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Diverging Trends in International Drug Policy Making: The Polarisation Between Dogmatic and Pragmatic Approaches

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The big trends in drug policy over the past decade reveal two opposing tendencies: one tends towards tolerance and pragmatism and has its centre of gravity in Europe, while the other under US guidance tries to reinvigorate a zero-tolerance mentality using more repressive means. These diverging trends start from a shared recognition that all combined efforts thus far – eradication, crop substitution, drug seizures, disruption of trafficking groups, demand reduction – have failed in terms of global impact. There may be a wealth of good practices on the local level, but there is barely any reduction in either supply of or demand for illicit drugs.

Some conclude that this recognition should lead to a global evaluation: re-assessment of the applied principles, opening of the debate, more space for experimentation with other approaches and a focus on more realistic aims in terms of reducing drug-related harms. Others, however, maintain that the reason the 'medicine' has not worked is that not enough has been applied and that the logical response should be to apply a stronger dose: re-affirm political commitment, oppose any tolerance, close ranks behind a 'get-serious' approach, set deadlines and don't be afraid to dirty your hands a bit to achieve results.

At the UN level, the polarisation between the two trends has caused paralysis. The United Nations International Drug Control Programme (UNDCP) has actively promoted the re-affirm discourse, trumpeting doubtful success stories under the slogan "*A drug free world — We can do it!*". In the sessions in Vienna of the UN Commission on Narcotic Drugs (CND), it is clear that the more liberal-minded countries are taking a low profile. Careful not to fuel tensions that might endanger carefully conquered ground for experimentation, they opt to keep the debate as general and diplomatic as possible, avoiding open controversy in the CND over their policy directions.

The mid-term UNGASS review scheduled for April 2003 could provide a new opportunity to achieve a breakthrough. A ministerial meeting will be included in next year's CND session to evaluate progress made with regard to the goals set out in the Political Declaration of the 1998 UNGASS on drugs. The review provides the first global opportunity since the UNGASS to re-assess and adjust the current international drugs policy framework.

DEMAND

On the demand side, the Harm Reduction concept has spread very fast in recent years and has now become the basis for a rational and pragmatic drug policy in almost every European Union country and several others like Australia, New Zealand, Canada and Brazil. Practices like decriminalisation of consumption, leniency in law enforcement towards cannabis and towards possession of other drugs for personal use, methadone prescription and needle exchange programmes are commonplace nowadays. The more controversial steps further along the path of leniency, like the 'coffee shops', heroin prescription programmes, injection rooms and XTC testing, have received acceptance beyond the pioneer countries, Switzerland and the Netherlands, and are under consideration or in preparation in several other countries. Compared with the tense situation at the time of the 1992 Maastricht Treaty, Europe has advanced rapidly on these issues.

Also in the UN system the harm reduction concept is gaining ground, agencies like WHO, UNDP, UNAIDS use the term as a matter of course, and the UNGASS last year on HIV/AIDS adopted a Declaration that "*harm reduction efforts related to drug use*" and "*expanded access to essential commodities, including [...] sterile injecting equipment*" should be ensured by 2005. The 1998 Special Session on drugs referred to "*reducing the adverse consequences of drug abuse*" as one of the guiding principles of demand reduction. Unfortunately, the agency supposed to coordinate drug control efforts within the UN system, the UNDCP, is the only one that continues to ban the concept and avoid any debate about it. Given the developments system-wide, UNDCP has become the odd one out.

On the cannabis front, policy developments are gaining steam. The United Kingdom has reclassified cannabis from a class B to class C drug, Switzerland is about to approve legislation that would decriminalise also cultivation and possession, and after an exhaustive two-year study of public policy related to cannabis, the Canadian Senate Special Committee on Illegal Drugs recently concluded that it should be legalized, that cannabis should be treated not as a criminal issue but as a social and public health issue.

There is no question that sooner or later the tolerance trend will run into the limitations of the UN conventions. It already touches the very edges of the letter and spirit of some articles. All steps taken along this path so far are defensible in that they adhere to the 1961 Single Convention and even most of the stricter obligations agreed to in the 1988 Vienna Convention. But the defence does require some creativity in the interpretation of 'medical and scientific use' which is the main area where the conventions sanction some experimentation. Still, the latest INCB report, using a strict interpretation of the conventions, warns in strong terms about an increasing tension between expanding lenient practices and strict adherence. The 'room for manoeuvre' is running out. If the countries committed to the search for pragmatic solutions want to advance any further, it becomes urgent to begin to question openly and seriously the straitjacket of the conventions.

SUPPLY

On the supply side, quite to the contrary, we've seen an escalation over the past decade of repressive approaches. Intensification of chemical spraying of crops in Colombia, an attempt to develop mycoherbicides to start a biological front in the War on Drugs, increasing military involvement in drug control efforts especially in Latin America under US leadership, collaboration with the Taleban regime to impose an opium ban in 2000 and the pressure on the Karzai government now to enforce the ban while nothing is in place yet in

terms of alternative livelihoods, all can be seen as signs of the escalation of supply side policies. In that context should also be seen the setting of the 2008 deadline at the United Nations General Assembly Special Session (UNGASS) on drugs *"to eliminating or reducing significantly the illicit cultivation of the coca bush, the cannabis plant and the opium poppy by the year 2008."*

In the course of the past decade worries spread about what was called *"the fatalistic attitude that the war against drugs is a 'lost cause'. [...] this should not be for us the moment for discouragement and disengagement, but rather it should be the moment to renew and enhance our determination in this war."* Between 1993-1996 several high-level UN meetings were convened to *'evaluate the effectiveness of the international drug control instruments and to identify areas of satisfactory progress and weakness, and to recommend appropriate adjustments of drug control activities whenever required'*.

At the meetings there was remarkable unanimity about the failure of the control system, while the growing polarisation surfaced about which direction to take. Several countries advocated an open-minded evaluation. Like Mexico who urged *'to launch an international time of reflection'* and to review the current classification of drugs *"in order to reduce the illicit drug market"*.

Like Mr. Baltasar Garzón the now world-famous Spanish judge who in 1993 represented the National Drug Plan: *"The time has come to pause and meditate on the solutions that should be adopted. I intend to advocate, in my country, the opening of a general debate to evaluate what has been achieved and to think about the future. We should come to this debate without any preconceived ideas or immovable dogmas. We must be open to the exchange of ideas. A similar process of reflection, within and from the United Nations, would be appropriate."*

Or Australia: *"Alternative strategies should continue to be analyzed. We are not advocating any particular change, but saying, don't dismiss innovative approaches which do not conform to current paradigms. [...] Don't avoid sensitive issues like harm reduction which the Commission must address."*

Bolivia noted that *"it was impossible to continue on the present road"*, and called for a world summit to *"seek out the reasons for the impotence of the present system of control"*.

An Advisory Group was set up to give recommendations. The Group concluded that *"a more detailed study of the implications of decriminalization and of harm-reduction campaigns, might well produce new perspectives leading to unexpected solutions."* It also recommended to *"review the adequacy of existing definitions in the 1961 and 1971 conventions, with particular reference to various cannabis and coca leaf products"*. And the group supported the proposal to hold a drug summit arguing that *"such a meeting would provide an opportunity to evaluate government achievements [...] The meeting could also examine and reaffirm principles and positions on a number of relevant issues, including the question of legalization."*

Many others, however, were not at all pleased by this open tone in the debate. Uruguay expresses its fear about even allowing dissent to be expressed: *"We have deep concern at the voices raised for liberalizing drug consumption. [...] The UN from its high position must be clear. Any doubt, hesitation, or unjustified review of the validity of goals will only undermine our commitment. [...] Our goals are noble and inflexible. We cannot be successful if there are discordant voices. We cannot retreat, we must be steadfast in our goals."*

At the end of the series of UN meetings, by 1996, all doors were closed. No detailed study into Harm Reduction was initiated, because *"such research might send wrong signals to proponents of legalization."* WHO did undertake a study on coca concluding that its use

had *"no negative health effects and has positive, therapeutic, sacred and social functions."* But the report was never published after the US threatened to stop WHO funding. The US representative concluded that *"if WHO activities relating to drugs failed to reinforce proven drug-control approaches, funds for the relevant programs should be curtailed."*

The summit proposal – to 'pause and think', a global moment of reflection – became reduced to the 1998 UNGASS, with a specified objective not to 'evaluate or re-assess', but to 'renew commitment' and 'strengthen the implementation' of the conventions.

As a British delegate summarised the opposition against a review of the drug control instruments: *"We have the machinery; we need now to make it work better. In particular, we need a more solid international front in support of the 1988 United Nations Convention. This is an instrument with teeth, and we need to make it bite."*

Dead Parrot

The 1988 Trafficking Convention and the 1998 Action Plans have unleashed an avalanche of new legislation, of harmonisation of laws and sentences, extradition agreements, and control and reporting systems for money laundering, precursors etc. All in the context of the attempt to make the system bite. But, as a Dutch delegate to the CND predicted: *"The whole situation is correctly characterized in terms of 'giant criminogenic multiplier effects' [...] Implementation of the 1988 Convention will deepen our knowledge. But it will not turn the tide."*

And it didn't. A lot more questionnaires and forms have to be filed, more law enforcement measures are implemented, more controlled deliveries and undercover operations, more drugs seized, more people arrested, more extraditions and higher sentences, but still there is no shortage on the market.

As the chairman of the UK Home Affairs Select Committee Chris Mullin, said: *"Attempts to combat illegal drugs by means of law enforcement have proved so manifestly unsuccessful that it is difficult to argue for the status quo."* The Committee report concluded: *"If there is any single lesson from the experience of the last 30 years, it is that policies based wholly or mainly on enforcement are destined to fail. It remains an unhappy fact that the best efforts of police and Customs have had little, if any, impact on the availability of illegal drugs and this is reflected in the prices on the street which are as low as they have ever been. The best that can be said, and the evidence for this is shaky, is that we have succeeded in containing the problem."*

The Interpol representative told one of the high-level conferences halfway the 1990s: *"I am reminded of the film title, 'Same Time Next Year' — as the years go by, there is no real improvement in the situation. [...] Next year we hope for serious progress, but we can't report it today."*

Let's face it. The current drug control system is not working. Governments can try over and over again to argue that the system is alive and kicking, build new prisons to stall their increased numbers of arrests, convene new meetings to re-affirm commitment, to call for more strict adherence to the conventions and to pose new deadlines, but in the end it is still a dead parrot.

With sufficient funds and law enforcement measures, trafficking routes and cultivation areas can be shifted from one place to another, drug cartels can be dismantled and replaced by new networks, tens of thousands of couriers can be put behind bars to be replaced from the endless army of the poor, and there may even be temporary disruptions in the availability of certain drugs in certain places, forcing consumers to find substitutes for their habit.

But there will never be a drug-free world, the 2008 deadline is insane, and the current repressive regime is causing many additional problems. Instead, we should focus on the many solutions that DO exist in terms of creating more human dignity and reducing the levels of harm caused by drugs and by repressive drug policies; solutions that will at the same time contribute to gradually diminish the extent of drug-related problems in a balanced way.

This is a dead parrot, the system is not going to bite.

CONCLUSIONS

Now in the Monty Python sketch about the dead parrot, the owner of the pet shop undertakes many failed attempts to argue that the remarkable bird is only resting, pointing out his beautiful feathers, hitting the cage to make the dead parrot move, but in the end he does conclude: *"Well, I'd better replace it, then."*

Unfortunately many in the drug control complex haven't reached that conclusion yet and are still hitting the cage: *"You see? there, it moved"*.

But appeals to open the debate are getting stronger, including the need to revise the drug conventions. The UK Committee for example, concluded: *"we believe the time has come for the international treaties to be reconsidered. We recommend that the Government initiates a discussion within the Commission on Narcotic Drugs of alternative ways – including the possibility of legalisation and regulation – to tackle the global drugs dilemma."*

The Canadian Committee *"recommends that the Government of Canada inform the appropriate United Nations authorities that Canada is requesting an amendment to the conventions and treaties governing illegal drugs"*.

The urgency now is to create the political space which would allow a reform process to move ahead, guided by open-mindedness, evaluation of practices on the basis of costs and benefits, leeway for experimentation and freedom to challenge the wisdom of the existing conventions. We do not yet know the ultimate outcome of such a reform process, but we have to replace the dead parrot with something.

In the search for a more humane and more effective system of regulation, countries and local authorities should somehow be given more space for policy changes and experiments than the conventions allow for. Such space also has to be opened up for the production side, where the conventions do not allow any latitude. In Southern countries this policy debate takes place under the Sword of Damocles of immediate INCB condemnation, US de-certification, pressure on preferential trade agreements and development aid cuts. More space for policy diversity is crucial, because in the end alternative models will be developed bottom-up, building on best practices, from experimentation, rather than from academic exercises or theoretical polarised and politicised paradigm fights between prohibition and legalisation.

The tone of the global debate is already changing. Rational thinking is gradually replacing the dogmas of the past. The pragmatic trend in Europe has become irreversible. The time has come for the countries leading this way to become more assertive about their achievements, to bring this refreshing tone and pragmatism to the UN. The UNGASS mid-term review on 16 and 17 April next year provides an excellent opportunity we cannot afford to lose again.

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