

# Latin America and the United States, a change of philosophy in drugs matters.

## An analysis reconsidered in light of last UNGASS (United Nations General Assembly special session on drugs) conclusions

### ABSTRACT

*“The war on drugs has been a failure. The United States and Latin America are now shifting their approach to combating the trafficking of illegal drugs and how they deal with those who abuse the drugs”.*

“La guerra alla droga è stato un fallimento. Gli Stati Uniti e l’America Latina stanno ora spostando il loro approccio alla lotta contro il traffico di droghe illegali ed il modo di trattare con coloro che abusano delle droghe”.

Since 2012, more or less, so far there have been more fundamental changes in the scenario of drugs related policies both in Latin America and the United States than in all previous decades combined.

Three fundamental changes have occurred, each of which would be particularly important even if assessed by itself alone. Together they may, in theory, constitute a decisive factor to put an end to the disputed and disagreed war on drugs in the Latin American hemisphere.

Foremost, the referendums on legalizing marijuana in the States of Colorado and Washington (USA) in November 2012 have to be taken into the utmost consideration. For the first time, a few voters in the country that is the biggest consumer of illegal drugs generally, and of cannabis in particular, approved proposals to legalize possession, production and distribution of cannabis.

While in Oregon a similar initiative failed and a proposal calling for a cannabis limited legalization was defeated in California in 2010, results in Colorado and Washington sent a strong message to the rest of the United States and of the international community. These results have not only created a conflict between federal law and the law of the States, but they also indicate a noticeable change in the American attitude.

The President Barack Obama’s reaction before voting in Colorado and Washington was significant too, since they took place in States in which he easily won as candidate for re-election. The legal and political problems involved by the American people’s decision are not minor: marijuana remains an illegal substance according to federal legislation and the UN international conventions on drugs and psychotropic substances adopted by United States. Mo-

reover, it's an issue still very delicate: although opinion surveys in the 2012 polls indicated for the first time a small majority in favor of legalization, opponents are still very vehement about it. President Obama, in an interview in December 2012, made three innovative statements to be taken into account. First, he said that the enforcement of the federal law on marijuana in Colorado and Washington was not a priority of his Government, because he had "more important things to do". Secondly, he reiterated his opposition to legalization, but then added: "at this very time". For the first time a President of the United States, in the exercise of his functions, was implying in some way a possible change in future policy. Finally, he supported the organization of a "national conversation" on the issue of State law against the federal law on similar issues.

The third change in very recent months occurred in a country that is one of the largest suppliers of drugs, Mexico, through which virtually all drugs destined to United States pass: cocaine, heroin, marijuana and methamphetamines. The first of December 2012, Enrique Peña Nieto succeeded Felipe Calderón in the Mexican Presidency. As it happens almost everywhere, the transition constituted an opportunity to carefully assess the policies of the outgoing government, even though the new one seemingly had not the intention to modify those previous policies in the short term.

Indeed, in Mexico there has been in the past a severe judgement on Calderón's "war against drugs". In fact, The Washington Post reported, on the grounds of internal government documents, that more than 25.000 people disappeared during the six years mandate of Calderón, in addition to the approximately 60.000 deaths due to the war on drugs in the country.

The Human Rights Watch NGO wrote an open letter to current President Pena Nieto, asking whether he intended to do something in relation to the thousands of missing Mexicans. Then, in a series of leaks and explicit statements, the new government highlighted the very high legal, bureaucratic and financial costs of past policies and stated that, despite enormously greater spending in law enforcement and security, many more crimes of all types had been committed.

In a few words, the latest traditional principle applied regarding the enforcement of prohibitionist and punitive policies and legislations on drugs was declared several times to be a catastrophic failure, with very high costs and without major results for the country, the rest of Latin America or United States.

Consequently, the main defenders of that principle (in the Latin American area represented by Calderón himself, former Colombian President Álvaro Uribe, the current and previous Presidents of Brazil and the conservative and security forces of the United States) seem to have been losing public support in recent years.

Latin American supporters of a slightly different strategy (President of Colombia Juan Manuel Santos and former President of Guatemala Otto Pérez Molina, for instance), on the basis of premises of public health and legalization, gained in recent years ground and consensus.

On another hand, Uruguay adopted during 2013 a legislation fully legalizing marijuana. The Organization of American States (OAS) based in Washington, through its commission CICAD (Inter-American drug abuse control Commission), in the meantime delivered several reports to the regional heads of State on alternative strategies related to the enforcement of legislation against drugs and on the "best practices" in force in other countries. And it is likely that other regions of the United States might approve a full legalization of marijuana or its medicinal use (almost 20 American States already allow it).

It appears that a turnaround or a change in drugs policies is on its way. Of course, it will not happen overnight, nor everywhere, or in relation to all drugs, but after decades of ethical and public health oriented criminalization and prohibition, things might have begun to move

in a different (and potentially dangerous?) direction. On the other hand, the largest part of international community remains very attentive and keen on avoiding that many decades of fight against narcotics and psychotropic substances, in order to implement a “world without drugs”, might be undermined by a few extreme stances pro-legalization.

From 19th to 21<sup>st</sup> of April 2016, the UNGASS (UN General Assembly Special Session on Drugs) took place. In the aftermath of such event the above mentioned OAS-CICAD expressed its official position on the General Assembly conclusions, reaffirming that the drug problem remains a high priority for American Nations and that the latter have to rally around very important commitments. In particular, CICAD: supported the UN international community when it reaffirmed the primacy of three United Nations drug conventions; underlined the need to emphasize public health approaches to drugs; encouraged closer collaboration between the public health and justice communities; expressed support for innovative sentencing reform initiatives and proportionate sentencing; recognized the importance of continued close cooperation between nations to effectively confront transnational criminal organizations, particularly those trafficking in drugs; emphasized the need to urgently address collaboratively emerging drug challenges, such as new psychoactive.

Thus, OAS highlighted the opportunity to streamline and optimize OAS drugs operations by seeking to establish a more harmonized Secretariat on Multidimensional Security, that shall include the establishment of a new department against Transnational Organized Crime focus on narcotics issue in American hemisphere, deeming essential that public health, law enforcement and statistic-collection and analysis entities work hand-in-hand to formulate evidence-based international drug policy recommendations and to reflect the integrated and balanced approach to drug policy agreed to by consensus at UNGASS in April.

As published by the New York Times on its April 25<sup>th</sup> issue, last UNGASS had been summoned at the urging of Mexico, Guatemala and Colombia, in order to call world leaders to meet at the United Nations to discuss saner ways to fight the drug trade. Substantially, they did not get very far toward a shift in approach with regards to the current stances. Nonetheless, there was a consensus that investing in health care, addiction treatment and alternatives to incarceration would do more to end the drug trade than relying primarily on prohibition and criminalization.

“A war that has been fought for more than 40 years has not been won,” President Juan Manuel Santos of Colombia said in an interview. “When you do something for 40 years and it doesn’t work, you need to change it.”

Mr. Santos and the presidents of Mexico and Guatemala argued that the war on drugs, which has been largely directed under terms set by the United States, has had devastating effects on their countries, which are hubs of the cocaine, marijuana and heroin trade. “When two elephants fight, the grass always suffers the most,” President Jimmy Morales of Guatemala said, referring to the drug cartels and American law enforcement agencies.

Since 2014, the three governments and like-minded allies have sought to lay the groundwork for changes to the current prohibitionist approach, which is grounded in the three UN Conventions adopted between the early 1960s and 1988. Those treaties, which required that signatories outlaw the trade and possession of controlled substances — including marijuana — were conceived at a time when international leaders saw law enforcement as the most effective way to curb drug production and consumption.

At present, several countries with considerable diplomatic clout, including China and Russia and leading European countries, maintain that criminalization should remain the cornerstone of the fight against drugs.

The Obama administration supported the UN meeting, and has been relatively receptive to new ideas from neighboring countries. “We are seeing tremendous advances in our under-

standing of drug dependency and our ability to address substance use disorders as a public health — rather than a strictly criminal justice — challenge,” Secretary of State John Kerry said in a press statement at the UNGASS opening on April 19, thus confirming former President Obama’s stances and statements:

“In New York this week, the United States will seek international consensus on an approach that upholds the three UN drug conventions – which continue to provide a solid foundation for international cooperation on drugs – and that fully integrates public health priorities, recognizing drug abuse as a chronic disease. This means implementing alternatives to incarceration where appropriate, the use of drug courts, and sentencing reform to channel those who suffer from substance use disorder into recovery and treatment, not just prisons. Finally, it means strengthening international law enforcement cooperation to combat violent drug trafficking organizations who threaten all nations and all peoples.

President Obama said that successfully addressing the drug problem is a national priority critical to promoting the safety, health, and prosperity of the American people. These same aspirations are shared by people of all the nations that will take part in the UN session. We have an opportunity to take an important step towards meeting the challenge posed by drugs around the world, and with the resolute commitment of our nation and other nations working together in common cause, we will”.

But, in the end, to forecast whether and when such change in US public policies, as outlined in Barack Obama’s Administration, will take place remains the hardest challenge. Will ever the United States underpin and support a real anti-prohibitionist approach to drugs matters, thus leading a global shift in prevailing UN philosophy? No one could tell, at present, even more when Donald Trump’s reactionary winds are blowing.