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Leap of Faith: Perspectives on Drug Legalisation Following the Summit of the Americas

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After decades as a seemingly unchallengeable feature of the new global system, the prohibition of drugs is finally coming under sustained criticism from a broad-based coalition, which for the first time includes sitting heads of state. While this is an entirely welcome development given the variety of significant problems associated with the "War on Drugs," a number of significant uncertainties remain with respect to the future of drug trafficking and drug violence in a post-universal prohibition world.

Why the phrase "post-universal prohibition?" One of the defining characteristics of the contemporary economy of drug trafficking is that it takes place entirely beyond any means of state control. Every stage in the "life cycle" of narcotics has been made illegal on an international basis, from production through distribution, use, and profit-making and sharing. In the absence of any other form of contract enforcement, violence has become critical to the regulation of this economy, with devastating results for the people of Latin America, Central Asia, and a variety of other places. This makes drugs distinct from other forms of illegal economies, such as timber and oil, which exist in a legal grey area and can even in some circumstances be laundered and enter legitimate markets.

The consensus around drug prohibition is largely, though not entirely, manifested through the UN Single Convention on Narcotic Drugs, whose 50-year anniversary was celebrated just last year. This instrument, along with a variety of related treaties and conventions, are amongst the most widely-observed international instruments of any kind in the world, and they have institutionalised a form of path-dependence where countries are only free to choose how aggressively they outlaw the life cycle of drugs, not whether or not to pursue this course of action. In other words, this prohibition consensus has had the effect of lifting the responsibility for the global War on Drugs out of the national level and to an international level, where it is extraordinarily difficult for an individual state to challenge. As a result, the only countries which do so are either pariah states (such as North Korea and, briefly, Manuel Noriega's Panama) or relatively small social democracies which have explored limited decriminalisation and treatment-based alternatives (the Netherlands and Portugal, for example). The former are not full participants in the international system, and the latter generally only address the usage end of the drug ecosystem. For all intents and purposes, then, there is very little information to go on with respect to how the international trade in drugs – and the violence which all too often accompanies that market – would react to a fundamental change in the prohibition system.

And, until very recently, there was little reason to believe that the prohibition system was in any way vulnerable. Opponents of prohibition had difficulty getting officials anywhere in the world to hear them out, and the staunch, unified backing of the Single Convention and its antecedents from Washington to London, Moscow and Beijing left most observers of international drug policy convinced that any adjustments to drug prohibition would be limited and tactical, at best – like the Obama Administration's quiet withdrawal of the "War on Drugs" terminology, a positive development which nevertheless was unaccompanied by any more significant policy change.

But now things appear to be evolving rapidly on the anti-prohibition front. In 2009, a group of former Latin American presidents and ministers signed a declaration that current drug policy was not working and needed to be fundamentally realigned. Earlier this year, President Otto Perez Molina of Guatemala declared openly that the War on Drugs has been a failure, and that the policies which support prohibition need to be replaced. Meanwhile, other sitting Latin American governments, including those of Brazil, Colombia and Mexico, have expressed a willingness to explore new alternatives, although they have stopped short of calling for an end to prohibition. Importantly, the Obama Administration has expressed a willingness to participate in this debate, even as it maintains an adamantly anti-legalisation stance.

These matters came to a head at the Summit of the Americas in Cartagena**,** Colombia, in mid-April. While the American media's coverage of the event was somewhat overshadowed by the poor behaviour of a number of Secret Service and military officers, this summit may be seen in the future as a critical moment in the history of the prohibition consensus: the first time since Richard Nixon's 1971 declaration that drugs were "public enemy number one" that American policymakers at the highest level openly acknowledged that alternatives to drug prohibition were worthy of consideration.

However, it is premature to see it as a turning point. While the countries whose leadership is most vocal about repealing prohibition are from states with considerable amounts of drug production and trafficking, prohibition is still backed to the hilt by the largest consumer countries, including the United States, Russia, China, and most Western European nations. This points to one the critical dichotomies in the modern drug trafficking world: that by and large, the production and trafficking of drugs takes place in poorer and more violent places than their final sale and usage. Which isn't to say that people in producing and trafficking countries don't use drugs; only that citizens of rich countries use more, and (most importantly) are willing to pay the highest prices for them. It's that differential – between the pennies made by the Colombians and Afghans producing the heroin and opium and the dollars spent by consumers in Europe and the U.S. – which provides the drug market with so much of its flexibility and resilience. The massive global supply chains which move industrial quantities of drugs across vast distances can survive in the face of determined law enforcement (and often military) opposition because the profit margins on whatever proportion of the cargo reaches its destination are so vastly high.

This dynamic is likely to resist piecemeal efforts at legalisation. Given that they have evolved to resist all manner of disruptions, drug supply chains are unlikely to suffer vastly from one country or another's decision to end prohibition; after all, the market for drugs in that country will still exist regardless of whether or not drugs are legal, though whether it will grow, shrink, or simply persist is an open question. Nor will legalisation necessarily reduce violence, especially in the short term. Illegality imputes certain important characteristics on resource conflicts, but not all resource conflicts are fought over illegal products – diamonds from the conflict zones of West Africa during the 1990s are the obvious counter-example here. Simply declaring drugs legal at the point of sale in a small number of countries might change the mechanisms of drug production and trafficking somewhat, but it will not result in an immediate transition from the armed model preferred by the Zetas, FARC or the Taliban to an orderly form of capitalism. Nor will those groups take kindly to competition from legitimate business. That said, depending on the market, violent actors may be more or less able to defend their turf: the marijuana plant, for example, is much easier to produce in a wide variety of conditions than the coca plant which requires specific climatic conditions mainly found in the Andean region where violent drug trafficking organisations remain strong, even in the wake of the well-publicised defeats and setbacks suffered by groups like the Shining Path and FARC. Over time, producers currently in business with violent drug traffickers might be coaxed into legitimate business, but doing so would require not only major security operations to protect them against reprisals, but a significant investment to win their loyalty by outspending the cash-rich cartels.

There are also significant questions about the actual mechanisms of legalisation on the international level. Absent a repeal of the Single Convention, a country which unilaterally legalised drugs and abetted production would likely find itself suddenly cast into the role of a pariah, denied foreign aid and favourable treatment in diplomacy and trade. Few countries are willing to take those kinds of risk for an uncertain set of benefits. That uncertainty is abetted by the fact that until an entire international drug supply chain is legalised, we simply do not have reliable information on what the effects will be on violence, economic development and public health. There is a substantial body of research on the dynamics of illicit drug markets, and some historical data on pre-Single Convention drug trafficking, but few direct precedents which illustrate how the modern system of drug trafficking, which evolved from a largely local trade to a massively globalised one entirely in the shadows, might react to attempts to bring it in from the light.

Put plainly, moving away from the current system requires a leap of faith.

None of this is intended as an argument in favour of the current system of prohibition. The failures of the war on drugs are numerous and well-documented, and it seems clear that inevitably, elite opinion in countries outside Latin America will come to accept that a change must be made. Indeed, the ground is already shifting in the international discourse about drugs and the appropriate way to manage the various harms from their use. But it remains far from obvious how or when the turning point against prohibition will come – or what will happen afterwards.

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