McCoy, J., *War on drugs: There has to be a better way*, The Miami Herald, 24 April 2012. <http://www.miamiherald.com/2012/04/24/2765878/war-on-drugs-there-has-to-be-a.html>
6. *Reducing the U.S. Demand for Illegal Drugs*, A Report by the United States Senate Caucus on International Narcotics Control, Washington D.C. June 2012, <http://drugcaucus.senate.gov>
7. Pachico, E., *At Summit, Americas Unanimously Back New Regional Crime Body*, InSight Crime, www.insightcrime.org, 16 April 2012.
8. OEA/Ser.E, CA-VI/CO.4/12, *Communiqué of the Heads of State and Government on the holding of the International Conference of Ministers of Foreign Affairs and Heads of Specialized National Agencies on the global drug problem*, 15 April 2012. http://www.summit-americas.org/SIRG/2012/041412/reunion_drugs_en.pdf
9. OEA/Ser.E, GRIC/M.2/INF.4/12, *Intervención de la Señora Ministra de Relaciones Exteriores de Colombia, María Ángela Holguín Cuéllar, ante la Segunda Reunión Ministerial del Grupo de Revisión e Implementación de Cumbres (GRIC)*, 5 junio 2012. http://www.summit-americas.org/SIRG/2012/060512/col_es.doc
10. *We have to find new solutions to Latin America's drugs nightmare*, OpEd of Otto Perez Molina in The Observer, June 8, 2012; <http://www.guardian.co.uk/commentisfree/2012/apr/07/latin-america-drugs-nightmare>
11. *Inaugural address by the President of CICAD, Mr. Rafael Bielsa*, OEA/Ser.L/XIV.2.51, CICAD/doc.1957/12, 11 May 2012; <http://www.cicad.oas.org/apps/Document.aspx?Id=1424>
12. *Palabras del Secretario General de la OEA José Miguel Insulza*, GRIC a nivel Ministerial en el marco de la XLII Asamblea General (Cochabamba, Bolivia), OEA/Ser.E, GRIC/M.2/INF.6/12, 5 June 2012. http://www.summit-americas.org/SIRG/2012/060512/sg_es.doc
13. *NGOs piden a la Cumbre de la Américas que tomen una decisión política sobre el tema drogas*, TELAM, 12 de Abril. <http://www.telam.com.ar/nota/21683>
14. Armenta, A., *A Growing Dissent*, Transnational Institute, May 2012. <http://www.tni.org/article/growing-dissent>
15. Jelsma, M., *Drugs in the UN system: the unwritten history of the 1998 United Nations General Assembly Special Session on drugs*, International Journal of Drug Policy, April 2003 (Volume 14, Issue 2). <http://www.undrugcontrol.info/images/stories/documents/unwritten.pdf>
16. Statement at the 55th session of the UN Commission on Narcotic Drugs, Vienna, 16 March 2012
17. *Intervención de la Presidenta de la República de Costa Rica, Doña Laura Chinchilla Miranda*, en ocasión de la Conferencia Internacional de

- Apoyo a la Estrategia de Seguridad de Centroamérica, Guatemala, 22 June 2011.
18. XIII Cumbre de Jefes de Estado y de Gobierno del Mecanismo de Diálogo y Concertación de Tuxtla, *Declaración Conjunta sobre Crimen Organizado y Narcotráfico*, Mérida, 5 December 2011.
http://www.sela.org/attach/258/default/Declaracion_Conjunta_Sobre_Crimen_Organizado_y_Narcotrafico_-_XIII_Cumbre_de_Jefes_de_Estado_y_de_Gobierno_del_Mecanismo_de_Tuxtla.pdf
19. Jelsma, M., *Chronicle of a Debate Foretold. Drugs on the Latin American summits*, 5 April 2012.
<http://www.druglawreform.info/en/weblog/item/3340-chronicle-of-a-debate-foretold>
20. Inaugural address by Rafael Bielsa, head of Sedronar and the President of CICAD at it's Fifty-first Session, 11 May 2012;
<http://www.cicad.oas.org/apps/Document.aspx?Id=1424>
21. Vega, W., 'No nos enganchem a un convoy de destrucción': Laura Chinchilla, *El Tiempo*, Bogotá, 13 April 2012.
22. This proposal was presented by the government on 20 June 2012 as part of an integral public safety protection plan, "Estrategia por la vida y la convivencia" ("Strategy for Life and Coexistence").
http://medios.presidencia.gub.uy/jm_portal/2012/noticias/NO_E582/Estrategia.pdf
23. Garibotto, G., 'Prisons and drugs in Uruguay, in: Systems Overload', *Drug Laws and Prisons in Latin America*, Washington Office on Latin America (WOLA) / Transnational Institute (TNI), December 2010.
http://druglawreform.info/images/stories/documents/Systems_Overload/TNI-Systems_Overload-uruguay-def.pdf
24. Barriuso Alonso, M., *Cannabis social clubs in Spain, A normalizing alternative underway*, TNI Series on Legislative Reform of Drug Policies Nr. 9, January 2011;
<http://www.druglawreform.info/en/publications/legislative-reform-series-/item/1095-cannabis-social-clubs-in-spain>
25. Ruchansky, E., *Sabini, del Frente Amplio: "Impacto enorme"*, Página 12, 21 June 2012;
http://www.pagina12.com.ar/diario/sociedad/su_bnotas/196905-59446-2012-06-21.html
26. Cámara de Diputados de la Nación, Proyecto de ley 0981-D-2012, 011 (16/03/2012), *Régimen contra el narcotráfico - ley 23737; modificaciones sobre despenalización de la tenencia de drogas para uso personal*.
<http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=0981-D-2012>
27. Inaugural address by Rafael Bielsa, op. cit.
28. Metaal, P., *Pardon for Mules in Ecuador: a Sound Proposal*, TNI Series Legislative Reform of Drug Policies Nr. 1 February 2009.
<http://www.druglawreform.info/en/publications/legislative-reform-series-/item/223-pardon-for-mules-in-ecuador>
29. Article 364, Constitution of the Republic of Ecuador, approved by popular referendum in September 2008.
30. Habeas Corpus (HC 104339) presented in defense of the defendant, arrested with about five kilos of cocaine and other drugs in lesser quantities, and imprisoned since August 2009.
31. Corte Constitucional, *Sentencia C-221/94, Despenalización del Consumo de la Dosis Personal*, Bogota, 5 May 1994.
<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6960#1>
32. Congreso de Colombia, Ley 1453, 24 June 2011;
<http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/ley145324062011.pdf>
33. Vargas, R., *Sociedad civil colombiana pide ser consultada sobre la reforma de la ley de droga*, TNI weblog, 6 October 2011.
<http://www.druglawreform.info/es/weblog/item/2805-sociedad-civil-colombiana-pide-ser-consultada-sobre-la-reforma-de-la-ley-de-droga->
34. 'El Quid': *La despenalización de cultivos ilícitos*, Citytv, Bogota, 13 May 2012.
<http://www.citytv.com.co/videos/784832/el-quid-la-despenalizacion-de-cultivos-ilicitos>
35. Hernández Tinajero, J. and Zamudio Angles, C., *Mexico: The Law Against Small-Scale Drug Dealing, A Doubtful Venture*, TNI Series on Legislative Reform of Drug Policies Nr. 3, November 2009;
<http://druglawreform.info/en/publications/legislative-reform-series-/item/220-mexico-the-law-against-small-scale-drug-dealing>

36. Hernández, Ana Paula, 'Drug legislation and the prison situation in Mexico', in *Systems Overload - Drug laws and prisons in Latin America*, Washington Office on Latin America (WOLA) / Transnational Institute (TNI), December 2010.
37. *Planteo uruguayo de legalizar marihuana desata polémica en América Latina*, La República, 21 June 2012; <http://www.lr21.com.uy/comunidad/1044343-propuesta-uruguay-de-legalizar-marihuana-desata-polemica-en-america-latina>
38. *Reducing Drug Trafficking Revenues and Violence in Mexico; Would Legalizing Marijuana in California Help?* RAND Corporation occasional paper, 2010 . http://www.rand.org/pubs/occasional_papers/2010/RAND_OP325.pdf
39. Hernández Tinajero, J., *La comunidad de negocios como un factor de cambio en las políticas de drogas en México*, TNI weblog, 14 June 2012; <http://www.druglawreform.info/es/weblog/item/3532-la-comunidad-de-negocios-como-un-factor-de-cambio-en-las-politicas-de-drogas-en-mexico>
40. Public Letter to Kofi Annan, 1 June 1998. <http://www.drugsense.org/unletter.htm>
41. Guillermprieto, A., *Drugs: The Rebellion in Cartagena*, The New York Review of Books, June 7, 2012. <http://www.nybooks.com/articles/archives/2012/jun/07/drugs-rebellion-cartagena/>
42. Wyss, J., *At summit, drug talk likely to be hot but hidden*, The Miami Herald, 14 April 2012. http://www.miamiherald.com/2012/04/09/2747033_p2/at-summit-drug-talk-likely-to.html
43. Bewley-Taylor, D., and Jelsma, M., *The Limits of Latitude – the UN Drug Control Conventions*, Series on Legislative Reform of Drug Policies Nr. 18, TNI/IDPC March 2012.
44. *Statement by the Minister of Health of Argentina, Juan Manzur, at the 55th session of the UN Commission on Narcotic Drugs*, Vienna, 16 March 2012.

Drug Law Reform Project

The project aims to promote more humane, balanced, and effective drug laws. Decades of repressive drug policies have not reduced the scale of drug markets and have led instead to human rights violations, a crisis in the judicial and penitentiary systems, the consolidation of organized crime, and the marginalization of vulnerable drug users, drug couriers and growers of illicit crops. It is time for an honest discussion on effective drug policy that considers changes in both legislation and implementation.

This project aims to stimulate the debate around legislative reforms by highlighting good practices and lessons learned in areas such as decriminalization, proportionality of sentences, specific harm reduction measures, alternatives to incarceration, and scheduling criteria for different substances. It also aims to encourage a constructive dialogue amongst policy makers, multilateral agencies and civil society in order to shape policies that are grounded in the principles of human rights, public health and harm reduction.



Transnational Institute (TNI)

De Wittenstraat 25
1052 AK Amsterdam
The Netherlands

Tel: -31-20-6626608

Fax: -31-20-6757176

E-mail: drugs@tni.org

www.druglawreform.info

www.undrugcontrol.info