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## Drug Policy in an Era of Normative Change: Prohibition and Harm Reduction in Uruguay, Ecuador, and Peru

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FLORIDA INTERNATIONAL UNIVERSITY

Miami, Florida

DRUG POLICY IN AN ERA OF NORMATIVE CHANGE: PROHIBITION AND  
HARM REDUCTION IN URUGUAY, ECUADOR, AND PERU

A dissertation submitted in partial fulfillment of

the requirements for the degree of

DOCTOR OF PHILOSOPHY

in

INTERNATIONAL RELATIONS

by

Nicolas Beckmann

2019

To: Dean John F. Stack, Jr.  
Steven J. Green School of International and Public Affairs

This dissertation, written by Nicolas Beckmann, and entitled Drug Policy in an Era of Normative Change: Prohibition and Harm Reduction in Uruguay, Ecuador, and Peru, having been approved in respect to style and intellectual content, is referred to you for judgment.

We have read this dissertation and recommend that it be approved.

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Terrence Peterson

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Félix E. Martín, Major Professor

Date of Defense: May 21, 2019

The dissertation of Nicolas Beckmann is approved.

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Dean John F. Stack, Jr.  
Steven J. Green School of International and Public Affairs

---

Andrés G. Gil  
Vice President for Research and Economic Development  
and Dean of the University Graduate School

Florida International University, 2019

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## DEDICATION

I dedicate this dissertation to Catalina and Miguelangel, who have been my greatest motivation to keep writing.

## ACKNOWLEDGMENTS

The following dissertation marks the end of a personal and professional journey, which I could not have completed without the help of numerous individuals and institutions. Most importantly, I could not have written this dissertation without the generous financial support of FIU's University Graduate School, the Steven J. Green School of International and Public Affairs (SIPA), and the Department of Politics and International Relations (PIR), which supported my studies and research with a Presidential Fellowship, a Graduate Assistantship, a Doctoral Evidence Acquisition Fellowship, and a Dissertation Year Fellowship. I am also grateful for the support I received to attend several academic conferences from the Graduate and Professional Student Committee (GPSC), SIPA, the PIR department, and the Kimberly Green Latin American and Caribbean Center (LACC). Ultimately, I could not have done evidence acquisition in Ecuador without the support of the 2017-2018 Morris and Anita Broad Research Fellowship, awarded by SIPA. I am deeply honored by the trust these institutions placed in my scholarly abilities and hope that the following dissertation does justice to their support.

While the above-mentioned assistance gave me the financial stability to accomplish my goals, the PIR department and SIPA provided the perfect environment for my intellectual growth and professional development. Apart from the outstanding quality of the training, I am particularly grateful for the mentoring, support, constant encouragement and close relationships I was able to develop with my professors. From my first days at FIU, my advisor Dr. Félix E. Martín has mentored me in academic, professional, and personal matters. Our ongoing conversations enabled me to nurture my

ideas about drugs and politics and transform them into a feasible research project that nevertheless embraces the complexity of topic. While his guidance has made me a better scholar and person, I am just as grateful for his long-standing efforts to create a strong community among PIR students. It is precisely this sense of community that has made my time at FIU so memorable and so much fun. I am equally indebted to my committee member, professor, and former graduate program director, Dr. Susanne Zwingel. As a professor, she fostered my interest in international norms, stimulated me to read far beyond mainstream IR theory, and encouraged me to follow my intuition as a scholar. As graduate program director, she fought endlessly to make our department a better place for its graduate students and supported us in every possible way. Dr. Terrence Peterson from the Department of History has joined my committee enthusiastically on short notice and has been a constant source of encouragement and assistance since then. Over several coffees, he helped me to formulate my ideas more effectively and provided crucial guidance for the historic part of the analysis. Moreover, based on his experiences he gave me numerous insights about the challenges and career prospects for young scholars. Dr. Erin Kimball Damman's classes about methodology and research design were among the most memorable and enjoyable ones I ever had. Her capacity to clarify complex and sometimes dry material and generate controversial discussions were a huge influence on how I want to teach my own courses. Furthermore, her classes shaped my thinking about causality and objectivity in the social sciences and were of paramount importance for the development of this dissertation. Dr. Eduardo Gamarra's teaching and knowledge about South American politics have in many ways substantiated my understanding of the region and have been crucial for the advancement of my case studies. Apart from my committee

members, I have benefited immensely from my classes with Dr. Breslin, Dr. Gould, Dr. Mesbahi, and Dr. Zeng, as well as the numerous interactions with the PIR department's outstanding faculty. In one way or another their insights have made their way into this dissertation.

One of the best things that happened to me at FIU is the friendship and support I received from our community of graduate students. It is not an exaggeration that we celebrate each other's successes as our own and help one another to overcome phases when we are struggling. I am especially grateful to Onur Erpul, Kevin Modlin, Nicolás Terradas, and Diego Zambrano, who have become like a second family. I am also indebted to Jessy Abouarab, Bibek Chand, Lukas Danner, Matt Felice, Zenel García, Yang-gyu Kim, Orçun Selçuk and Mike Wartenbe for their advice and friendship.

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Although my three research trips were among the most memorable experiences of my life, they did not go by without some difficulties. On my last weekend in Quito I was hit by a car and hospitalized with a broken pelvis. My friend Juan Carlos Holguín took it

on him to assure that I received the right medical treatment and, just as important, that I had good company. He also took me into his home for several days, allowing me to recover in a comfortable environment after leaving the hospital. I am equally grateful to José Gabriel Reyes, who visited me every day and made this painful experience much more bearable through his positive spirit. I was also heartened by the quick responses and care I received from several individuals at FIU. Dr. Lidia Kos, Dr. Félix Martín, Birgitta Rausch-Montoto, and Dr. Susanne Zwingel not only facilitated my quick return to Miami but also made me feel that I was not alone at this difficult moment. Upon my return to Miami, my housemates Nicolás Terradas and Onur Erpul, as well as Kevin Modlin helped me whenever I needed assistance. My father Hansjuern stayed with me for three weeks and supported me in every possible way to get me back on my feet in due time. His company and encouragement were the best remedy for a quick recovery. I am also grateful for all the visits, calls, and messages I received during these weeks.

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While I was traveling in Colombia, I met the love of my life, Catalina Moreno Flórez. In very little time, our affection and attraction transformed into a serious enterprise of starting a life together. Her son Miguelangel not only accepted me as his mother's partner but also invited me to become his father. This surprising invitation

allowed me to become a more mature and responsible person a little bit sooner than expected. Their love and energy not only enriched my life but also motivated me to sit down every day and keep working on this dissertation. This is why I dedicate this dissertation to both of you.

ABSTRACT OF THE DISSERTATION

DRUG POLICY IN AN ERA OF NORMATIVE CHANGE: PROHIBITION AND  
HARM REDUCTION IN URUGUAY, ECUADOR, AND PERU

by

Nicolas Beckmann

Florida International University, 2019

Miami, Florida

Professor Félix E. Martín, Major Professor

The present dissertation investigates how the advocacy and contestation of international norms related to the production and use of psychoactive substances affected drug policy decisions in South America since 1971. The goal is to provide a more complete account of why most states in the region are sticking to prohibitionist policy models, despite their evident failure and an international context that has become more favorable to the exploration of alternative policies. At the same time, it seeks to detect some of the factors that enabled countries to move towards a framework of harm reduction, prohibition's main competitor in international drug policy debates.

The theoretical part of this dissertation delineates that international norms, and their advocacy and contestation, affect policy choices primarily by changing the domestic and international incentives for governments to act according to the norms' parameters. In line with this argument, the three case studies on Uruguay, Ecuador, and Peru reveal that, rather than responding to specific drug-related problems, considerations about power, material benefits, and international standing have driven most policy decisions. While the motivations behind drug policy changes are strikingly similar, case-specific

constellations of incentives, actors, events, and factors related to political cultures and systems, help explain differences in outcomes.

Despite the multiplicity of processes leading to different choices, the three cases illustrate several tendencies and resemblances, which contribute to a more complete understanding of the drug policy field in South America. Most importantly, in contrast to previous studies and popular narratives that tend to blame the U.S. for South America's drug policy failures, this dissertation emphasizes that key actors from South America not only accepted drug war policies but actively promoted prohibition and militarization. Through the emphasis of South American agency this dissertation offers a new historical contextualization of the war on drugs, which helps to understand why prohibition remains popular today. Given prohibition's popularity and embeddedness in institutional cultures, policy flexibilization were often catalyzed by events that caused large audiences to sympathize with victims of repressive drug policies as well as specific political junctures that allowed for effective local advocacy of alternative policy models.

## TABLE OF CONTENTS

| CHAPTER  | PAGE |
|--|------|
| I. INTRODUCTION .....  | 1    |
| 1.1 Background, Relevance, and Contribution .....  | 7    |
| 1.2 Case Selection and Research Strategy .....   | 14   |
| II. NORMS AND NARCOTICS: WHY INTERNATIONAL NORMS ARE<br>IMPORTANT TO STUDY DRUG POLICY CHANGES IN SOUTH<br>AMERICA ..... | 19   |
| 2.1 The Role of Norms in International Relations .....   | 19   |
| 2.2 Distinction 1: Norms of Behavior, Legal Norms, and Intersubjective<br>Norms .....                                    | 22   |
| 2.3 Distinction 2: Norms that Guide and Norms that Follow .....  | 24   |
| 2.4 Why Norms Matter .....   | 26   |
| 2.5 Distinction 3: Global, Regional, and Domestic-level Norms .....  | 27   |
| 2.6 How Norms Spread .....   | 28   |
| III. FROM LOCAL TO GLOBAL: A BRIEF HISTORY OF PROHIBITION<br>AND INTERNATIONAL DRUG CONTROL .....                        | 33   |
| 3.1 The Sino-Indian Opium Trade and the Beginning of International Drug<br>Control .....                                 | 34   |
| 3.2 The Origins of U.S. Leadership in the International Efforts to Control<br>Narcotic Drugs .....                       | 38   |
| 3.3 The 1909 Shanghai Opium Commission and the Path to the Hague .....   | 41   |
| 3.4 The Hague Opium Conference and Its Aftermath .....   | 43   |
| 3.5 Drug Control in the League of Nations: Early Period .....  | 45   |
| 3.6 The 1924/1925 Geneva Conventions .....   | 48   |
| 3.7 The 1931 Limitation Convention.....  | 51   |
| 3.8 The 1936 Convention for the Suppression of the Illicit Traffic in Dangerous<br>Drugs .....                           | 53   |
| 3.9 U.S. Leadership During World War II.....   | 55   |
| 3.10 Drug Control in the UN: Early Years .....   | 57   |
| 3.11 The 1961 Convention on Narcotic Drugs .....   | 60   |
| 3.12 The 1971 Convention on Psychotropic Substances .....  | 63   |
| 3.13 The 1972 Amendment to the Single Convention.....  | 66   |
| 3.14 The 1988 Convention against Illicit Traffic in Narcotic Drugs and<br>Psychotropic Substances .....                  | 68   |
| 3.15 Conclusion .....  | 72   |
| IV. CONTESTING PROHIBITION, ADVOCATING HARM REDUCTION:<br>NORMATIVE CHALLENGES TO A FAILING REGIME.....                  | 76   |
| 4.1 Ten Critiques of Prohibition .....   | 77   |
| 4.2 Legalization and Harm Reduction .....  | 83   |

|  |     |
|--|-----|
| 4.3 Actors and Activism .....  | 86  |
| 4.4 Changes in the System: The Flexibilization of International Drug Control ...             | 92  |
| V. CHANGE AND EVOLUTION OF SOUTH AMERICAN DRUG POLICIES .....                                | 101 |
| 5.1 South America in the IDCR .....  | 102 |
| 5.2 The Emergence of Prohibition .....   | 105 |
| 5.3 The Deepening of Prohibition in the 1970s .....  | 107 |
| 5.4 Militarization and Prohibition in the 1980s .....  | 113 |
| 5.5 Diversification in the 1990s .....   | 118 |
| 5.6 Continued Diversification in the First Decade of the 2000s .....                         | 122 |
| 5.7 The Legalization of Marijuana and Cannabis-Based Medicines .....                         | 126 |
| VI. INTERNATIONAL NORMS AND POLICY CHANGE: A THEORETICAL FRAMEWORK .....                     | 133 |
| 6.1 Epistemological Differences .....  | 134 |
| 6.2 Norms from a Rationalist Perspective .....   | 134 |
| 6.3 Norms from a Sociological Institutional Perspective .....                                | 136 |
| 6.4 Norms from a Post-Positivist Perspective .....   | 142 |
| 6.5 Towards a Rationalist Framework .....  | 147 |
| 6.6 Domestic Incentives .....  | 149 |
| 6.7 International Incentives .....   | 151 |
| 6.8 Applying the Framework .....   | 154 |
| 6.9 Why Rationalism is Not Enough: Identity, Context, and the Dynamic Content of Norms ..... | 155 |
| 6.10 Merging the Parts .....   | 158 |
| VII. URUGUAY'S PATH TOWARDS MARIJUANA LEGALIZATION .....                                     | 160 |
| 7.1 Uruguay's Drug Laws Before 1971 .....  | 160 |
| 7.2 The Decree Law 14,294 from 1974 .....  | 163 |
| 7.3 Analysis of the Decree Law 14,294 and Its Aftermath .....                                | 166 |
| 7.4 Law 17,016 from 1998.....  | 178 |
| 7.5 Analysis of Law 17,016 and Its Aftermath .....   | 180 |
| 7.6 The Regulation of the Marijuana Market through Law 19,172 .....                          | 188 |
| 7.7 Analysis of Law 19,172 .....   | 191 |
| VIII. ECUADOR'S JOURNEY BACK TO THE PAST.....  | 212 |
| 8.1 Ecuador's Drug Laws Before 1971 .....  | 213 |
| 8.2 Stronger Prohibition in the 1970s .....  | 219 |
| 8.3 Prevention and Prohibition in the 1980s .....  | 229 |
| 8.4 Law 108 .....  | 232 |
| 8.5 Analysis of Law 108 .....  | 235 |
| 8.6 Correa's Tolerant Wave (2007-2014).....  | 242 |
| 8.7 The Return of Prohibition under Correa (2015-) .....                                     | 248 |
| 8.8 Future Outlook .....   | 254 |

|     |  |     |
|-----|--|-----|
| IX. | COCA POLICY AND DRUG PROHIBITION IN PERU.....  | 258 |
|     | 9.1 Peru's Drug Laws Prior to 1971 .....   | 259 |
|     | 9.2 Peru Joins the "War on Drugs:" The Decree Law 22,095 .....   | 265 |
|     | 9.3 Coca Policy in the 1970s: From Ambivalence to Repression .....                                       | 270 |
|     | 9.4 The Implementation of Peru's Anti-Drug Policy in the 1980s: From<br>Optimism to Disenchantment ..... | 284 |
|     | 9.5 Drug Policy Under Fujimori (1990-2000) .....   | 290 |
|     | 9.6 Tied to Commerce: Drug Policy under Toledo (2001) and García (2006)...                               | 302 |
|     | 9.7 Full-Blown Enforcement Under Humala (2011-2016).....   | 308 |
|     | 9.8 The Legalization of Cannabis-Based Medicines and Future Outlook .....                                | 312 |
| X.  | CONCLUSION .....   | 319 |
|     | BIBLIOGRAPHY.....  | 327 |
|     | VITA.....  | 363 |



## LIST OF TABLES

| TABLE  | PAGE |
|--|------|
| 1. Global Adherence to International Drug Control Treaties .....   | 74   |
| 2. South America's Participation at International Drug Control Conferences in the Early 20 <sup>th</sup> Century ..... | 102  |
| 3. South America's Ratifications of Early Drug Control Conventions .....   | 103  |
| 4. South America's Participation at Major Drug Control Conference's within the UN System .....                         | 104  |
| 5. South America's Ratification of UN Drug Control Conventions and Amendments .  | 105  |
| 6. South American Drug Laws at the End of the 1970s .....  | 112  |
| 7. South American Drug Laws at the End of the 1980s .....  | 117  |
| 8. South American Drug Laws at the End of the 1990s .....  | 121  |
| 9. South American Drug Laws at the End of the First Decade of the 2000s .....  | 126  |
| 10. Legality of Cannabis and Cannabis-Based Medicines .....  | 128  |
| 11. Domestic and International Incentives to Change Drug Policies .....  | 154  |
| 12. Causes and Conditions Enabling Uruguay's Marijuana Legalization .....  | 211  |
| 13. CONSEP's 2014 Scale to Define Trafficking Categories for Different Drugs .....                                     | 244  |
| 14. Perception of Drug-Related Problems in Ecuador .....   | 245  |
| 15. CONSEP's Revised 2015 Scale .....  | 249  |
| 16. Perception of Crime/Public Security and Drug Consumption as Ecuador's Most Important Problem .....                 | 251  |
| 17. Perception of Drug Consumption as Country's Most Important Problem Across South America .....                      | 254  |

## LIST OF ABBREVIATIONS AND ACRONYMS

|         |  |
|---------|--|
| ABFL    | Archive and Library of the Legislative Function (Ecuador) [org. Archivo-Biblioteca de la Función Legislativa]  |
| AC      | Central Archive (org. Archivo Central)   |
| ADLP    | Digital Archive of the Peruvian Legislative (org. Archivo Digital de la Legislación del Perú)  |
| AHD     | Historic and Diplomatic Archive of Uruguay's Foreign Ministry (org. Archivo Histórico Diplomático)   |
| APRA    | American Popular Revolutionary Alliance (org. Alianza Popular Revolucionaria Americana)  |
| ARA     | Bureau of Inter-American Affairs, Department of State  |
| ASEP    | South American Agreement on Narcotic Drugs and Psychotropic Substances (org. Acuerdo Sudamericano sobre Estupefacientes y Psicotrópicos)                                       |
| ATPA    | Andean Trade Preference Act  |
| ATPDEA  | Andean Trade Promotion and Drug Eradication Act  |
| BNDD    | Bureau of Narcotics and Dangerous Drugs  |
| B.O.    | Official Bulletin (org. Boletín Oficial)   |
| C.C.    | Constitutional Court (org. Corte Constitucional)   |
| CIA     | Central Intelligence Agency  |
| CND     | Commission on Narcotic Drugs   |
| COIP    | Organic Integral Criminal Code (org. Código Orgánico Integral Penal)   |
| CONATON | South American Plenipotentiary Conference on Narcotic Drugs and Psychotropic Substances (org. Conferencia Sudamericana Plenipotenciaria sobre Estupefacientes y Psicotrópicos) |

|          |   |
|----------|---|
| CONSEP   | National Council for the Control of Narcotic and Psychotropic Substances (org. Consejo Nacional de Control de Sustancias Estupefacientes y Psicotrópicas)       |
| CONPACCP | National Confederation of Farmers from Coca-Growing Basins of Peru (org. Confederación Nacional de Productores Agropecuarios de las Cuencas Cocaleras del Perú) |
| C.P.     | Criminal Code (org. Código Penal)   |
| C.S.J.   | Supreme Court of Justice (org. Corte Suprema de Justicia)   |
| CSJN     | Supreme Court of Justice of the Nation (org. Corte Suprema de Justicia de la Nación)  |
| D.       | Decree (org. Decreto)   |
| DEA      | Drug Enforcement Agency   |
| DEVIDA   | National Commission for the Development and Life Without Drugs (org. Comisión Nacional para el Desarrollo y Vida sin Drogas)                                    |
| DIA      | Defense Intelligence Agency   |
| D.L.     | Decree Law (org. Decreto Ley)   |
| D.Leg.   | Legislative Decree (org. Decreto Legislativo)   |
| DNSA     | Digital National Security Archive   |
| D.O.     | Official Diary (org. Diario Oficial)  |
| D.O.U.   | Official Diary of the Union (org. Diário Oficial da União)  |
| D.S.     | Supreme Decree (org. Decreto Supremo)   |
| DND      | Division of Narcotic Drugs  |
| DMT      | N,N-Dimethyltryptamine  |
| DPA      | Drug Policy Alliance  |
| DPRC     | Drug Policy Research Center at RAND Corporation   |

|        |  |
|--------|--|
| DSB    | Drug Supervisory Body  |
| ECOSOC | United Nations Economic and Social Council   |
| EIC    | East India Company   |
| ENACO  | National Enterprise of Coca (org. Empresa Nacional de la Coca)   |
| FA     | Broad Front party (org. Frente Amplio)   |
| FBN    | Federal Bureau of Narcotics  |
| GC     | Civil Guard (org. Guardia Civil)   |
| GCDP   | Global Commission on Drug Policy   |
| G.O.   | Official Gazette (org. Gaceta Oficial)   |
| GOE    | Government of Ecuador  |
| GOP    | Government of Peru   |
| GOU    | Government of Uruguay  |
| IDCR   | International Drug Control Regime  |
| IDPC   | International Drug Policy Consortium   |
| INCB   | International Narcotics Control Board  |
| IO     | Intergovernmental Organizations  |
| IR     | International Relations  |
| IRCCA  | Institute for the Regulation and Control of Cannabis (org. Instituto de Regulación y Control del Cannabis) |
| JND    | Uruguay's National Drugs Board (org. Junta Nacional de Drogas)   |
| L.     | Law (org. Ley)   |
| LACDD  | Latin American Commission on Drugs and Democracy   |
| LoA    | Logic of Appropriateness   |

|          |   |
|----------|---|
| LoC      | Logic of (Expected or Anticipated) Consequences   |
| LSD      | Lysergic Acid Diethylamide  |
| MCR      | Member of Chamber of Representatives  |
| MDMA     | Methylenedioxymethamphetamine   |
| MERCOSUR | Southern Common Market (org. Mercado Común del Sur)   |
| MREMHE   | Ministry of Foreign Relations and Human Mobility of Ecuador (org. Ministerio de Relaciones Exteriores y Movilidad Humana del Ecuador)   |
| MREP     | Ministry of Foreign Relations of Peru (org. Ministerio de Relaciones Exteriores del Perú).  |
| MREROU   | Ministry of Foreign Relations of Uruguay (org. Ministerio de Relaciones Exteriores de la República Oriental del Uruguay)  |
| MRTA     | Túpac Amaru Revolutionary Movement (org. Movimiento Revolucionario Túpac Amaru)   |
| NGO      | Non-Governmental Organization   |
| NSDD     | National Security Decision Directive  |
| OAC      | Opium Advisory Committee at the League of Nations   |
| OAS      | Organization of American States   |
| OSF      | Open Society Foundations  |
| PCOB     | Permanent Central (Opium) Board   |
| PIP      | Peru's Investigative Police (org. Policía de Investigaciones del Perú)  |
| PLUSD    | Public Library of U.S. Diplomacy  |
| RAND     | Research and Development Corporation  |
| ReGESEP  | Governmental Meeting of South American Experts on Narcotic Drugs and Psychotropic Substances (org. Reunión Gubernamental de Expertos Sudamericanos sobre Estupefacientes y Psicotrópicos) |

|          |  |
|----------|--|
| R.O.     | Official Registry (org. Registro Oficial)                          |
| ROU      | Oriental Republic of Uruguay (org. República Oriental del Uruguay) |
| SL       | Shining Path (org. Sendero Luminoso)                               |
| THC      | Tetrahydrocannabinol   |
| TNI      | Transnational Institute  |
| UHV      | Upper Huallaga Valley  |
| UN       | United Nations   |
| UNFDAC   | UN Fund for Drug Abuse Control                                     |
| UNGA     | United Nations General Assembly                                    |
| UNGASS   | United Nations General Assembly Special Session                    |
| UNODC    | United Nations Office on Drugs and Crime                           |
| U.N.T.S. | United Nations Treaty Series                                       |
| URUBA    | Uruguayan Embassy in Buenos Aires                                  |
| USAID    | United States Agency for International Development                 |
| USG      | United States Government   |
| WOLA     | Washington Office on Latin America                                 |
| WTO      | World Health Organization  |

## I. INTRODUCTION

On February 7, 2017 Peru's National Police raided a clandestine marijuana laboratory in Lima's neighborhood San Miguel. However, instead of drug traffickers the laboratory was run by a group of mothers producing cannabis oil and other medicines for their children suffering from degenerative diseases. The incident raised public attention and initiated a national debate about marijuana prohibition, in light of its widely-acknowledged medical properties. Within the same year, the country's Congress almost unanimously approved a new law allowing scientific investigations as well as the import, production, and use of cannabis-based medicines. While the legalization of so-called medical marijuana does not contradict the rules and regulations of the prohibitionist International Drug Control Regime (IDCR), which allows for the use of drugs for medical and scientific purposes, Peru's decision represents a growing flexibilization of drug policies in South America, which would have been unimaginable a few decades earlier.

For several decades, drug policies across South America have been shaped by the goal to undermine and repress all activities facilitating recreational drug consumption through prohibitions, law enforcement, and the use of force. As outlined in greater detail in the following chapters, these policies have not only been ineffective in eliminating or reducing drug consumption, but also gave rise to powerful criminal industries that undermine public security and the rule of law in many states. The emergence and persistence of these policies are often explained as impositions from the U.S. and the IDCR it helped to set up. The United States' influential role in international drug control efforts started in the late 19<sup>th</sup> century, when its expansion into the Pacific Rim exposed the country's leadership to high levels of opium consumption in Southeast Asia, which, in their view, undermined the country's economic and geopolitical objectives. Around the same time, the use of narcotic substances within the U.S. was increasingly perceived as a grave social problem. As most drugs and their ingredients were supplied by foreign traders, the U.S. government began pushing for multilateral treaties

regulating the “legitimate” drug trade, *i.e.* for medical and scientific purposes, while restricting recreational drug use.

In the following decades, a growing group of states negotiated and adopted eight drug control treaties, each of which invented new mechanisms to regulate the licit drug trade while undermining activities related to the supply of narcotics for recreational purposes.<sup>1</sup> As the number of treaties grew, efforts for a more encompassing global regulation gained impetus, and eventually succeeded in creating the 1961 Single Convention on Narcotic Drugs within the framework of the United Nations (UN). Coming into force in 1964, the Single Convention cemented drug prohibition as the dominant norm in guiding drug policies across the globe. It was supplemented by the 1971 Convention on Psychotropic Substances, which prohibited recreational use and regulated the licit trade in synthetic drugs without any organic content. The 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which sought to undermine specifically the illicit networks that administer the drug trade and introduced new regulations for the licit trade in precursor chemicals, completed the drug control regime’s legal framework.

Parallel to the establishment of a highly prohibitionist drug control regime of global reach, in the 1980s the “war on drugs” became a cornerstone of U.S. foreign policy towards Latin America and was put into practice through the application of military force to combat drug cartels, eradicate illicit crops, destroy drug laboratories, and interdict drug supplies.

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<sup>1</sup> These include the International Opium Convention of 1912; the Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and Use of, Prepared Opium of 1925; the International Opium Convention of 1925; the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 1931; the Agreement concerning the Suppression of Opium Smoking of 1931; the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs of 1936; the Protocol for Bringing under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 1948; and the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International Wholesale Trade in, and use of Opium of 1953.



In line with these global and regional developments, in the course of the 20<sup>th</sup> century South America became increasingly prohibitionist. In the beginning of the century, most countries merely restricted the sale and consumption of narcotic substances like opium, cocaine and marijuana, which were often distributed in pharmacies without many limitations. Over time, however, more and more drug-related activities became punishable. Furthermore, penalties for drug-related offenses increased with each new legislation. In the 1980s and 1990s, the region's primary producers of cocaine, Bolivia, Colombia, and Peru, went through of process of securitization and militarization of their drug policies. Especially in Colombia, this led to violent confrontations between the governments and the largest drug cartels.

While the U.S. role in the “war on drugs” is well established and widely acknowledged, there is a series of questions that have not been addressed in detail by the existing literature. For example, why did several governments criminalize drug possession and consumption, while others did not? Why did some states join the “war on drugs” much later and more reluctantly than others? And, why did certain countries relax their drug policies in the 1990s, a moment when others became more prohibitionist? The existing literature rightly emphasizes the role of U.S. pressure. Yet, it is not very clear how South American states absorbed and processed this pressure.

The question of why South American states opted for different approaches in dealing with their drug-related problems becomes even more complex for the period since the early 2000s when prohibition and the “war on drugs” became increasingly unpopular. Libertarians like Thomas Szass and Milton Friedman have argued for many years that drug consumption should be a personal right, and not subject to state control. Other critiques have focused on the negative consequences of the “war on drugs” and prohibition. The crux of their argument is that the illegal nature of the drug trade allows criminal networks to make large profits, which are often used to corrupt state institutions, establish control over territories (to protect their illegal business

operations), and buy weapons. At the same time, the goal to suppress and undermine these criminal networks has led to large outbreaks of violence, especially in Colombia in the 1990s and more recently in Central America.

While academics and social activists have expressed these criticisms for many years, in the 2000s prominent public intellectuals as well as former and incumbent presidents from Latin America, with different ideological inclinations, have elevated these critiques to the political mainstream. Moreover, several critics of prohibition started advocating a new type of drug policy, based on harm reduction. In contrast to prohibition, which seeks to undermine recreational drug use at all cost, harm reductionists believe that this is an impossible enterprise. Instead, they seek to make consumption less harmful for drug users and society as a whole.

This dissertation argues that the growing contestation of prohibition and the emergence of harm reduction as an alternative policy framework constitute substantial normative change, which is likely to influence drug-policies within South American states. The empirical record seems to confirm this assumption. Since 2005, Argentina, Brazil, Chile, Colombia, and Ecuador decriminalized the use of marijuana and other psychoactive substances; Argentina, Chile, Colombia, Peru and Uruguay passed laws that enable the production, import, and use of certain cannabis-based medicines; Ecuador and Brazil reduced legal penalties for small-scale trafficking; Brazil, Colombia, Ecuador, and Uruguay promoted treatment and public health policies; Chile, Colombia, and Uruguay legalized the self-cultivation of cannabis plants; and Uruguay even went as far as legalizing the production, sale, and recreational consumption of marijuana. Moreover, although Bolivia upholds one of the most punitive laws regarding the trafficking and consumption of illegal drugs, the government of Evo Morales (2006-), a former coca grower, installed a new system of “social control” to regulate coca production.<sup>2</sup>

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<sup>2</sup> Previously, in a country where the coca leaf is considered sacred and whose indigenous population has consumed it for millennia, coca farmers were subject to violent eradication campaigns, irrespective of

However, the application of increasingly tolerant drug policies is not a uniform trend. While Venezuela applauded and supported its regional peers for changing the terms of the debate, in 2005 and 2010 the government of Hugo Chávez issued two new laws, each of which widened the scope of punishable drug-related activities and significantly increased penalties for drug offenses. In 2015, Ecuador increased the penalties for the possession of small amounts of drugs, making their consumption *de facto* illegal, even though the country had decriminalized drug use in its 2008 constitution. In the same year, Argentina's newly elected president, Mauricio Macri, declared the extinction of the drug trade as one of the three main goals of his presidency, closely resembling the rhetoric of the "war on drugs." Furthermore, since 2011 Peru eradicated more hectares of coca than ever before and arrested more drug users than in previous decades, despite the fact that the possession of drugs for personal consumption is not technically illegal.

The persistence of prohibition raises the question of why most countries in South America are struggling to leave behind unsuccessful policy models, especially in light of a more favorable international context and potentially better alternatives. Moreover, why did some harm reduction policies take hold in Uruguay, Chile, and Colombia, but not in Paraguay, Peru, and Venezuela? In other words, why do countries from South America, which are exposed to the same policy failures and processes of norm advocacy and contestation opt for different policy choices?

In the following dissertation, I seek to tackle these questions by illustrating different ways in which international norms on drug policies, as well as their advocacy and contestation, interact with domestic-level processes and thereby affect the incentives of governments to enact changes

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whether or not they sold their leaves to illicit groups. Under the new system, registered farmers are allowed to cultivate an area of 1,600 square meters with coca and are bound to report to the authorities if other farmers exceed this amount. This approach has not only provided Bolivian farmers with a legal mechanism to produce coca for the licit domestic market, but also led to an overall reduction in coca production (*The Conversation*, "How Bolivia Curbed Coca Production by Moving Away from Violent Crackdowns," September 29, 2016, <https://theconversation.com/how-bolivia-curbed-coca-production-by-moving-away-from-violent-crackdowns-66251>).

in drug policies. While much of the literature on international norms highlights how they produce sameness, this dissertation shows that norms are crucially important in the drug policy field even though countries chose different policies. By changing what the international community, specific governments, transnational agents, and domestic actors considers as appropriate behavior, norms provide multiple incentives for governments to act according or against a particular norm. Moreover, one and the same norm may be interpreted differently, even by actors within the same regional or domestic setting. These factors help explain why being exposed to the same norms does not necessarily lead to sameness. Norms matter primarily because there is no one singular logic or mechanism of how they effectuate change, but multiple ones that constantly interact and sometimes work against one another.

To advance a better and more complete understanding of how international norms affect drug policies, this dissertation proceeds in four steps: First, it justifies why the concept and theories about international norms are crucial to study drug policy changes in South America and draws conceptual distinctions between different norm-types (chapter II). Second, it examines how the diffusion of norms about drug policy initiatives (prohibition vs. harm reduction) is spreading globally and regionally (chapters III to V). Three, based on the International Relations (IR) literature on norms, chapter VI develops a theoretical framework of how international norms create and alter incentives for governments to change their drug policies. While the framework is based on strong rationalist assumptions, it incorporates considerations about governments' identities and the unique characteristics of specific cases, which are prominent in sociological institutionalism and post-positivism. Fourth, chapters VII to IX trace empirically how international norms play into the decision-making process within states, and how specific cases (Uruguay, Ecuador and Peru) received, reacted, and implemented various policy options since 1971.

The three case studies reveal that, rather than responding to specific drug-related problems, considerations about power, material benefits, and international standing have driven most drug policy reforms. Although since the early 2000s policies responding to specific problems have become more common, these are still embedded in power-based calculations. While the motivations behind drug policy changes are strikingly similar, case-specific constellations of incentives, actors, events and factors related to political cultures and systems, help explain differences in outcomes. This makes it extremely hard to theorize parsimoniously or even predict future policy changes. Nevertheless, several findings of this study contribute to a better understanding of the drug policy field in South America and how international norms affect political processes and outcomes. The following section details how this study and its findings contribute to the existing literatures on Latin American drug policies and international norms. The last section of this introduction explains the criteria for selecting Uruguay, Ecuador, and Peru as case studies, as well as the dissertation's research strategy.

### **1.1 Background, Relevance, and Contribution**

The present study builds on two different literatures: the primarily empirical literature on the illegal drug trade and drug policy in Latin America; and, the more theoretical literature on international norms within the field of IR. The drug policy literature has made important contributions to a better understanding of the evolution of the international drug control regime (IDCR);<sup>3</sup> the development and changing nature of the illegal drugs trade in Latin America, and its social, political, economic, and cultural repercussions;<sup>4</sup> the history of the “war on drugs” and its

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<sup>3</sup> William B. McAllister, *Drug Diplomacy in the 20th Century. An International History* (New York: Routledge, 1999); and Francisco E. Thoumi, “Debates recientes de la Organización de las Naciones Unidas acerca del Régimen Internacional de Drogas: Fundamentos, limitaciones, e (im)posibles cambios,” en *Drogas y prohibición. Una vieja guerra, un nuevo debate*, ed. Juan G. Tokatlián (Buenos Aires: Libros del Zorzal, 2010), 27-56.

<sup>4</sup> Bruce M. Bagley and Jonathan D. Rosen, eds., *Drug Trafficking, Organized Crime, and Violence in the Americas Today* (Gainesville: University Press of Florida, 2017); Bruce M. Bagley and William O. Walker

effects on democratic governance;<sup>5</sup> the complex relationship between the drug trade, state policy, and violence;<sup>6</sup> and the effects of drug policies on prison populations.<sup>7</sup>

The present dissertation contributes to this diverse literature in four important ways. First, chapter V provides the first comparative analysis of how South American countries (except Guyana, Suriname, and French Guiana) penalized drug-related activities since 1971. Tables 6 to 9 not only summarize which countries criminalized the possession of drugs for personal consumption but also detail the lowest and highest forms of punishment for drug trafficking, and aggravated forms of trafficking (*i.e.* particularly serious offenses that justify higher penalties). The chapter substantiates the claim that even though the region as a whole has become more

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III, eds., *Drug Trafficking in the Americas* (New Brunswick: Transaction Publishers, 1994); Juan C. Garzón, *Mafia & Co.: The Criminal Networks in Mexico, Brazil, and Colombia* (Washington D.C.: Woodrow Wilson Center Press, 2008); Paul Gootenberg, *Andean Cocaine: The Making of a Global Drug* (Chapel Hill: The University of North Carolina Press, 2008); Francisco E. Thoumi, “La relación entre corrupción y narcotráfico: Un análisis general y algunas referencias a Colombia,” *Revista de Economía de la Universidad del Rosario* 2, no. 1 (Junio 1999): 11-33; and Francisco E. Thoumi, *Illegal Drugs, Economy, and Society in the Andes* (Washington D.C.: Woodrow Wilson Center Press, 2003).

<sup>5</sup> Tad G. Carpenter, *Bad Neighbor Policy, Washington’s Futile War on Drugs in Latin America* (New York: Palgrave MacMillan, 2003); Juan G. Tokatlián, ed., *La guerra contra las drogas en el mundo andino. Hacia un cambio de paradigma* (Buenos Aires: Libros del Zorzal, 2009); and Coletta A. Youngers and Eileen Rosin, eds., *Drugs and Democracy in Latin America: The Impact of U.S. Policy* (Boulder: Lynne Rienner Publishers, 2005).

<sup>6</sup> John Bailey and Matthew M. Taylor, “Evade, Corrupt or Confront? Organized Crime and the State in Brazil and Mexico,” *Journal of Politics in Latin America* 1, no. 2 (2009): 3-29; Daniel Brombacher, *El control de la oferta en la lucha antidrogas, ¿a quien le sirve?* (Bogotá: Friedrich Ebert Stiftung, Programa de Cooperación en Seguridad Regional, Policy Brief 37, 2010); Daniel Brombacher, *This is what you get. Mercados ilegales y violencia en América Latina* (Bogotá: Friedrich Ebert Stiftung, Programa de Cooperación en Seguridad Regional, Policy Brief 43, 2012); Benjamin Lessing, “Tres mitos sobre la guerra contra el narcotráfico,” *Perspectivas Sobre Desarrollo* 9, no. 1 (2011): 74-104; and Benjamin Lessing, “When Business Gets Bloody. State Policy and Drug Violence,” in *Small Arms Survey 2012, Moving Targets*, eds. Glenn McDonald, Emile LeBrun, Eric G. Berman, and Keith Krause (Cambridge: Cambridge University Press, 2012), 41-77.

<sup>7</sup> Benjamin Lessing, “The Danger of Dungeons: Prison Gangs and Incarcerated Militant Groups,” in *Small Arms Survey 2010, Gangs, Groups and Guns*, eds. Eric G. Berman, Keith Krause, Emile LeBrun and Glenn McDonald (Cambridge: Cambridge University Press, 2010), 157-183; and Pien Metaal and Coletta C. Youngers, eds., *System Overload: Drug Laws and Prisons in Latin America* (Amsterdam, Washington D.C.: Transnational Institute, Washington Office on Latin America, 2011).

prohibitionist until the 1990s, there were important differences in how each country applied prohibition.

Second, studies addressing changes of drug laws are often incomplete or contain significant errors. For example, articles about Ecuador cite the 1987 Law of Control and Intervention in the Trafficking of Narcotics and Psychotropic Drugs as a new law that was more prohibitionist than its predecessors.<sup>8</sup> However, the 1987 law merely constituted a new codification of previous laws, which neither altered the classification of drug-related crimes nor their penalties. Furthermore, some texts incorrectly argue that Ecuador's 1990 Law 108 did not distinguish between drug traffickers and drug users.<sup>9</sup> Similarly, the literature on Peru tends to ignore a myriad of legal changes that occurred in the 1990s, characterizing Law 28,002 from 2003 as a reform that increased penalties for drug-related crimes even though it actually lowered some of them.<sup>10</sup> Given these errors, the present dissertation seeks to provide a more accurate picture and characterization of South America's drug laws.

Third, while most authors agree that the prohibitionist and militarized framework of the "war on drugs" constitutes a serious policy failure, there is very little analysis of how drug policies haven been debated and designed within specific states, especially in comparative perspective.<sup>11</sup> Generating new insights about changes in drug policies is vital because even

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<sup>8</sup> See: Sandra G. Edwards, "A Short History of Ecuador's Drug Legislation and the Impact on Its Prison Populations," in *System Overload*, 50–59; and Jorge Paladines, *En busca de la prevención perdida: Reforma y contrareforma de la política de drogas en Ecuador* (Quito: Friedrich Ebert Stiftung, Estudios, Abril 2016).

<sup>9</sup> Carla Álvarez Velasco, "Reformas y contradicciones en la política de drogas de Ecuador," WOLA, Julio 2014, 14, nota 2.

<sup>10</sup> See: Aldo F. Ponce, "From Freedom to Repression and Violence: The Evolution of Drug Policy in Peru," in *Drug Policies and the Politics of Drugs in the Americas*, eds. Beatriz Caiuby Labate, Clancy Cavnar, and Thiago Rodrigues (Switzerland: Springer International Publishing, 2016), 123–148; and Ricardo Soberón Garrido, "Legislation on Drugs and the Prison Situation in Peru," in *System Overload*, 70–79.

<sup>11</sup> An exception is an edited volume by Caiuby Labate, Cavnar and Rodrigues, which advances a multi-level framework, inspired by Foucauldian biopolitics, to analyze the spread of prohibition across the region. However, while the case studies offer interesting insights on the evolution of drug policies across the

though there is a large body of evidence showing that prohibitionist policies are ineffective, many countries across the globe keep applying them. The present study will not only be relevant to explain the continued popularity of drug prohibition, but may also interest government officials and drug policy activists, who can learn from this dissertation how actors from other countries brought about change; how they contested the dominant norm and policy framework of prohibition; how they incorporated the rising international prominence of harm reduction in national debates; and how they overcame political, social, and legal obstacles.

An important insight of this dissertation is that the timing of local advocacy is crucially important. While the rising international prominence of harm reduction allowed drug policy activists to make stronger cases for alternative policy models, in and of itself local advocacy has not been sufficient to generate significant changes in public opinion policy outcomes. All three case studies reveal that advocacy for harm reduction policies is most effective at specific political junctures that offer short and limited opportunities for policy changes. In Uruguay and Peru, flexibilizations of drug policies were catalyzed by events that caused large audiences to sympathize with victims of drug prohibition, such as the arrest and imprisonment of Alicia Castilla, a 66-year old writer who grew marijuana plants at her home (despite the fact that drug consumption was technically legal) in Uruguay, and the above-mentioned detention of mothers producing cannabis-based medicines for their sick children in Peru's capital Lima. Furthermore, a series of unrelated killings within a week shocked the citizens of Uruguay and created a political climate that allowed government officials to make a case, and convince that country's president, that marijuana legalization would help alleviate the problems related to organized crime and

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region, many of them do not provide strong answers on how and why particular drug policy changes occurred (Beatriz Caiuby Labate, Clancy Cavnar, and Thiago Rodrigues, eds., *Drug Policies and the Politics of Drugs in the Americas* [Switzerland: Springer International Publishing, 2016]). Furthermore, Cutrona studied Argentina's resistance to the "war on drugs" in comparative perspective (Sebastián A. Cutrona, *Challenging the U.S.-Led War on Drugs: Argentina in Comparative Perspective* [New York: Routledge, 2017]).



citizen insecurity. In Ecuador, the broad support of social movements for the leftist candidate Rafael Correa in 2007, enabled civil society groups to take advantage of their close relation with the government and place the decriminalization of drug use and harm reduction on the political agenda. Hence, the capacity of activists to recognize windows of opportunity and act quickly at specific instances is crucially important to advance political changes.

Fourth, generating new knowledge about drug policy changes is not only central to understand the current period in which several states from South America changed their drug policies but will also help to shed light on certain aspects of the “war on drugs” that have not been addressed in detail. As outlined above, while the existing literature and popular narratives rightly emphasize the threat of U.S. sanctions and economic incentives, it is unclear how the states of South America absorbed and processed this pressure. The three case studies highlight that the United States was particularly successful at manipulating domestic incentive structures by offering technology, training, and financial support to police units, customs and border patrols, the armed forces, and the judiciary, thereby creating a more favorable context to advance prohibitionist drug laws. At the same time, the present dissertation emphasizes how multiple actors from South America not only accepted “drug war” policies but actively promoted prohibition and militarization, both domestically and internationally. Hence, by emphasizing South American agency this dissertation offers a new historical contextualization of the “war on drugs,” which helps to understand why prohibition remains popular today.

To tackle the above-stated issues, this dissertation draws on the IR literature on international norms, which advances a series of arguments about how norms affect state policies in various fields. As outlined below, norms are important to this research project because apart from altering incentives for governments to change their policies and changing the preferences of political actors, the drug policy field is strongly shaped by processes of norm advocacy and contestation. In this literature, three theoretical and epistemological perspectives have been

driving the debate: rationalism, sociological institutionalism, and post-positivism. Rationalist scholars assume that the social and political behavior of actors is motivated by strategic, utilitarian, and instrumental means-ends calculations. Within this approach, norms are important because in their presence actors recalculate how to achieve their given interests.<sup>12</sup> Sociological institutionalists reject the idea that social actors always behave rationally and instrumentally. For them, the interests and preferences of actors must be analyzed and explained as the products of intersubjective structures and social interactions. In this perspective, governments and other actors follow norms not because it serves their interests, but because their identity induces them to consider adherence to prevalent norms as appropriate.<sup>13</sup> Post-positivists are more concerned about the complexity of the social world, in which entities are hardly ever fixed and multiple processes are in constant interaction. They see norms as fluid, dynamic, and constantly contested, embodying different meanings in different contexts. Given the dynamic nature of norms, and the capacity of agents to alter their content, they encourage researchers to focus on the communicative processes that accompany social interactions with a particular focus of how social agents refer to norms to legitimize their actions, rather than assuming *a priori* how they work.<sup>14</sup>

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<sup>12</sup> Jeffrey T. Checkel, "International Norms and Domestic Politics: Bridging the Rationalist-Constructivist Divide," *European Journal of International Relations* 3, no. 4 (December 1997): 473-495; Andrew P. Cortell and James W. Davis Jr., "How Do International Institutions Matter? The Domestic Impact of International Rules and Norms," *International Studies Quarterly* 40, no. 4 (December 1996): 451-478; and Andrew P. Cortell and James W. Davis Jr., "Understanding the Domestic Impact of International Norms," *International Studies Review* 2, no. 1 (Spring 2000): 65-87.

<sup>13</sup> Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (Autumn 1998): 887-917; Margaret E. Keck and Kathryn Sikkink, "Transnational Advocacy Network in International and Regional Politics," *International Social Science Journal* 51, issue 159 (March 1999): 89-101; Audie Klotz, "Norms Reconstituting Interests: Global Racial Equality and U.S. Sanctions Against South Africa," *International Organization* 49, no. 3 (Summer 1995): 451-487; Ethan Nadelman, "Global Prohibition Regimes: The Evolution of Norms in International Society," *International Organization* 44, no. 4 (Winter 1990): 479-526; and Frank Schimmelfennig, "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union," *International Organization* 55, no. 1 (Winter 2001): 47-80.

<sup>14</sup> Matthias Hofferberth and Christian Weber, "Lost in Translation: A Critique of Constructivist Norm Research," *Journal of International Relations and Development* 18, issue 1 (January 2015): 75-103; Mona Lena Krook and Jacqui True, "Rethinking the Life Cycles of International Norms: The United Nations and

While most research on international norms originated from sociological institutionalist and post-positivist perspectives, this dissertation sides most with the rationalist view. This is because governments have two overarching objectives that are relatively fixed and compel them to follow incentives rather than preferences. Most importantly, governments—including presidents, ministers, parliamentarians, and state officials—want to stay in office. Hence, they will try to design policies that are attractive to the population, their electorate or important domestic actors. Secondly, governments want to improve relations with other states that are central to advance their strategic goals. This objective is particularly relevant for small states with few resources given that these states tend to be more vulnerable to outside influences.

Siding with a rationalist view does not imply that policy makers' considerations about what is right or wrong are unimportant. In particular, the preferences of individuals involved in drafting drug laws help explain specific aspects of these laws such as Uruguay's 1974 decision not to criminalize the possession of drugs for personal consumption. Furthermore, Uruguay's 2013 marijuana legalization depended on the support and political capital of the popular president José Mujica, who appears to have been genuinely convinced that state-regulation was a better alternative than prohibition. However, as the case studies show the personal preferences of leaders are not needed to explain most policy choices. Moreover, when they do play a role, they are only relevant only to the extent that they will not impose great political costs, or when leaders have no prospects of staying in office. Instead, this project shows that drug policy changes are far more likely when governments have clear incentives, which will help them to satisfy the above-stated goals.

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the Global Promotion of Gender Equality,” *European Journal of International Relations* 18, issue 1 (March 2012): 103-127; and Ole Jakob Sending, “Constitution, Choice and Change: Problems with the ‘Logic of Appropriateness’ and its Use in Constructivist Theory,” *European Journal of International Relations* 8, issue 4 (December 2002): 443-470.

My main contribution to the rationalist approach is to specify the three most important domestic and international incentives for governments to change their drug policies and illustrate how they are related to international norms. While the framework outlined in chapter VI advances a series of assumptions about how these incentives operate, which ones are more important to a particular government cannot be assumed *a priori* but needs to be investigated on a case by case basis.

When examining which incentives drove a government to change its drug policy in a particular way, scholars inevitably have to confront questions about its identity as well as the socio-economic context in which it operates. As these factors constitute important elements of sociological institutionalism and post-positivism, the present dissertation illustrates new ways in which the three competing perspectives can be combined. Ultimately, as highlighted above, most theorists of international norms use the concept to explain sameness of policies despite political, economic, and cultural differences. By specifying multiple ways in which norms can affect political outcomes, the present dissertation highlights how norm-based theories can be used not only to study sameness but also differences in policy choices.

## **1.2 Case Selection and Research Strategy**

After examining the global and regional diffusion of drug policy initiatives (chapters III to V) and laying out the theoretical framework (chapter VI), the following chapters VII to IX will trace empirically the political process that has led to major legal changes in the penalization of drug-related activities in Uruguay, Ecuador, and Peru. While drug policies have both legal and operational elements this dissertation prioritizes the former. Apart from laying out specific rules, drug laws often define and represent the content of drug policies. However, especially in the case of Peru the dissertation also pays close attention to operational features, such as the degree of coca eradication and the use of the armed forces in drug-control efforts, which were not always reflected in the country's drug laws.

This research project focuses on cases from South America, because state and non-state actors from this region are important agents in the contestation of prohibition and the recent advocacy of harm reduction. Furthermore, over the past 15 years South America has experienced more drug policy changes than its neighboring regions Central America and the Caribbean. This makes South America an interesting laboratory for the analysis of difference and diverse policy changes. From within South America, this dissertation analyzes the cases of Uruguay, Ecuador, and Peru because, in recent years, each of these countries has chosen a distinct approach to their drug-related problems, offering a high degree of variance in the outcome drug policy. Each case, therefore, contributes unique insights into how international norms interplay with local processes, leading to different policy choices.

The case of Uruguay is important primarily because the country's legalization and regulation of the production, sale, and recreational consumption of marijuana constitutes the most far-reaching drug policy reform based on harm reduction. Strikingly, an estimated 60.7 percent of the population opposed the new law, while only 34 percent of Uruguayans supported it.<sup>15</sup> Studying how and why Uruguay decided to legalize marijuana will reveal important insights about the conditions that are necessary, or facilitate, drug reforms along similar lines. In other words, it sheds light on the question of what makes marijuana legalization a feasible political project, despite domestic opposition. Ecuador was selected because of the country's changing positions on drug control. After the government of Rafael Correa (2007-2017) had decriminalized drug use (2008), distinguished between different levels of responsibility within the drug trade (2014), and lowered penalties for trafficking (2014), in 2015 the same government effectively re-penalized drug use by increasing the sanctions for the possession of even small amounts of psychoactive substances. Analyzing the case of Ecuador will generate new knowledge about why

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<sup>15</sup> Maria F. Boidi et al., *Marijuana Legalization in Uruguay and Beyond* (Miami: Latin American Marijuana Research Initiative, Florida International University, 2015), 3.

a country that has moved closer to a framework of harm reduction may decide to abandon this approach. The case of Peru presents an anomaly because, against the regional trend, it has become more prohibitionist in recent years. This changed in 2017, when, to the surprise of many, the government of Pedro Pablo Kuczynski decided to legalize cannabis-based medicines.<sup>16</sup> Nevertheless, analyzing why consecutive Peruvian governments have been reluctant to apply harm reduction and, since 2011, arrested more drug users and eradicated more coca than ever before, will generate key insights on the continued popularity of prohibition and the factors that prevent normative changes at the regional level from affecting state policy.

Although the countries were selected primarily because of recent developments, each of the case studies will cover two time frames. The first period analyzes the era of the “war on drugs” from 1971 until the early 2000s. The second one focuses on the contemporary period from the early 2000s onwards. There are several reasons for incorporating the “drug war” era into this project: First, analyzing the historic trajectory of drug policies in each country is crucial to understanding the conditions in which current policy changes are taking place. Second, it enables this dissertation to draw cross-temporal comparisons between a period when the norm prohibition was most dominant, and the current era, in which harm reduction has become increasingly popular. Third, by incorporating each country’s drug policy history this research project can address some of the questions that have been unanswered by the literature on the “war on drugs” (see above). For example, how did local agents respond to U.S. pressures? How were drug policy changes debated and justified? And, why did Uruguay advance a much softer form of prohibition, despite having one of the most brutal military dictatorships in the region?

To reconstruct how and why the three cases decided to change their drug laws at a specific juncture, this project uses techniques similar to process tracing. More precisely, the

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<sup>16</sup> Dan Collins, “Peru Legalizes Medical Marijuana in Move Spurred by Mother’s Home Lab,” *The Guardian*, October 20, 2017, <https://www.theguardian.com/world/2017/oct/20/peru-marijuana-cannabis-legal-terminally-ill-children>.

present dissertation draws causal connections between the domestic-international incentive structure and a policy outcome by tracing the sequence of events that have preceded major policy changes. However, different to most research employing process tracing, this dissertation does not engage in the testing of clearly defined hypotheses, but instead examines six possible incentives for policy changes (see chapter VI).<sup>17</sup> While each of these incentives has the potential to effectuate policy changes independently, the incentives often interact and reinforce each other, leading to multi-causal explanations.

The analysis of policy changes usually involves an assessment of which domestic and international actors advocated (or rallied against) policy changes; the strategies they used, including their utilization of international norms; how this affected public opinion and policy debates; how the government responded to domestic and international incentives; the interactions between state and non-state actors in the stage of policy design; how new laws were debated in the parliament; and how governments justified changes in their respective policies. When determining the relative importance of specific incentives, this dissertation also considers the motivations, desires, and beliefs of specific actors. Hence, although the goal is to establish the strongest possible causal connections, parts of the dissertation show some resemblances to interpretive methods.

For the historical part of the analysis, I examined data from archival and library sources, including the content of newspaper articles; parliamentary debates; documents from ministries and governments agencies; diplomatic cables; and written statements by actors involved in the policy debates. To access this data, I visited historic archives and libraries in each of the countries selected for this study. In Uruguay, I researched at the Historic Archive of Uruguay's Ministry of

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<sup>17</sup> For a more elaborate description of process tracing, see Alexander L. George and Andrew Bennett, "Process Tracing and Historical Explanation," chap. 10 in *Case Studies and Theory Development in the Social Sciences* (Cambridge: MIT Press, 2005), 205-232; and James Mahoney, "The Logic of Process Tracing Tests in the Social Sciences," *Sociological Methods and Research* 41, issue 4 (November 2012): 570-597.

Foreign Relations, the Administrative Archive of Uruguay's Ministry of Foreign Relations, the National Library, the Library of the Legislative Power, and the Law and Social Science Libraries of the University of the Republic. In Ecuador, I visited the Central Archive of the Ministry of Foreign Relations and Human Mobility, the National Library, the Library and Archive of the National Assembly, and the Library Aurelio Espinosa Pólit. In Peru, I visited the Central Archive of the Ministry of Foreign Relations and the National Library in Lima. Furthermore, I accessed documents from the Public Library of U.S. Diplomacy (PLUSD) and the Digital National Security Archive (DNSA).

For the contemporary period, I collected evidence from a wide range of sources, including newspaper articles and media reports; the communicative trails of the actors involved in the debates on drug policy (policy briefs, position papers, statements to the public, etc.); public opinion data; and parliamentary debates. An essential part of the analysis is based on semi-structured interviews with actors involved in the debates and policy formulation (policy makers, government officials, NGO and civil society representatives, journalists, etc.). In Uruguay I was able to interview ten actors, in Ecuador five, and in Peru I had two informal talks with members of Peru's leading agency on drug control DEVIDA. These interviews helped me to fill gaps in the causal process and reconstruct the sequence of events that has led to major policy changes; obtain a better sense of the motivations of policy makers to advocate and vote for certain changes (or against them); detect connections between transnational and domestic actors in the drug policy field; better understand how local actors view international developments debates in drug policy; and analyze in greater detail how local actors used international norms strategically to accomplish their goals. Before getting into the analysis, the following chapter II provides a series of conceptual distinctions between different norm types and outlines in greater detail why the concept and theories on international norms are ideally suited to study drug policy changes in South America.



## II. NORMS AND NARCOTICS: WHY INTERNATIONAL NORMS ARE IMPORTANT TO STUDY DRUG POLICY CHANGES IN SOUTH AMERICA

This chapter discusses why the concept and theories of international norms are essential to study drug policy changes in South America. From a public policy perspective, the focus on international norms may seem odd given that it presupposes that norms are an important, if not predominant, factor in explaining policy changes. However, as outlined in the following chapters, since the early 20<sup>th</sup> century drug policies across the world have been influenced by norm advocacy and contestation through transnational actors and states, which created an influential drug control regime of global reach. In recent years, transnational NGOs such as the Global Commission on Drug Policy, the Drug Policy Alliance, the Transnational Institute, and the International Consortium on Drug Policy have not only commented on regional and national developments but also interacted extensively with local actors, sharing knowledge and experiences. In a nutshell, all drug policy debates have international and transnational dimensions, no matter how local they appear. The concept of norms as well as theories on norm-driven policy changes are well-suited to study how international developments impact policy making at the state level, and how global, regional, and domestic processes interact and influence one another. Before outlining in greater detail some of the characteristics that make norms so important, the following paragraphs briefly discuss the role and ascendance of norms in the discipline of IR, provide some clarity on how this dissertation defines international norms, and distinguish between different types of norms.

### **2.1 The Role of Norms in International Relations**

Since the inception of the study of international politics in the early 20<sup>th</sup> century, the importance attached to norms varied significantly. The early stages of the discipline were driven by high normative aspirations, expressed in the goal to prevent the mass-scale violence of World

War I. Prominent IR thinkers like Leonard Woolf, Norman Angell, and Alfred Zimmern sought to establish ideas that could serve as the basis for a more peaceful international order, including a system of collective security, international institutions, democratization, and economic and cultural exchange.<sup>18</sup> Even E.H. Carr, who criticized these authors for their neglect of power politics, acknowledged that effective political action ought to be based on a considerations of ethics and power.<sup>19</sup>

The outbreak of World War II gave prominence to more pessimistic accounts of international politics. According to Ruggie, the academic aversion to idealism resulted in a widespread discounting of the role of ideational factors, “be they identities, norms, aspirations, ideologies, or simply ideas about cause-effect relations.”<sup>20</sup> “The behavioral revolution and its enthusiasm for measurement” constituted another tendency that led to a declining interest in norms and ideas, since such entities were difficult to measure and analyze within the dominant methodological approach.<sup>21</sup> The increasing application of economic methods in the 1970s and 1980s, which drew heavily on rational choice and actor assumptions, as well as strong notions of utility maximization, reinforced this trend. Within this framework, power and interests were derived from material factors, such as the position of a state in the international system, or the possibility to generate welfare and security gains through cooperation. During this period, norms were most prominent in the analysis of international regimes, defined by Krasner as “sets of

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<sup>18</sup> For a more complete assessment of inter-war IR thinking, see: David Long and Peter Wilson, *Thinkers of the Twenty Years' Crisis. Inter-War Idealism Reassessed* (Oxford: Clarendon Press, 1995).

<sup>19</sup> Moreover, Finnemore and Sikkink cite a series of other prominent IR scholars, who have written extensively about ideational and normative factors in the 1950s and 1960s, including Inis Claude, Ernst Haas, and Hans Morgethnau (Finnemore and Sikkink, “International Norm Dynamics,” 889 (see intr., n.13).

<sup>20</sup> John G. Ruggie, “What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge,” *International Organization* 52, no. 4 (Autumn 1998): 855.

<sup>21</sup> Finnemore and Sikkink. “International Norm Dynamics,” 889.

implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations."<sup>22</sup> Norms, conceptualized as standards of behavior defined in terms of rights and obligations, were seen as characteristic of the nature of the regime: "*Changes in principles and norms are changes in the regime itself.*"<sup>23</sup> However, there was very little analysis of how norms originate, evolve, spread, and when and how they affect political outcomes.

Since the end of the cold war, and the subsequent broadening of the IR field, the study of norms, and other ideational factors, has gained new prominence. Today, most scholars agree that norms do have an impact on international and domestic political outcomes. However, there is strong disagreement about the degree to which they matter; by what mechanisms they affect political interactions and results; how, when, and why they emanate and evolve; and what methods and techniques should be applied to study their impact. Similarly, there are ongoing debates about how norms should be conceptualized. As stated by Björkdahl, "There are many definitions of norms, which converge and overlap—stemming from different philosophical traditions and theoretical approaches."<sup>24</sup> This often leads to confusion and misunderstandings in the debates. To circumvent this problem and provide a greater degree of conceptual clarity, the following section introduces three categories that distinguish between different types of norms: norms of behavior, legal norms, and intersubjective norms. It is followed by another section, which draws a further distinction between norms that guide and norms that follow, which represent different levels in a normative hierarchy.

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<sup>22</sup> Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," *International Organization* 36, no. 2 (1982): 186.

<sup>23</sup> Ibid. 188.

<sup>24</sup> Annika Björkdahl, "Norms in International Relations: Some Conceptual and Methodological Reflections," *Cambridge Review of International Affairs* 15, issue 1 (2002): 13.

## 2.2 Distinction 1: Norms of Behavior, Legal Norms, and Intersubjective Norms

Norms are often defined in terms of similarity or patterns of behavior.<sup>25</sup> In other words, a particular type of actor, or a subgroup of this actor, tends to behave in the same or similar ways in a certain aspect of social life. An example is the design and implementation of increasingly prohibitionist drug laws across the world since the beginning of the 20<sup>th</sup> century. This dissertation defines these patterns as norms of behavior, or behavioral norms.

While most of the IR literature on international norms does not define them in purely legalistic terms, it often refers to norms that are embedded or outlined in international rules and regulations, specifying how states should behave. Such norms are a distinct category and therefore defined as legal norms. An example are the requirements established in the three international treaties that compose the current international drug control regime: The Single Convention of Narcotic Drugs of 1961 and its 1972 Protocol; the Convention on Psychotropic Substances of 1971; and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. As outlined in the following chapter, these treaties call upon their member states to carry out multiple tasks to regulate the licit drug trade, while prohibiting numerous activities related to the production, trade, and recreational consumption of mood-altering narcotics and psychotropic substances.<sup>26</sup>

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<sup>25</sup> See: Robert Axelrod, "An Evolutionary Approach to Norms," *American Political Science Review* 80, no. 4 (December 1996): 1095-1111; and Janice E. Thomson, "Norms in International Relations: A Conceptual Analysis," *International Journal of Group Tensions* 23, no. 1 (Spring 1993): 81.

<sup>26</sup> The norms expressed in international treaties have very different characteristics in terms of their precision and the degree of obligation they entail. Some legal norms commit other governments to a certain objective but do not specify how to achieve it. Other norms carry precise instructions, telling states exactly what is expected of them. Furthermore, some norms embedded in international treaties merely encourage their members to act in a certain way, whereas others are much stricter in terms of their obligations. Some of them even carry the risk of sanctions if states do not comply. An example of a norm that is unspecific and entails a low level of obligation is the Single Convention's article 2 §5 (a): "A party shall adapt any special measures of control which in its opinion are necessary having regard to the particular dangerous properties of a drug" (U.N. Single Convention on Narcotic Drugs art. 2 §5 (a), opened for signature Mar. 30, 1961, 520 U.N.T.S. 151 [entered into force Dec. 13, 1964]). An example of a norm from the same convention that is precise and entails a high degree of obligation is article 19 §1 on the estimates of drug requirements for medical and scientific purposes: "The Parties shall furnish to the Board each year for each

Another category of norms defined in this dissertation is intersubjective norms. These are shared assumptions about the appropriate behavior for a particular type or category of actor (states, businesses, individuals, etc.). Building on the previous examples, in the field of drug policy intersubjective norms can be shared assumptions about how states should design their drug laws. As we can see from the examples, drug policy norms often simultaneously have intersubjective, legal, and behavioral dimensions. However, intersubjective norms do not require representations in legal documents or conformity of behavior. It is sufficient that a group of actors or individuals has similar assumptions about how a particular actor should behave. Therefore, this category is particularly useful to study political activism from civil society that may generate changes in state behavior and international law.

The existence of intersubjective norms can be identified through expressions of the same or similar standards of appropriate behavior in statements of political and social actors, the media, scientific publications, and public opinion, among many others. In the words of Finnemore and Sikkink, “because norms by definition embody a quality of ‘oughtness’ and shared moral assessment, norms prompt justifications for action and leave an extensive trail of communication among actors that we can study.”<sup>27</sup> Florini also stresses that a norm “must take on an aura of legitimacy before it can be considered a norm.”<sup>28</sup> However, determining whether or not shared assumptions are considered as legitimate presents serious challenges given that legitimacy is itself intersubjective. What we can say with some certainty, though, is that the stronger intersubjective

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of their territories, in the manner and form prescribed by the Board, estimates on forms supplied by it in respect of the following matters: (a) Quantities of drugs to be consumed for medical and scientific purposes; (b) Quantities of drugs to be used for the manufacture of drugs, of preparations in Schedule III, and of substances not covered by this Convention; (c) Stocks of drugs to be held as at 31 December of the year to which the estimates relate; and (d) Quantities of drugs necessary for addition to special stocks” (*Id.* art. 19 §1).

<sup>27</sup> Finnemore and Sikkink, “International Norm Dynamics,” 892.

<sup>28</sup> Ann Florini, “The Evolution of International Norms,” *International Studies Quarterly* 40, no. 3 (September 1996): 365.

norms become (both in terms of the quantity as well as the popularity of actors supporting them), the more likely they are to generate legal norms and changes of behavior. At the same time, the existence of international legal norms and norms of behavior are likely to strengthen, legitimize, and reinforce intersubjective norms. The relationship between the three different norm types, however, is not always straightforward and may vary significantly in different issue areas.

### **2.3 Distinction 2: Norms that Guide and Norms that Follow**

Many norms form part of a normative hierarchy in which the ones on top set out the guidelines and parameters for policy choices, whereas the lower ones follow from, reinforce, and help implement the ones on top. This dissertation defines the first category as norm that guide (or guiding norms) and the second one as norms that follow (or following norms). The principal norms analyzed in the framework of this dissertation, prohibition and harm reduction, are both guiding norms. Advocates of prohibition believe that all activities related to the production, transportation, distribution, sale, and consumption of mood-altering substances, except for medical and scientific purposes, should be prohibited. For more than a century, prohibition has been guiding numerous multilateral treaties, which have set the parameters for drug policies across the globe. These treaties contain multiple norms that entail different expectations about how states should behave in order to prohibit recreational drug use and illicit trafficking. For example, states are expected to supervise and issue licenses to all entities involved in the licit drug trade; submit estimates of need and statistics of drug sales and purchases to the International Narcotics Control Board (INCB); and report any suspicious activities. At the same time, they are expected to classify as punishable offenses all other drug-related activities, including drug possession for personal consumption; create law enforcement agencies to repress illicit traffic; and run ‘educational’ campaigns to prevent drug use. All of these norms follow from the shared assessment that recreational drug use should be prohibited.

Harm reductionists believe that governments should accept drug use as an endemic feature of human life and try to make it safer for individual users and societies. While harm reduction had very little impact on the multilateral treaties that constitute the current drug control regime, similar to prohibition, harm reductionists advocate a series of norms that follow, reinforce, and help implement it. According to them, governments should provide (or allow the provision of) clean syringes for heroin users to prevent the spread of HIV, hepatitis and other diseases transmitted through blood; make treatment available to large groups of addicts to help them overcome their addiction; allow drug users to test the chemical composition of their drugs to ensure that it is safe for consumption; distribute drugs to addicts to supervise their drug use and help them overcome their addiction; and legalize and regulate less harmful drugs to control how these drugs are marketed and sold. These following norms have not only informed the content of drug policies in many parts of the world, but also shaped the behavior of private and civil society actors, which share a commitment to making to lowering the harms and risks of drug use.

While norm advocacy and contestation often occur between guiding norms, supporters of prohibition and harm reduction also advocate and contest norms within the parameters of these guiding norms. For example, some supporters of prohibition prefer to penalize drug consumption with imprisonment, whereas others favor obligatory treatment. Similarly, harm reductionists frequently debate which substances should be legal and regulated, and, even more important, how they should be regulated. Moreover, in the areas of treatment, education, and rehabilitation there is significant overlap between prohibition and harm reduction.

After having provided some clarity about what norms are and how they can be differentiated, the following paragraphs illustrate some of the effects of norms that make them so important for this dissertation. Moreover, the next two sections highlight some indicators of a norm's strength and explain how their strength may vary at different levels of analysis.

## 2.4 Why Norms Matter

Because most norms constitute strong, intersubjective notions of appropriate behavior, they have the capacity to shape social and political processes in three important ways. First, they may reflect, or even change, the ideas about what constitutes appropriate behavior of decision makers with the power to change political outcomes, such as presidents, ministers, or members of parliaments. Second, they influence the international community's and domestic constituencies' views and preferences, as well as their discursive resources, about appropriate behavior. As outlined in greater detail in chapter VI, this incentivizes governments to act according to predominant norms, even if it goes against their own convictions. As governments want to stay in power and maintain good international standing, at least in relation to states that are important to advance their strategic goals, this effect is more important than the first. However, analysts should consider and pay attention to both. Third, through their presence in international debates, laws, and the behavior of other actors, norms can provide unpopular policy choices with aura of legitimacy, which may be crucial to gain domestic acceptance.

The above-outlined effects of norms are more pronounced the stronger a norm becomes. According to Björkdahl, the stronger a norm, "the more influential it will be on interests, individual actors' behavior and the collective practices of like-minded actors."<sup>29</sup> The strength of a norm rises as more actors (both state and non-state) share its core assumption and are willing to advocate for its realization and translation into policy. As stronger norms are more likely to generate behavioral and legal changes, their presence in international rules as well as their translation into policy are additional indicators of their strength. However, despite their importance, "International norms do not determine outcomes, they only create permissive conditions for action. In other words, norms structure realms of possibilities and define a range of

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<sup>29</sup> Björkdahl, "Norms in International Relations," 22 (see n. 24).



legitimate policy options that would not have been self-evident in the absence of such norms.”<sup>30</sup> However, their relative strength and importance may vary significantly at different levels of analysis. Therefore, this dissertation also distinguishes between global, regional, and domestic-level norms.<sup>31</sup>

### **2.5 Distinction 3: Global, Regional, and Domestic-level Norms**

The present dissertation defines global norms as assumptions about appropriate behavior that are shared and advocated by a variety of actors in different parts of the globe. When actors from a specific region, such as South America or South-East Asia, advocate particular norms, this dissertation refers to them as regional norms. Domestic-level norms are those assumptions that are prominent among actors within a particular state.

Of course, these categories are not mutually exclusive. In fact, norms can be simultaneously global, regional, and domestic. However, their respective strength is likely to vary across these different levels of analysis. Moreover, both global and regional norms may affect or become domestic-level norms, whereas, the other way around, domestic-level norms may turn into, or increase the strength of, regional or global norms. For example, this may be the case when the adaptation of a norm provides effective solutions for an issue of common interest.

The fact that norms are an important factor in social life, raises the question of why particular norms and policy proposals, such as drug prohibition and harm reduction, spread and diffuse across the globe, inspiring, or turning into, public policies, while other do not. In the words of Ann Florini, “Why, of the variety of norms available at any given time to govern behavior in particular choice situations, does one rather than another become a widely accepted

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<sup>30</sup> Björkdahl, “Norms in International Relations,” 22.

<sup>31</sup> These categories are not all encompassing. Further categories could be cross-regional, sub-regional, bilateral, subnational, and local. For a similar categorization see: Jeffrey W. Legro, “Which Norms Matter? Revisiting the Failure of Internationalism,” *International Organization* 51, no. 1 (Winter 1997): 33.

standard of behavior?”<sup>32</sup> The following paragraphs summarize the most important arguments about the spread of norms in global politics.

## **2.6 How Norms Spread**

To answer the above question, scholars of policy diffusion from different fields have focused both on the mechanisms of norm and policy diffusion, as well as the characteristics inherent to the norm itself. Scholars focusing on the norms’ characteristics have stressed numerous factors including the form and content of the norm (clear and specific vs. ambiguous and complex); the degree to which they are applicable in cross-cultural contexts (for example, norms focusing on bodily harms); and their compatibility with other prominent norms.<sup>33</sup> A point of strong disagreement is the norms’ specificity, meaning how well their guidelines are defined and understood by different actors.<sup>34</sup> While Legro and others argue that very specific norms are more likely to be followed, Krook and True uphold that “norms diffuse precisely because—rather than despite the fact that— they may encompass different meanings, fit in with a variety of contexts, and be subject to framing by diverse actors.”<sup>35</sup>

Such divisions are equally prominent in the debates on the mechanisms through which norms and policy proposals diffuse. While scholars disagree on the extent to which particular mechanisms matter, they agree that the spread of particular policies cannot be understood in isolation of international factors. The following paragraphs summarize the most important diffusion mechanisms mentioned in the literature: coercion, persuasion, competition, emulation, (rational) learning, and cognitive heuristics. In the former two, external actors (states,

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<sup>32</sup> Florini, “The Evolution of International Norms,” 363 (see n. 28).

<sup>33</sup> Finnemore and Sikkink, “International Norm Dynamics,” 906-908.

<sup>34</sup> Legro, “Which Norms Matter?”, 34.

<sup>35</sup> Ibid.; and Krook and True, “Rethinking the Life Cycles,” 105 (see intr., n. 14).

international governmental organizations, private enterprises, and civil society actors) actively seek to promote policy changes in other countries, while the latter ones are more decentralized focusing on how domestic actors, primarily governments are applying norms to obtain particular benefits.

In a process of *coercion*, sometimes referred to as penetration or external pressure, powerful actors seek to implicitly or explicitly influence policy choices of other states by altering their opportunities and constraints. According to Simmons, Dobbin and Garrett, “this mechanism may involve the threat or use of physical force, the manipulation of economic costs and benefits, or even the monopolization of expertise—all of which aim at influencing policy change in other countries.”<sup>36</sup> Dolowitz and Marsh refined the discussion on coercion by distinguishing between direct and indirect coercion. In the former, governments directly force or pressure a weaker one to adapt a policy, whereas the latter highlights the role of externalities such as constraints of the world economy, technology, fears of being left behind, and the emergence of an international consensus.<sup>37</sup> Moreover, the authors highlight that international organizations and NGOs are increasingly acting as agents of coercive transfers.<sup>38</sup>

Rather than the use of coercive material forces, *persuasion* refers to the use of arguments and deliberation to convince governments to adapt a certain policy. Checkel argues that persuasion is most effective when “the persuadee is in a novel and uncertain environment; (...) when the persuadee has few prior, ingrained beliefs that are inconsistent with the persuader’s message; (...) when the persuader is an authoritative member of the in-group to which the

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<sup>36</sup> Beth A. Simmons, Frank Dobbin, and Geoffrey Garrett, “Introduction: The International Diffusion of Liberalism,” *International Organization* 60, no. 4 (Fall 2006): 790.

<sup>37</sup> David Dolowitz and David Marsh, “Who Learns What from Whom: A Review of the Policy Transfer Literature,” *Political Studies* 44, no. 2 (1996): 347-349.

<sup>38</sup> David Dolowitz and David Marsh, “Learning from Abroad: The Role of Policy Transfer in Contemporary Policy Making,” *Governance: An International Journal of Policy and Administration* 13, no. 1 (January 2000): 11.

persuadee belongs or wants to belong; (...) when the persuader does not lecture or demand but, instead, ‘acts on principles of serious deliberative argument;’ (...) when the persuader-persuadee interaction occurs in less politicized and more insulated, private settings.”<sup>39</sup>

The mechanism of *competition* refers to the attractiveness of certain policies to investors and buyers in international markets. According to this mechanism, states may opt to apply specific policies to appear more attractive than their peers in terms of attracting foreign capital and selling their products. Simmons, Dobbin, and Garret argue that “competitors will have strong incentives to give up policy and social tools they favor on political and social grounds and follow suit—for fear of large-scale losses of investments and jobs.”<sup>40</sup>

*Emulation*, sometimes labeled as mimicry, refers to a process of adapting structures and policies from other societies.<sup>41</sup> Several scholars have related emulation to a quest of obtaining legitimacy, standing and social acceptance in the international system.<sup>42</sup> According to this view, governments apply norm-based policy proposals not because they expect direct benefits from them, but because it is expected from them by their regional peers, the international community, or any other group of states to which they want to belong. A failure to follow a norm may lead to protest, shaming, and exclusion, resulting in a lack of social standing.

For diffusion theories based on (*rational*) *learning*, policies of others are important not because they affect the payoffs of a policy choice, but because actors’ choices generate new data

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<sup>39</sup> Jeffrey T. Checkel, “Why Comply? Social Learning and European Identity Change,” *International Organization* 55, no. 3 (Summer 2001): 562-563.

<sup>40</sup> Simmons, Dobbin, and Garrett, “The International Diffusion of Liberalism,” 792.

<sup>41</sup> Colin J. Bennett, “What is Policy Convergence and What Causes It?”, *British Journal of Political Science* 21, no. 2 (April 1991): 220.

<sup>42</sup> See J.C. Sharman, “Power and Discourse in Policy Diffusion: Anti-Money Laundering in Developing States,” *International Studies Quarterly* 52, no. 3 (September 2008): 646-649; Simmons, Dobbin, and Garrett, “The International Diffusion of Liberalism,” 799-801; and Kurt Weyland, “Theories of Policy Diffusion: Lessons from Latin America’s Pension Reform,” *World Politics* 57, no. 2 (January 2005): 274-278.

that informs beliefs about causal relationships.<sup>43</sup> The mechanism is based on the idea that governments have an interest in improving their policies by learning from the experiences of others. Therefore, policies that have proven to be successful in other countries are likely to be adopted in some form in other contexts.

Weyland's framework of *cognitive heuristics* acknowledges that policy choices are goal oriented and that external models are attractive because they offer solutions to real-world problems. He upholds, however, that a series of cognitive-psychological shortcuts undermine decision-makers' capacities to process information and adequately assess others' policy choices. Therefore, policy choices are often inspired by desires of what external models might achieve, rather than actual facts. This explains why large groups of states sometimes adapt strikingly similar but sub-optimal policies.<sup>44</sup>

While several scholars are highlighting the strength of one mechanism over the others, most research combines insights from different theories to explain specific policy choices and their diffusion. Many of them acknowledge that the mechanisms outlined above offer different insights, which may operate under specific circumstances, in different sequential orders, or in distinct issue areas. For them, the question is not which of the mechanisms is the best one to explain the emergence of behavioral norms, but under which circumstances each mechanism matters. In this sense, the research and use of competing and complementary explanations highlight there is no one size fits all approach on how norms spread and influence behavior. Each norm and diffusion process have their own histories and need to be investigated on a case to case basis, paying attention to multiple developments shaping the spread of a policy. The following two chapters attempt to provide a brief overview of the history of drug prohibition, its

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<sup>43</sup> Simmons, Dobbin, and Garrett, "The International Diffusion of Liberalism," 795.

<sup>44</sup> Weyland, "Theories of Policy Diffusion," 281-294.

contestation, and the rising advocacy of harm reduction as an alternative way of regulating drug use.

### III. FROM LOCAL TO GLOBAL: A BRIEF HISTORY OF PROHIBITION AND INTERNATIONAL DRUG CONTROL

The consumption of psychoactive substances for medical, recreational, and mood-altering experiences has been a constant feature of human life in both tribal and modern societies.<sup>45</sup> However, over time states and societies have created different norms and rules in dealing with their production, sale, and use. For example, the consumption of mood-altering substances has been accepted in many tribal cultures, in which shamans or religious leaders were entitled with the authority to distribute them during special rituals or religious ceremonies.<sup>46</sup> In other contexts, drug distribution and consumption was almost unrestricted, for example during the 19<sup>th</sup> century in the United States (see below).

While for most of human history norms regarding drug use were strongly embedded in local cultures and traditions, throughout the 20<sup>th</sup> century the United States led a coalition of countries, which elevated drug prohibition to become a powerful global norm and created a highly prohibitionist drug control regime. The present chapter provides an overview of the principal steps and developments towards the establishment of prohibition as the dominant norm in guiding drug policy across the globe, as well as the creation of numerous following norms embodied in multilateral treaties, regulating the licit drug trade and seeking to curb their illicit traffic. The chapter begins with a display of first initiatives to reduce opium production and trade between British India and China. It then traces how, as the result of geopolitical and, to a minor

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<sup>45</sup> See: Elisa Guerra-Doce, “The Origins of Inebriation: Archeological Evidence of the Consumption of Fermented Beverages and Drugs in Prehistoric Eurasia,” *Journal of Archaeological Method and Theory* 22, no. 3 (2015): 751-782. For a more popular account see: Robert Evans, *A Brief History of Vice: How Bad Behavior Built Civilization* (New York: Penguin Random House LLC, 2016).

<sup>46</sup> Charles Grob and Marlene Dobkin de Rios, “Adolescent Drug Use in Cross-Cultural Perspective,” *Journal of Drug Issues* 22, no. 1 (1992): 121-138.

extent, domestic considerations, the United States emerged as a dominant actor in international drug control initiatives.

The next part analyzes the early attempts to create a global drug control framework, including the 1909 Shanghai Opium Commission and the 1912 International Opium Convention. In the following, it analyzes drug control efforts within the system of the League of Nations, especially the creation of the Advisory Committee on the Traffic in Opium and other Dangerous Drugs, the 1924-25 Geneva Conventions, the creation of the Permanent Central Opium Board; and the 1931 Conference on the Limitation of the Manufacture of Narcotic Drugs.

The key part of the chapter examines drug control initiatives within the United Nations, especially the establishment of the 1961 Single Convention on Narcotic Drugs (and its 1972 protocol); the 1971 Convention on Psychotropic Substances; and the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which constitute the legal framework of the international drug control regime (IDCR). Furthermore, the chapter provides a detailed account of how the licit drug trade, *i.e.* the production and distribution of drugs for medical and scientific purposes, became increasingly controlled, while activities related to recreational drug use became more restricted, punishable, and criminalized. The subsequent chapter IV outlines the most important critiques of the prohibitionist IDCR and highlights key moments in which drug control and prohibition have been contested. It shows that even though prohibition remains the most prominent guiding norm in the area of drug policy, it now has a real competitor: harm reduction.

### **3.1 The Sino-Indian Opium Trade and the Beginning of International Drug Control**

International drug control initiatives are inextricably linked to the intensification and acceleration of global commerce during the 19<sup>th</sup> century. While traders had exchanged narcotic drugs like opium and marijuana for centuries, in the early 19<sup>th</sup> century these substances moved into the mainstream of international flows of goods and capital. Opium imports into China, which



rose from 200 to 6,500 metric tons between 1800 and 1880, best exemplify this point.<sup>47</sup> Traders also began exchanging the raw materials and chemical precursors of plant-based drugs, thereby facilitating the discovery of cocaine and heroin in European laboratories, which became popular for their medical qualities.<sup>48</sup>

The trade of narcotics (any drug with raw-material content) and their ingredients posed new challenges to societies around the world. Although drugs were often promoted as remedies for widespread diseases, their mood-altering qualities gained increasing popularity. As their consumption spread, so grew the perception of their risks and side effects, especially their propensity to develop harmful addictions. However, the ability of governments to control and regulate the drug trade not only depended on their own efforts but on the capacity and cooperation of their counterparts around the world. This problem was most explicit in the growing trade of opium between British India and China.

Introduced by Dutch traders operating from India in the early 17<sup>th</sup> century to combat the effects of malaria, opium use spread gradually along the Chinese coast. After large-scale opium addictions took place in Amoy (Xiamen) and Formosa (Taiwan), Chinese authorities began to see opium smoking as a moral vice and economic threat.<sup>49</sup> In 1729, the Chinese government issued an Imperial edict banning the import and sale of opium for the first time.<sup>50</sup> However, European

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<sup>47</sup> UNODC, *A Century of International Drug Control* (Vienna: 2009), 23.

<sup>48</sup> The isolation of pure cocaine from the coca leaf was attributed to the German chemist Albert Nieman around 1860. According to McAllister, cocaine not only enjoyed prominence because of its medical qualities as an anesthetic, but also because it represented scientific “progress” (McAllister, *Drug Diplomacy*, 15 [see intr., n. 3]). Heroin was first synthesized by the English chemist C.R. Alder Wright in 1874 and rediscovered by the German pharmaceutical company Bayer in 1895. As of 1895, it was marketed under the name heroin as a cough suppressant (UNODC, *A Century of International Drug Control*, 49)

<sup>49</sup> UNODC, *A Century of International Drug Control*, 19.

<sup>50</sup> McAllister, *Drug Diplomacy*, 12.

merchants kept smuggling opium into Chinese territory. By the end of the 18<sup>th</sup> century, illegal imports into China had doubled as compared to six decades earlier.<sup>51</sup>

Much of the exports were administered by the British East India Company (EIC). The EIC acquired a trade monopoly in Bengal and Bihar, which produced most of India's opium. To circumvent the Chinese ban and possible legal repercussions, it sold the opium to private merchants, which shipped the narcotic to British-owned warehouses in Canton (Guangzhou) from where it was smuggled by Chinese merchants. The growing export of opium to China not only provided a living for colonial administrators and merchants, but also helped to address long-term trade imbalances. Yet, the biggest expansion of the opium trade into China began after the EIC lost its monopoly between 1813 and 1834.<sup>52</sup>

As the result of the new competition prices for opium declined. This enabled a larger portion of the Chinese population to purchase and consume the popular narcotic, thereby fueling Indian production and exports. Between 1775 and 1839, opium exports to China increased from 75 metric tons to an estimated 2,500 tons. As a consequence of the growing trade, in some years British authorities obtained up to 34 percent of their total revenues in India from opium sales.<sup>53</sup> China reacted to the rising consumption by enacting even stricter laws (in 1814 and 1831). However, none of the measures was successful. In the end, Chinese efforts to protect their population, and the continued interest of the British Empire to maintain opium exports, erupted in two military confrontations, in 1839 and 1856, known as the opium wars.<sup>54</sup> Both wars ended with

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<sup>51</sup> Timothy Brook and Bob Tadashi Wakabayashi, "Introduction: Opium History in China," in *Opium Regimes: China, Britain, and Japan, 1839-1952*, eds. Timothy Brook and Bob Tadashi Wakabayashi (Berkeley and Los Angeles: University of California Press, 2000), 6.

<sup>52</sup> UNODC, *A Century of International Drug Control*, 20.

<sup>53</sup> Ibid. 21.

<sup>54</sup> Ibid. 23.

a humiliation of the Chinese and left them without any choice but to accept the opium trade. By 1880, opium imports rose up to 6,500 tons.<sup>55</sup>

To reduce the growing trade deficit, in 1880 Chinese authorities decided to gradually legalize the domestic production of opium, which halved imports between 1880 and 1908, while domestic production and consumption skyrocketed.<sup>56</sup> According to official Chinese estimates, in 1906 opium addiction affected 23.3 percent of the male population and 3.5 percent of the female citizens, stretching through all levels of Chinese society. Opium consumption was also popular in Chinese communities abroad, which made its use more visible across the globe.<sup>57</sup>

At the beginning of the 20<sup>th</sup> century, British policymakers began to reconsider their position. As Western powers employed increasingly aggressive strategies to open China to foreign trade and investment, Chinese rebellions were countered with oppression. The ongoing fights led to a loss of control of the central government. The British Empire's leadership, however, recognized that their interests were best served by maintaining the country's territorial integrity and the opium habit was considered to have weakened the country's position. Through the electoral victory of the Liberal party, the British anti-opium movement gained political strength. In 1907, the British government agreed to reduce Indian opium exports by 10 percent annually, provided that China would cut its domestic production at the same rate. Three years after the agreement's implementation, Britain would designate an inspector with the authority to supervise Chinese progress. On the basis of the inspector's judgments, both parties would continue their anti-opium campaigns for another 7 years.<sup>58</sup> China's initial efforts to reduce opium

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<sup>55</sup> Carl A. Trocki, *Opium, Empire and the Global Political Economy: A Study of the Asian Opium Trade* (London and New York: Routledge, 1999), 126.

<sup>56</sup> UNODC, *A Century of International Drug Control*, 23-24.

<sup>57</sup> Ibid. 25.

<sup>58</sup> McAllister, *Drug Diplomacy*, 23-24.

production were so impressive that India stepped up its timetable. By 1913, it exported its last licit opium to China. However, China's domestic efforts to curb production came to a halt after the Manchu dynasty was overthrown by revolution in 1911. The unstable republic that followed was not able to control its territories, enabling several provincial warlords to facilitate opium production.<sup>59</sup>

Nevertheless, the Ten Year Agreement of 1907 set the tone and served as an influential model for drug control advocates for the next six decades. According to McAllister, supporters of drug control believed the agreement demonstrated that drug control was primarily a matter of national will: "States that really *wanted* to impose effective drug restrictions could do so in relatively short order; had the Chinese government maintained control, the opium scourge would surely have been defeated. (...) Consequently, questions about what caused addiction, the relationship between supply and demand, and whether formal controls fostered illegal activity received little attention."<sup>60</sup> Parallel to the Ten Year Agreement, the United States started pushing for more encompassing global regulations. The following section outlines the origins and motivations of U.S. leadership in drug diplomacy and global control efforts.

### **3.2 The Origins of U.S. Leadership in the International Efforts to Control Narcotic Drugs**

Throughout the 19<sup>th</sup> century U.S. society experienced with increasing concern significant rises in the consumption of opium and its derivatives, including morphine, heroin, and codeine, as well as powder cocaine, all of which were imported and sold without any restrictions. Many medical professionals promoted the use of opiates to treat different expressions of pain, anxiety,

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<sup>59</sup> McAllister, *Drug Diplomacy*, 24-25.

<sup>60</sup> Ibid. 25.

and symptoms of gastrointestinal illnesses.<sup>61</sup> Cocaine not only gained popularity as a remedy for sinusitis and hay fever but, interestingly, also as a cure for opium, morphine, and alcohol habits.<sup>62</sup> According to Musto, “By 1900, America had developed a comparatively large addict population, perhaps 250,000.”<sup>63</sup> This gave rise to concerns and pressures to prohibit their unrestricted sale. Campaigns to restrict drug use were not only motivated by concerns about health and welfare but also tied to racist stereotypes and fears of minority groups. Opium smoking became associated with immigrants from China, most of whom had entered the U.S. around 1870 to work in railroad construction. However, after a period of economic depression they began to constitute a labor surplus and started to be viewed as a threat. Opium smoking was considered as another way in which the Chinese undermined American society, contributing to its prohibition in 1909.<sup>64</sup> Interestingly, the available data suggests that opiate addiction in the United States had witnessed its peak in 1890, about two decades before the imposition of tighter restrictions.<sup>65</sup>

Cocaine was primarily feared in the South. Many government officials believed that its euphoric and stimulating properties would spur violence against whites by the black minority. According to popular anecdotes, after taking cocaine blacks acquired superhuman strength, cunning, efficiency, improved pistol marksmanship, and resistance to .32 caliber bullets. The passage of the country’s first comprehensive drug law, the 1914 Harrison Act, contained numerous examples of the South’s fear of the cocaineized black.<sup>66</sup>

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<sup>61</sup> David F. Musto, *The American Disease: Origins of Narcotic Control* (Oxford and New York: Oxford University Press [1973, 1987], 1999), 1.

<sup>62</sup> Ibid. 7.

<sup>63</sup> Ibid. 5.

<sup>64</sup> Ibid. 6.

<sup>65</sup> Gene A. Heyman, *Addiction: A Disorder of Choice* (Cambridge: Harvard University Press, 1999), 3-4.

<sup>66</sup> Musto, *The American Disease*, 7-6.

Internationally, U.S. leadership in drug control is intimately related to the seizure of the Philippines from Spain and the goal to export U.S. products to China. After the United States took over the Philippine Islands in 1898, opium smoking was well established among the ethnic Chinese population. Prior to the arrival of the U.S., the Spanish administration had operated a government monopoly, which allowed opium sales, but only to ethnic Chinese. A 1902 cholera epidemic led to more widespread use among native Filipinos, who took opium because of the constipating qualities of its alkaloids. Subsequently, opium use became so widespread that the first Episcopal bishop of the Philippines, Charles Henry Brent, an important voice in Philippine affairs, became one of the principal leaders in the international anti-opium movement. In 1903, the Islands' civil governor, William Howard Taft, appointed an investigating committee, integrated by Bishop Brent and two medical experts, to examine how other regions dealt with the problem. After visiting Japan, Formosa, Shanghai, Hong Kong, Saigon, Singapore, Burma, and Java, the committee concluded that the only effective laws against opium were those enacted by Japan. While opium use in the United States and the Philippines raised strong concerns in the U.S. government, its principal motivation to become engaged in international narcotics control was tied to its goal to improve relations with the Chinese government and gain access to the Chinese market.

American merchants and investors saw a great potential for U.S. investments and the export of industrialized goods. However, they believed that rampant opium consumption lowered Chinese demand.<sup>67</sup> At the same time, U.S. traders experienced distrust due to general anti-foreign sentiments and the harsh treatment Chinese travelers and laborers received in the U.S. In 1905, Chinese merchants issued a voluntary embargo against U.S. goods. The U.S. leadership saw controlling the opium trade as a way to mollify Chinese resentments. In 1906, President Theodore

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<sup>67</sup> McAllister, *Drug Diplomacy*, 27.

Roosevelt (1901-1909) responded favorably to a request by Bishop Brent, urging for an international meeting to help China with its opium problem.<sup>68</sup> Brent believed that continued opium trade would undermine prohibitionist efforts in the Philippines. Under the leadership of the medical physician and Far East expert Dr. Hamilton Wright, and supported by temperance groups, missionary societies, and merchant organizations, the U.S. began preparations for the first international conference to discuss the opium trade.<sup>69</sup>

### **3.3 The 1909 Shanghai Opium Commission and the Path to the Hague**

In February 1909, the United States, Great Britain, France, the Netherlands, Portugal, Germany, Austria-Hungary, Italy, Russia, Japan, China, Persia, and Siam convened in Shanghai. The only state invited that did not attend was the Ottoman Empire.<sup>70</sup> Most nations, however, were only mildly interested in the topic. This was expressed in the request of Great Britain and the Netherlands to rank the meeting as a commission, which could make only recommendations and not issue any commitments.<sup>71</sup>

Under the leadership of Bishop Brent, who was chosen chairman, the Commission began a fact-finding mission, gathering data on cultivation, trade, and consumption of opium. Moreover, the Commission issued resolutions endorsing to gradually suppress opium smoking; reexamine laws about opium use; and prohibit the export of opium to other nations whose laws prohibited its importation. Moreover, there was unanimous agreement that governments should take measures to control morphine and other opium derivatives.<sup>72</sup>

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<sup>68</sup> Musto, *The American Disease*, 30-35.

<sup>69</sup> McAllister, *Drug Diplomacy*, 27-28.

<sup>70</sup> UNODC, *A Century of International Drug Control*, 33.

<sup>71</sup> Musto, *The American Disease*, 35-36.

<sup>72</sup> International Opium Commission, *Report of the International Opium Commission, Vol. 1-Report of the Proceedings* (Shanghai: North-China Daily News & Herald Ltd., 1909), 84.

The conference, however, also revealed fundamental differences. While the U.S. delegation aimed at creating the foundation of an unambiguous prohibitionist global drug regime, based on a rigorous control of drug supplies, most other colonial powers had more moderate views. Many of them believed that drug use could not be eliminated, and that drug control should focus on limiting the consequences of their abuse and deter their use through higher prices. Furthermore, several countries did not share the U.S. position that all non-medical uses were evil and immoral. Therefore, the meeting could not reach agreement on a definition of what constituted legitimate use.<sup>73</sup> The colonial powers also rejected the U.S. proposal to follow up the meeting in Shanghai with a plenipotentiary conference.

The United States, however, continued to exert pressure for a post-Shanghai meeting. The country's new president, William Howard Taft (1909-1913), who was governor general of the Philippines from 1901 to 1903 and had strongly supported Bishop Brent's anti opium positions, favored international action. Moreover, opium restriction coincided with his goal to expand U.S. influence in the Pacific region. Once again, the U.S. goal to penetrate the Chinese market provided the push for another meeting. At the time, a new wave of Chinese nationalism and resistance to foreign investment threatened to undermine U.S. goals. The country's leadership believed that helping to curb the opium trade would give them more prestige in China and that another international meeting would "smooth the troubled water" for its "aggressive commercial policy there."<sup>74</sup>

In September 1909, the U.S. sent invitation letters to the powers represented at Shanghai to enable a conference in The Hague in the following year. The list of items the United States proposed to discuss included control of the production and distribution of opium; limiting opium

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<sup>73</sup> UNODC, *A Century of International Drug Control*, 48.

<sup>74</sup> The quotes are from the U.S. opium commissioner Hamilton Wright, seeking to convince Secretary of State Philander C. Knox to hold another international conference. Cited in: Musto, *The American Disease*, 39.



cultivation; uniform national controls and penal regulations; governmental regulation of opium exporters; and reciprocal rights to search vessels suspected of carrying contraband opium.<sup>75</sup> Despite initial reluctance, and due to continued pressure from the U.S. government, a critical mass of governments agreed to meet at the Hague on December 1, 1911. However, several countries insisted on amendments to the agenda. Italy called for international controls on marijuana; France refused to consider any changes to its domestic legislation; Great Britain and France rejected proposals concerning the search of vessels in international seas; Britain insisted that the conference took up the issue of manufactured drugs like morphine, heroin, and cocaine; and Germany, the main exporter of these drugs opposed the British proposal.<sup>76</sup>

### **3.4 The Hague Opium Conference and Its Aftermath**

The divergent interests and competing visions about the nature of drug control efforts overshadowed the proceedings at the Hague. While the U.S. delegation, supported by the Chinese, pressed for radical measures, Germany and the Netherlands supported controls over raw materials but rejected limitations on manufactured drugs, *i.e.* drugs that go through a process of chemical elaboration. Germany argued that limiting production made no sense unless other manufacturing nations, like Switzerland, agreed to do the same.<sup>77</sup> Major opium cultivators such as Portugal (in Macao), Persia, and India, considered domestic drug use as an internal matter. Moreover, they insisted on the right to export opium to territories that did not prohibit their trade. Except for China, participants whose populations consumed large amounts of opium viewed the

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<sup>75</sup> McAllister, *Drug Diplomacy*, 31.

<sup>76</sup> Ibid. 32-33.

<sup>77</sup> Musto, *The American Disease*, 50.

enforcement of prohibition as unrealistic and often worried that reducing licit supplies would foster illicit trade.<sup>78</sup>

Despite this unpromising outlook, the conference established the first international drug control treaty, the International Opium Convention, consisting of six chapters and 25 articles. Chapters I and II called upon the signatories to restrict opium smoking and trade, and included a clause preventing the export to territories that prohibited their import.<sup>79</sup> However, the principal producing territories defeated provisions to reduce opium cultivation. Moreover, the treaty did not set a timetable for the elimination of opium smoking.<sup>80</sup> The provisions for manufactured drugs of chapter III remained equally elusive. While they contained a series of licensing, manufacturing, and distribution controls, the German delegation ensured that the provisions remained vague. Chapter IV addressed the opium situation in China. It called on the contracting powers to prevent smuggling of opium and other narcotics into Chinese territory, while the Chinese government would undertake similar measures. Chapter V called upon all parties to prohibit the possession of raw opium, prepared opium, morphine, cocaine, and their respective salts. Chapter VI addressed the treaty's signing and ratification procedures.<sup>81</sup> Due to Germany's and France's concerns that upon ratification the drug trade would simply move to places with fewer restrictions, it included a clause that all producing, manufacturing, and consuming states, a total of 34 governments, had to ratify the treaty before its entry into force.<sup>82</sup>

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<sup>78</sup> McAllister, *Drug Diplomacy*, 33.

<sup>79</sup> International Opium Convention chs. I and II, opened for signature Jan. 23, 1912, 8 L.T.N.S. 187 (entered into force Jun. 28, 1919).

<sup>80</sup> UNODC, *A Century of International Drug Control*, 50.

<sup>81</sup> International Opium Convention, *supra* n. 79, chs. III, IV, V, and VI.

<sup>82</sup> McAllister, *Drug Diplomacy*, 33-34.

The principle of universality advocated by the Germans and the French proved to be a major obstacle. Over the next 30 months, eight countries ratified the agreement, while 24 promised to adhere. However, the opium producers Serbia and Turkey rejected the treaty altogether.<sup>83</sup> The outbreak of World War I overshadowed efforts to obtain their support, which brought drug control initiatives to a hold. However, the following peace negotiations proved favorable to the Hague Opium Convention. United States, Great Britain, and China insisted on including a clause requiring ratification as a prerequisite for any peace agreement. This way, Germany, Austria, and Turkey were obliged to ratify the Convention and its requirement for near-universal adherence was satisfied.<sup>84</sup> The nascent League of Nations took over responsibility to supervise its implementation, converting Geneva into the center of international drug control, assuring it a permanent place in the international agenda.<sup>85</sup>

### **3.5 Drug Control in the League of Nations: Early Period**

Apart from its goal to create a more peaceful and stable international environment, the League of Nations became an important venue for grappling with socio-medical concerns, including child welfare, women's rights, health care, labor legislation, malnutrition, and drug use. According to McAllister, League officials showed great interest in drug-related issues because success in international drug control was believed to strengthen the organization, while failure would weaken it. The most optimistic voices considered that success in the area of narcotics control might provide the key to resolve the paramount issue of the day, arms control.<sup>86</sup> Additionally, League officials were hopeful that the drug issue would draw the United States,

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<sup>83</sup> McAllister, *Drug Diplomacy*, 35.

<sup>84</sup> Ibid. 36-37.

<sup>85</sup> Ibid. 37.

<sup>86</sup> Ibid. 87.

which rejected becoming a member, closer to the League.<sup>87</sup> Although the League assumed responsibility for administering the Hague Convention, many of its parties, including the U.S., Germany, Russia, and several Latin American states, were non-members.<sup>88</sup> However, over time, many of them became members or cooperated with the its drug control bodies in one way or another.

To fulfill its responsibility of supervising the International Opium Convention, the League's architects created several entities responsible for drug matters. The Advisory Committee on the Traffic in Opium and Other Dangerous Drugs, usually referred to as the Opium Advisory Committee (OAC) served as the focal point for most issues related to the drug trade. It was integrated by government representatives, who met quarterly during the League's early years and annually later on. To assure administrative and executive support, the League established an Opium and Social Questions Sections (the Opium Section) within the secretariat. The League Health Committee also provided expertise on medical matters.<sup>89</sup>

The drug control bodies focused their initial efforts on estimating the extent of the drug trade. The OAC requested statistical data on imports, exports, re-exports, and reserve stocks. Conservative estimates calculated that world production of opium and coca exceeded "legitimate" demand by a factor of 10. As one of its first measure, the OAC recommended that all states adapt an import/export certification scheme to ensure that all drug shipments had a "legitimate" destination.<sup>90</sup>

The League also created a Mixed Sub-Committee, with experts from the OAC and the Health Committee to study definitional and etiological issues: What is the aim of the work

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<sup>87</sup> McAllister, *Drug Diplomacy*, 45.

<sup>88</sup> Ibid. 46.

<sup>89</sup> Ibid. 44.

<sup>90</sup> Ibid. 47.

undertaken by the League? What constitutes an abuse? How do abuses occur? How can these abuses be ascertained? And, how can abuses be prevented? However, rather than dealing with the intricacies of drug use, addiction, and possibilities of treatment, the Mixed-Sub Committee engaged in narrow, material discussion about the world's legitimate needs for opium. On the one hand, the representatives of the OAC wanted to protect the production and manufacturing capabilities of the states they represented and therefore argued that quasi-medical opium use, *i.e.* the eating and smoking of opium in traditional preparations, should be considered as legitimate. On the other, the experts from the Health Committee argued for a lower ceiling of licit consumption. Once it became evident that the position of the OAC experts would prevail, the Health Committee prepared an alternative report, which estimated legitimate opium consumption 33 percent lower.<sup>91</sup> According to McAllister, the above episode presents a missed opportunity to explore alternative approaches:

While social and medical questions never disappeared entirely, the system focused on economic calculations, regulatory statutes, and enforcement measures. Medical experts played an important role in defining which drugs possessed addiction potential, but those determinations focused on narrow physiological manifestations and eschewed the larger social implications of addiction. Supply control emerged as the regime's *raison d'être*.<sup>92</sup>

Possibilities to envision alternative solutions to drug-related issues further declined with the return of the United States to the discussions on drug control. While in the early stages the United States rejected cooperation with the League entirely, pro-League advocates as well as drug control associations in the U.S. lobbied extensively to cooperate more closely with the international community. Due to the extent of the global drug trade, concerns about rising drug

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<sup>91</sup> McAllister, *Drug Diplomacy*, 48.

<sup>92</sup> *Ibid.* 49-50.

consumption in China, and internal pressures, by late 1922 the government of Warren G. Harding (1921-1923) decided that it had to engage with Geneva. Subsequently, the State Department announced that it would send an unofficial observer to the January 1923 OAC meeting.<sup>93</sup>

Influenced by missionary groups, religious organizations, and temperance workers, the U.S. took on a radical supply-control position. The U.S. observer campaigned for the elimination of excess production and the prohibition of quasi-medical opium use, *i.e.* its consumption in traditional preparations, in India, and opposed a government-controlled opium monopoly in China. Despite strong resistance, U.S. interventions not only changed the terms of debates but also influenced the Mixed Sub-Committee to redefine quasi-medical use of opium as not legitimate.<sup>94</sup> The next OAC meeting in the Spring was attended by four U.S. delegates, who defended U.S. positions even more forcefully. Furthermore, due to U.S. pressure the parties at Geneva agreed to hold another plenipotentiary conference on drug control.<sup>95</sup>

### **3.6 The 1924/1925 Geneva Conventions**

To reduce the complexity of the negotiations, League representatives opted for holding two consecutive conference. The first one, scheduled for November 1924, included a small number of states and focused exclusively on the opium situation in Southeast Asia. The second meeting, which was scheduled to directly follow the first, sought to control the production of manufactured drugs like heroin, morphine, and cocaine, as well as to limit the amounts of raw opium and coca imported for manufacturing to supply medical and scientific needs.<sup>96</sup>

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<sup>93</sup> McAllister, *Drug Diplomacy*, 52-53.

<sup>94</sup> Ibid. 53.

<sup>95</sup> Ibid. 56.

<sup>96</sup> Ibid. 58-59.

After the negotiations of the first conference had taken twice as long as planned, the parties established the Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and Use of, Prepared Opium, signed by the British Empire, Burma, India, France, Japan, the Netherlands, Portugal and Thailand. The Agreement required that the importation, sale, and distribution of opium (except for retail sales) should be handled by government monopolies; prohibited the sale of opium and the entry of minors into smoking dens; committed governments to reduce the number of smoking dens and retail stores; regulated the export and import of opium; and required governments to discourage the use of opiates through educational campaigns.<sup>97</sup> Despite advancing this new set of legal norms, McAllister underlines that the conference achieved relatively little:

The colonial powers would not commit to a date for elimination of opium smoking. All insisted that the situation would not improve until China controlled its internal production. The Chinese exploited the conference to publicize grievances about extraterritoriality, claiming that they could not alleviate the problem as long as foreigners escaped Chinese justice. At the same time, the Chinese refused to admit the magnitude of the problem within their own borders.<sup>98</sup>

The delay of the negotiations and the failure to achieve a substantive accomplishment set the tone for the second conference, which started while the first conference was still in process. Unlike the club-like atmosphere of the first, forty-one governments attended it. However, a small set of core states dominated the proceedings. While the agenda was targeted towards the establishment of a new supervisory institution and the creation of a standardized import/export certification system, the U.S. delegation pressed for a timetable to eliminate opium smoking

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<sup>97</sup> Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and Use of, Prepared Opium arts. 1-7, opened for signature Feb. 11, 1925, 51 L.T.N.S. 337 (entered into force Jul. 28, 1925).

<sup>98</sup> McAllister, *Drug Diplomacy*, 68.

within ten years and the restriction of opium and coca production to medical and scientific needs. Many governments saw their interests threatened by these proposals and proclaimed to abandon the negotiations, arguing that these goals lay outside the conference's competence. However, after recognizing that its demands would not be met, the U.S. decided to quit the proceedings, leaving the negotiations of the final agreement to the other parties.<sup>99</sup>

The final version of the International Opium Convention of 1925, which was signed and ratified by 56 countries, created a new set of rules regarding the "legitimate" trade of narcotic drugs and altered the IDCR's institutional structure. Without any binding obligations, chapter II compelled states to enact new laws and regulations to control the production of raw opium and the coca leaf. Chapter III required the contracting parties to pass new laws to limit the production, import, sale, distribution, export, and use of manufactured drugs to scientific and medical needs. Chapter IV established a series of guidelines for the trade with Indian Hemp. Chapter V created a new import/export authorization model as the main control mechanism for international trade. A system of import certificates and export authorizations ensured that trade in narcotic substances was controlled by the competent authorities in each country. Ultimately, chapter VI established a new organization to supervise the regime's proceedings, the Permanent Central (Opium) Board (PCOB).<sup>100</sup> Art. 21 required all Parties to submit to the PCOB non-binding estimates of the quantities of each substance covered by the Convention to be imported into their territory for internal consumption during the following year.<sup>101</sup> While earlier drafts of the treaty had envisioned a board with the power to fix estimates for countries that failed to submit their own, question estimates that seemed excessive, and sanction states that exceeded the import estimates,

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<sup>99</sup> McAllister, *Drug Diplomacy*, 69-77.

<sup>100</sup> International Opium Convention chs. I to VI, opened for signature Feb. 19, 1925, 81 L.N.T.S. 317 (entered into force Feb. 3, 1948).

<sup>101</sup> *Id.* art. 21.



the final document provided for a board with no compulsory powers and only limited authority to scrutinize trade.<sup>102</sup> The eight members of the Board were to be assigned by the Council of the League. However, the United States and Germany were invited to nominate one person. Moreover, even though the League would contribute to the Board's budget, the new organ was allowed to hire its own staff, which provided it with some autonomy.<sup>103</sup>

For supply control advocates the International Opium Convention of 1925 constituted both shortcomings and advances. On the one hand, it only applied to its signatories, which, among many others, did not include the United States, Persia, and Peru. More importantly, it did not place any restrictions on cultivation, manufacturing, and consumption. On the other hand, it advanced the IDCR's institutional infrastructure, created new expectations and standards of behavior (even if not honored at all times), and established the prohibition of all recreational drug use as the regime's primary objective.

### **3.7 The 1931 Limitation Convention**

By the end of the decade, many states had tightened their domestic controls, India had curtailed its opium exports, the International Opium Convention of 1925 enjoyed growing acceptance, and the work of the OAC and the PCOB provided a clearer picture over supply and demand in the global drug trade.<sup>104</sup> However, from a supply-side perspective a multitude of challenges remained: Persia and other states filled the void left by the Indian withdrawal from the quasi-medical opium market; China continued to produce large amounts of opium, while its importation of manufactured drugs skyrocketed; the European colonial powers continued to tolerate opium smoking; and many pharmaceutical companies moved their production sites to

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<sup>102</sup> McAllister, *Drug Diplomacy*, 72.

<sup>103</sup> Ibid. 73.

<sup>104</sup> UNODC, *A Century of International Drug Control*, 55.

countries with less stringent controls. Moreover, illicit trafficking of narcotic drugs grew significantly, fostering large-scale, transnational criminal networks.<sup>105</sup>

Since reducing agricultural supplies appeared unlikely, control advocates focused on the next logical step, envisioning schemes to curb surpluses of manufactured drugs. This, they hoped, would inevitably lead to a reduction of the organic raw materials used for their manufacture. After months of preparations, 57 countries, including the United States, attended the Conference on the Limitation of the Manufacture of Narcotic Drugs, which convened in Geneva from May 27 to July 13, 1931. OAC representatives suggested to curb production through a quota scheme according to which all governments were supposed to calculate their medical requirements. The market would then be divided among manufacturing states according to an agreed-upon formula.<sup>106</sup> However, many governments saw the quota scheme as an infringement on free trade and were afraid that such a cartel-like arrangement would undermine the possibility of satisfying their medical needs at a competitive price. Moreover, they objected that the initial scheme did not consider the need for medical emergencies. After weeks of consultations, the contracting parties came up with a compromise solution: Signatories were to submit estimates for the needs of manufactured drugs by August 1 of the preceding year, with the possibility to revise the estimates in case of a medical emergency. However, they did not have to designate in advance where they would buy their supplies, thus allowing them to take offers from different manufacturers. Most importantly, the treaty required countries to cease imports and/or manufacture when they exceeded their annual estimate.

The 1931 Limitation Convention also introduced the mechanism of drug scheduling, *i.e.* applying different levels of control based on the degree of danger presented by a drug, as well as the extent to which it was useful for medical purposes. While heroin, morphine, and cocaine were

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<sup>105</sup> McAllister, *Drug Diplomacy*, 86.

<sup>106</sup> *Ibid.* 88.

placed in group I, which was subject to tighter controls, group II consisted of codeine, ethylmorphine and their salts. New narcotics were subject to the tightest level of control until governmental representatives determined their effects with the advice and testimonies of medical experts, pharmaceutical companies, and the research community.<sup>107</sup>

To supervise the agreement, the signatories created a new institution, the Drug Supervisory Body (DSB). Different to the PCOB, the DSB was allowed to produce estimates for all countries and territories, even the ones that did not form part of the treaty.<sup>108</sup> However, the Body was neither allowed to frame estimates unilaterally, nor did it have enforcement powers.<sup>109</sup> In any case, the 1931 Convention, which was eventually ratified by 67 countries, clearly delineated the boundary between the licit drug trade and illicit traffic. Furthermore, it imposed significant controls on the licit trade of narcotics, representing an important milestone in the global prohibition of recreational drugs use.<sup>110</sup>

### **3.8 The 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs**

The implementation of the 1931 Limitation Convention coincided with the withdrawal of Germany and Japan from the League of Nations (1933), the dissolution of the World Disarmament Conference (1934), and a renewed prospect of war. Furthermore, for the first time, parts of the drug control community began questioning the regime's tenets. Though more and more countries started to regulate their "legitimate" drug trade according to the IDCR's rules and regulations, Asian and Latin American states in particular gained a reputation for failing to

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<sup>107</sup> Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs chs. I to IV, opened for signature Jul. 13, 1931, 139 L.N.T.S. 303 (entered into force Jul. 9, 1933).

<sup>108</sup> *Id.* art. 7.

<sup>109</sup> McAllister, *Drug Diplomacy*, 96.

<sup>110</sup> UNODC, *A Century of International Drug Control*, 55.

cooperate with the regime or taking advantage of its multiple loopholes. Moreover, to escape controls several illicit manufacturers moved operations closer to their raw-material sources, into countries that would not close them down. Consequentially, clandestine drug factories cropped up in Eastern Europe and Asia. Even in industrialized countries, the new control mechanisms gave rise to an increasingly sophisticated illicit drug market.<sup>111</sup> These developments led to factions within the drug control community. Some voices even questioned the efficacy of the supply-control approach. In 1936, the PCOB caused a firestorm, arguing that control mechanisms had largely failed. Moreover, some OAC representatives questioned the IDCR's strict emphasis on law enforcement, advocating psychological treatment and prevention as alternative tools. However, during a period when the future of the League became increasingly uncertain, while facing severe budgetary constraints, dissenting voices were kept quiet.<sup>112</sup>

Based on the believe that disrupting transnational criminal networks would eliminate addiction, League officials began campaigning for a conference that would “impose uniform penalties on traffickers, punish those who facilitated smuggling into foreign jurisdictions, and enhance extradition agreements.”<sup>113</sup> In 1936, League members and the United States convened in Geneva to negotiate the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs. The conference, however, began with a dispute between the United States and other participants over the agenda. The U.S. delegation insisted to discuss the elimination of raw materials and the prohibition of opium smoking to which other states objected. Unwilling to compromise, the United States withdrew from the conference.

The final treaty classified a series of punishable activities related to the illicit drug trade and urged the Contracting Parties “to make the necessary legislative provisions to severely

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<sup>111</sup> McAllister, *Drug Diplomacy*, 124.

<sup>112</sup> Ibid. 124-126.

<sup>113</sup> Ibid. 120.

punishing, particularly by imprisonment or other penalties of deprivation of liberty” all drug-related offenses.<sup>114</sup> Moreover, the treaty established a series of guidelines for the penalization of foreign nationals and possible extraditions.<sup>115</sup> However, the practical importance of the convention was limited as only 13 countries signed and ratified it. Furthermore, its entry into force coincided with the outbreak of World War II, which undermined the treaty’s implementation. WWII also precluded plans for a conference to tackle the long-standing issue of reducing opium and coca cultivations. Nevertheless, the main tenets of the regime survived throughout the war.

### 3.9 U.S. Leadership During World War II

Drug control advocates in the United States saw WWII as an opportunity to align the direction of IDCR with their preferences. Harry Anslinger, head of the newly established Federal Bureau of Narcotics (FBN) and a strong believer in prohibition and heavy penalties, was the architect of the U.S. approach.<sup>116</sup> During the war, the United States had emerged as the world’s principal producer and distributor of medicines. Anslinger used this position to make drug sales, as well as coca and opium purchases (of which the United States had acquired massive stockpiles) dependent on adhering to the control regime’s treaties and submitting statistical information to the PCOB and the DSB. He also banned drug exports to Mexico in 1940, until the

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<sup>114</sup> The following punishable activities are listed in the Convention’s art. 2: “(a) The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokage, despatch, despatch in transit, transport, importation, and exportation of narcotic drugs, contrary to the provisions of said Conventions; (b) Intentional participation in the offenses specified in this Article; (c) Conspiracy to commit any of the above-mentioned offenses; (d) Attempts, and subject to the conditions provided by national, preparatory acts.” Moreover, art. 5 states that “The High Contracting Parties, whose national law regulates cultivation, gathering, and production with a view to obtaining narcotic drugs, shall likewise make severely punishable contraventions thereof” (Convention for the Suppression of the Illicit Traffic in Dangerous Drugs arts. 2 and 5, opened for signature Jun. 26, 1936, 198 L.N.T.S. 301 [entered into force Oct. 10, 1947]).

<sup>115</sup> *Id.* arts. 7 to 9.

<sup>116</sup> Musto, *The American Disease*, 209-216.

country suspended an experimental ambulatory treatment program that involved the free distribution of morphine to registered addicts, and to Chile (1942), after the country started to produce its own opium.<sup>117</sup> In the later stages of the war, Anslinger and his supporters used their influence to promote opium prohibition in Asian territories the U.S. occupied. Despite the questionable legality of these measures, the State Department was able to convince the British and the Dutch to follow suit.<sup>118</sup>

The United States also exerted its influence on the IDCR's functionality and organizational structure. As it became difficult to maintain personnel and activities in Geneva, the PCOB and the DSB, which had some autonomy from the League, were allowed to open branch offices in the United States from where they would carry out their statistical work without commenting or even sanctioning other governments.<sup>119</sup> The OAC, however, suffered a different fate. Due to its close attachment to the League, it gained a reputation for being susceptible to political considerations, which, according to U.S. views, undermined initiatives to cut back production and prohibit all non-medical and non-scientific drug use. Although the head of the OAC and the League's Opium Section, Bertil A. Renborg, temporarily resided in the United States, his activities were severely restricted and eventually the U.S. government denied his reentry.<sup>120</sup> However, the entry of personnel from the PCOB and DSB led to the coalescence of like-minded control advocates, who began planning and laying out their post-war vision. The so-called inner circle agreed that the OAC should not be resurrected and placed their hopes in a new organization, within the United Nations system, which could be infiltrated with like-minded professionals. After the Dumbarton Oaks Conference, where the United Nations was formulated

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<sup>117</sup> McAllister, *Drug Diplomacy*, 145.

<sup>118</sup> Ibid. 151.

<sup>119</sup> Ibid. 139.

<sup>120</sup> Ibid. 143.

and negotiated, decided that the United Nations Economic and Social Council (ECOSOC) would deal with drug-related matters, the inner circle successfully campaigned for a new organization, the Commission on Narcotic Drugs (CND), which reported directly to ECOSOC. The United Nations also created a Division of Narcotic Drugs (DND), which functioned as the UN's equivalent to the League's Opium Section (see above).<sup>121</sup>

### **3.10 Drug Control in the UN: Early Years**

After the newly-created UN bodies picked up their work, members of the IDCR's inner circle, who occupied all key positions, had two major objectives: First, the resurrection of control mechanisms in territories affected by the war; and, second, the regulation and prohibition of synthetic narcotics like meperidine (Demerol) and methadone, which emerged during the war to lower the dependence on traditional opioids. To achieve the first objective, representatives of the PCOB, DSB, and CND, often assisted by agents of Harry Anslinger's FBN, travelled over Asia and Europe to explain reporting procedures, search for excess stocks, uncover trafficking networks, and lobby for support. As the result of their effort, by the late 1940s most countries, including Germany and Japan, had reconstituted effective regulatory systems.<sup>122</sup>

The emergence of new synthetic substances entailed both risks and opportunities for control advocates. On the one hand, by escaping from regulation new synthetics had the potential to undermine the regime. On the other hand, by creating alternatives to popular narcotics they promised the potential to make agricultural production of opiates and coca increasingly irrelevant. In any case, control experts agreed that new drugs had to be regulated. Therefore, the CND drafted an agreement, which required states to submit the new substances to the same procedures of estimates and statistical reporting as opium-based drugs. An expert committee of the World

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<sup>121</sup> McAllister, *Drug Diplomacy*, 153-154.

<sup>122</sup> Ibid. 162.

Health Organization (WHO) would evaluate the drugs according to their addictive potential, while the DSB and PCOB would oversee their trade. The 1948 Synthetic Narcotics Protocol soon gained widespread acceptance and was implemented in the following year.<sup>123</sup> This meant that 14 new substances came under international control by 1951 and six more by 1954.<sup>124</sup>

The inner circle's next move was to expand the IDCR's control mechanisms to the so-called third world, where most opiate and coca cultivation, and increasingly drug manufacturing, took place. However, the process of decolonization, political instability, and the emerging cold war undermined their efforts to some extent. Hard-line actions against recalcitrant states carried the risk of driving them into the hands of the Soviet Union, which the regime's primarily Western agents wanted to avoid at all costs. On top of that, as the IDCR was based on eight multilateral treaties, which enjoyed different levels of acceptance and contained numerous loopholes, the drug control system became increasingly hard to administer. Therefore, control advocates wanted to simplify it by incorporating all previous agreements into a single document. In 1948, ECOSOC approved negotiations and its staff began drafting a new consolidated agreement, the Single Convention.<sup>125</sup> However, their goal was curtailed by one of the inner circle's own members, the head of the DND, Leon Steinig. Rather than putting his weight behind a comprehensive agreement, he launched a campaign to create an international opium monopoly; an agency to set prices, buy from producers, and sell to manufacturers. Steinig believed that the creation of such a monopoly would eliminate excess production and present an opportunity to do the same for nuclear material.<sup>126</sup>

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<sup>123</sup> McAllister, *Drug Diplomacy*, 164-165.

<sup>124</sup> UNODC, *A Century of International Drug Control*, 59.

<sup>125</sup> McAllister, *Drug Diplomacy*, 172.

<sup>126</sup> Ibid. 173.



Few took his idea seriously at the beginning, but, to the surprise of many, in 1949 he reached an agreement on quotas between the four main opium producers: Iran, Turkey, India, and Yugoslavia. Moreover, the International Bank for Reconstruction and Development signaled interest in providing a loan to set up the new institution. However, in fear of higher prices pharmaceutical companies started pressuring their governments to oppose the plan, which soon lost the support of the international community. Rather than recognizing the plan's unfeasibility, Steinig devoted the following years to defend and resurrect it, thereby frustrating and delaying the negotiations for the Single Convention. In 1952, he was finally replaced by the British national Gilbert E. Yates. However, the initial prospect of quick negotiations towards a comprehensive treaty had faded. Instead, control officials concentrated their actions on a new protocol to regulate opium production and sale. The 1953 Opium Protocol obliged producer states to submit to the DSB estimates about the amount of opium planted, harvested, consumed domestically, exported, and stockpiled. Year-end statistics would be submitted to the PCOB, which had the power to make inquiries into discrepancies, conduct inspections, and impose embargoes. Moreover, it could take investigatory and punitive action even for states that did not form part of the agreement.<sup>127</sup> The Protocol also stipulated that opium should be restricted to medical and scientific needs, although states had a 15-year grace period before those provisions would be enforced. While each state was allowed to accumulate very large stockpiles before being investigated, the 1953 Opium Protocol, contained by far the most stringent drug control measures embedded in international law.<sup>128</sup>

However, not all of the states that took part in the negotiations were ready to support it afterwards. In order to become effective, the Protocol had to be ratified by at least three of the

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<sup>127</sup> Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium arts. 8 to 12, opened for signature Jun. 23, 1953, 456 U.N.T.S. 3 (entered into force Mar. 8, 1963).

<sup>128</sup> UNODC, *A Century of International Drug Control*, 60.

seven major opium producers. While India (1954) and, with much reluctance, Iran (1959) ratified the agreement, none of the other producers gave their support. They hoped that the negotiations of the Single Convention, into which the 1953 Protocol would be integrated, could produce a more favorable outcome.<sup>129</sup>

### **3.11 The 1961 Convention on Narcotic Drugs**

The creation of the Single Convention was utterly complex and subject to numerous considerations about the extent of control mechanisms, state sovereignty, economic interests, and how to treat and regulate different substances. Control advocates were facing the risk that a treaty with too many restrictions, punitive elements, and intrusions of state sovereignty would be rejected by the international community. Therefore, their goal was to make the treaty as restrictive as possible without losing broad support.

A first draft of the Single Convention emerged in the early 1950s. Bearing the stamp of DND director Leon Steinig, it included many of the features of the international opium monopoly and was amply rejected by the UN membership. A second draft was established in 1956. This time it included several provisions of the 1953 Opium Protocol. Once again, it failed to reach sufficient support. In 1957-58, the CND composed a more moderate third offer, which most governments accepted as an acceptable starting point.<sup>130</sup>

During the negotiations, the 73 participating states defined the narcotic substances to be controlled; prohibited the use of opium, cocaine, coca, cannabis and its derivatives; specified punishable offenses related to the illicit traffic in narcotic drugs; clarified the reporting obligations of its members; outlined the IDCR's control mechanisms and punitive powers; and

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<sup>129</sup> McAllister, *Drug Diplomacy*, 202-203.

<sup>130</sup> Ibid. 204-205.

enacted some changes to the regimes administrative structure.<sup>131</sup> Moreover, the final document, the Single Convention on Narcotic Drugs, incorporated nine previous agreements into a unifying treaty. Only the 1936 Convention on illicit trafficking, which enjoyed little international support did not make it into the final agreement and remained in force.<sup>132</sup>

The Single Convention's prohibitionist character is evident throughout the document. The treaty's preamble states "that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind," while "*Considering* that effective measures against abuse of narcotics require co-ordinated and universal action."<sup>133</sup> Article 4 establishes that "The Parties shall take such legislative and administrative measures (...) to limit exclusively to medical and scientific purposes the production, manufacture, export, import distribution of, trade in, use and possession of drugs."<sup>134</sup> Although states were granted a 15 to 25 years transition period, the use of opium smoking, opium eating, coca-leaf chewing, and cannabis smoking for recreational purposes became prohibited by international law.<sup>135</sup> Furthermore, building upon the offenses listed in previous treaties, article 36 specified a series of punishable offenses related to the illicit trafficking of narcotic substances, which ought to be penalized "particularly by imprisonment or other penalties of deprivation of liberty" by the Convention's parties.<sup>136</sup> Article 33 declared the possession of drugs illegal, but did not specify

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<sup>131</sup> UNODC, *A Century of International Drug Control*, 60.

<sup>132</sup> See U.N. Single Convention on Narcotic Drugs art. 44, opened for signature Mar. 30, 1961, 520 U.N.T.S. 151 (entered into force Dec. 13, 1964).

<sup>133</sup> *Id.* preamble.

<sup>134</sup> *Id.* art. 4.

<sup>135</sup> See *id.* art. 49.

<sup>136</sup> *Id.* art. 36 §1: "Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other

whether or not it should be punished, thereby allowing governments some flexibility in its implementation.<sup>137</sup>

Similar to previous treaties, the Single Convention required all parties to submit estimates and statistics for the import, export, manufacture, storage, and consumption of opium, coca, and cannabis as well as manufactured drugs with raw-material content. The import/export certification system also remained in force, requiring governments to license manufacturers, traders, and distributors.<sup>138</sup> Furthermore, the 1961 Convention maintained the “schedules of control” scheme (see section 3.7) but expanded the number of schedules from two to four, allowing for more flexibility in regulating narcotic substances with very different characteristics and effects.<sup>139</sup> Under the new scheme, opiates and cocaine faced the toughest restrictions while coca production was treated with less severance. Cannabis-growing states avoided any serious limitations. Due to the successful lobbying of pharmaceutical companies, psychotropic substances, a new category used for synthetic drugs without any organic content, including hallucinogens, amphetamines, barbiturates, and tranquilizers, were not restricted.<sup>140</sup>

To simplify the supervision of the treaty’s commitments, it promoted some administrative changes. The PCOB and the DSB were fused into a new body, the International Narcotics Control Board (INCB). The new board would collect estimates and statistics, while having the authority to calculate and make estimates for states failing to submit them. It also maintained the power to issue embargoes against states failing to comply with the IDCR’s rules as well as to deduct excess

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action in which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offenses when committed intentionally, (...).”

<sup>137</sup> *Id.* art. 33.

<sup>138</sup> See: *id.* arts. 12, 13, 19, 20, and 31.

<sup>139</sup> See: *id.* art 3.

<sup>140</sup> McAllister, *Drug Diplomacy*, 209.

imports and manufactures from the quantities allowed for the following year.<sup>141</sup> However, producers of organic raw materials assured that the conference eliminated all clauses dealing with inspections, mandatory embargoes, and clear reduction targets.<sup>142</sup> To most control advocates, the goal of achieving a unifying and inclusive agreement outweighed the objective to achieve bolder steps in eliminating all non-medical and non-scientific drug use. Nevertheless, because of these limitations, the United States rejected the treaty and started to campaign instead for the ratification of the 1953 Opium Protocol. Although the U.S. was successful in convincing Greece and Turkey to adhere, thereby fulfilling its entry into force, it was unable to halt the progress of the Single Convention. At ECOSOC's 1962 autumn session, 81 nations approved a resolution in favor of the Single Convention, while only the U.S. rejected it. In the following, numerous states sped up their ratification procedures. In 1964, the UN secretariat had received 40 ratifications, which ensured its entry into force in the same year. In 1966, the Single Convention had already received over 50 ratifications, leaving the U.S. with no other choice than to follow suit.<sup>143</sup> Today, the treaty, as amended by the 1972 protocol (see below) has been ratified by 181 countries, thereby enjoying almost universal application.

### **3.12 The 1971 Convention on Psychotropic Substances**

Although the Single Convention enjoyed great international acceptance, it did little to prevent drug consumption. The United States in particular experienced sharp rises in heroin use. At the same time, numerous countries witnessed with increasing concern the spread of psychotropic drugs, including methamphetamine, LSD, and MDMA. Their growing usage in different cultural and social contexts, including appearances in popular culture, challenged the

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<sup>141</sup> See: U.N. Single Convention on Narcotic Drugs, *supra* n. 132, arts. 14, 15 and 21.

<sup>142</sup> McAllister, *Drug Diplomacy*, 208-209.

<sup>143</sup> *Ibid.* 217-218.

dominant believe that these “modern, scientifically based substances” did not have the properties to develop dependencies.<sup>144</sup> Moreover, new studies of the WHO indicated that some amphetamines shared characteristics similar to cocaine and that certain hallucinogens produced effects analogous to cannabis.<sup>145</sup> As calls for their regulation became more forceful, pharmaceutical companies successfully lobbied their governments to prevent these substances from being incorporated into the Single Convention, which would have implied high levels of control and more bureaucratic obligations. Instead, UN membership agreed to negotiate a new treaty regulating the “legitimate use” of psychotropic substances.

During the negotiations, cultivating and manufacturing states reversed the roles occupied at the 1961 conference. While the cultivators wanted to uphold the manufacturers of psychotropic drugs to the same standards as narcotic substances, manufacturing states (mainly Western industrial powers) argued for the type of loopholes they previously opposed.<sup>146</sup> The final document not only reflected the power relations between the two groups but also the influence of pharmaceutical companies, which managed to place multiple representatives in the delegations negotiating the treaty. Even before the start of the conference, manufacturers were able to remove language from the draft that would have required governments to submit estimates of need, thereby allowing pharmaceutical companies to keep producing as much as they liked.<sup>147</sup> While the final document placed fairly strong controls on hallucinogens like LSD and DMT, it applied much weaker limitations on widely-used stimulants and depressants. Other substances, including precursor chemicals, escaped controls altogether. Moreover, the schedules of the 1971 Convention did not make any mention of derivatives, which allowed pharmaceutical to

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<sup>144</sup> McAllister, *Drug Diplomacy*, 227.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid. 231.

<sup>147</sup> Ibid. 230.

circumvent controls by slightly changing the chemical composition of the controlled substances. Therefore, only 32 substances spread among the four schedules.<sup>148</sup>

Despite these limitations, the 1971 Convention extended the principle of prohibiting recreational drug use to a new set of substances.<sup>149</sup> In pursuing this goal, it stated that the substances covered in the treaty could only be supplied with medical prescriptions, accompanied by the appropriate warnings about health risks. Moreover, the treaty prohibited advertisements of these drugs to the general public.<sup>150</sup>

Similar to the Single Convention, the new agreement called upon its members to take preventive and repressive action against illicit traffic as well as to assist and cooperate with other states in their efforts against international traffic of psychotropic substances.<sup>151</sup> Any action against the rules of the Convention, or a law enacted in pursuance of its obligations, ought to be treated as a punishable offense, while holding it desirable that these crimes be treated as extradition offenses.<sup>152</sup>

McAllister also upholds that “In subsequent years, skillful manipulation by pro-control governments and the UN secretariat gradually plugged many of the treaty’s gaps.”<sup>153</sup> After its entry into force in 1976, the WHO and the CND declared that derivatives of the substances

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<sup>148</sup> McAllister, *Drug Diplomacy*, 233.

<sup>149</sup> The language used in the 1971 Convention is more amenable than the very strict restrictions of the Single Convention and its amended protocol (see below). Only the use of schedule I substances (LSD, MDMA, and DMT, among others) is explicitly prohibited, while the treaty calls upon the Parties to “limit by such matters as it considers appropriate the manufacture, export, import, distribution and stocks of, trade in and use and possession of substances in Schedules II, III, and IV,” while calling it “desirable” that the Parties do not permit the possession of these substances (U.N. Convention on Psychotropic Substances art. 5, opened for signature Feb. 21, 1971, 1019 U.N.T.S. 175 [entered into force Aug. 16, 1976]).

<sup>150</sup> *Id.* arts. 9 and 10.

<sup>151</sup> *Id.* art. 21.

<sup>152</sup> *Id.* art. 22.

<sup>153</sup> McAllister, *Drug Diplomacy*, 234.

regulated by the Convention also fell under international control. Furthermore, the DND and INCB asked governments to submit statistics that were not part of the treaty on a voluntary basis. By the early 1980s most governments followed suit. This way, provisions not included in the Convention became part of customary international law.<sup>154</sup> Nevertheless, despite their widespread use, they remained a secondary concern for control advocates, who continued concentrating their efforts on narcotic drugs.<sup>155</sup>

### **3.13 The 1972 Amendment to the Single Convention**

While the United States took on a moderate position regarding the regulation of psychotropic substances, and did not ratify the 1971 Convention until 1980, it launched another high-profile international campaign against the supply of narcotics. Fueled by domestic heroin use, in 1970 U.S. officials began advocating strengthening the Single Convention, hoping to achieve an outright ban on opium production. As several states rejected the proposal, the U.S. suggested to empower the INCB in its regulatory and investigatory capacities and to create a new framework for extradition procedures.<sup>156</sup>

There was little opposition to U.S. proposals and at a 1972 conference in Geneva, the 97 participating states negotiated 22 amendments to the Single Convention. Most importantly, the agreement established new powers and control mechanisms for the INCB to fulfill the goal of limiting “the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purposes, to ensure their availability for such purposes and to prevent illicit cultivation, production and manufacture of, and illicit trafficking in and use of,

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<sup>154</sup> McAllister, *Drug Diplomacy*, 241.

<sup>155</sup> Ibid. 243.

<sup>156</sup> Ibid. 235-236.



drugs.”<sup>157</sup> According to the Protocol, parties had to supply the INCB with information about the precise area to be used for the cultivation of opium poppies as well as the approximate quantity of opium to be produced.<sup>158</sup> If the INCB suspected illicit trafficking, it could request explanations from governments, and propose consultations, truth-finding studies, and international cooperation.<sup>159</sup> Although these measures depended on the cooperation of the states that had come under suspicion, they provided new ways of applying pressure to uphold international commitments. Similar to its already established powers regarding the supervision of imports and manufacture of narcotic drugs, the 1972 Protocol granted the Board with the capacity to deduct the suspected amount from the country’s estimate of its licit production, thereby creating an economic incentive to abstain from illicit cultivation and trafficking.<sup>160</sup>

Apart from increasing the INCB’s powers, the Protocol established further standards of behavior for the Convention’s parties. While article 12 required states to seize and destroy any illicit opium and cannabis plants, article 13 asked them to supply the INCB with information on illicit trafficking activities within their territories.<sup>161</sup>

Article 14 covered a set of new provisions regarding the extradition of international drug traffickers. Most importantly, it declared all drug-related offenses (see note 136) as extraditable and urged Parties that sign new extradition treaties to include these offenses into the agreements.

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<sup>157</sup> U.N. Protocol Amending the Single Convention on Narcotic Drugs, 1961, art. 2, amendment to art. 9, new §4, opened for signature Mar. 25, 1972, 976 U.N.T.S. 3 (entered into force Aug. 8, 1975).

<sup>158</sup> *Id.* art. 9, amendment to art. 19.

<sup>159</sup> *Id.* art. 6, amendments to art. 14.

<sup>160</sup> *Id.* art. 11, new art. 21 bis.

<sup>161</sup> *Id.* art. 12, amendment to art. 22; and *id.* art. 13, amendment to art. 35.

Moreover, it enabled countries that make extradition dependable on the existence of a treaty to use the Convention as their legal framework.<sup>162</sup>

The 1972 protocol also paved the way for the creation of a new fund to support large-scale crop-substitution programs, technical assistance to improve administration and law enforcement, and coordination of educational efforts.<sup>163</sup> The goal was to help cultivating states, which had often demanded assistance, to eradicate illicit crops. While in previous decades such demands were perceived as a form of blackmail, the United States started considering this type of assistance as an important element of its international anti-narcotics strategy. Since publicly accepting U.S. money and policy instructions was unattractive to many developing nations, the UN fund provided an alternative way to channel such assistance. With the support of the UN secretariat, in 1971 the CND approved the creation of the UN Fund for Drug Abuse Control (UNFDAC), which added a new element to the expanding IDCR.<sup>164</sup>

### **3.14 The 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**

Despite the new set of control mechanism, towards the end of the 1970s many countries experienced sharp rises of drug use, a trend that continued throughout the 1980s.<sup>165</sup> While the licit market had become strongly supervised with few possibilities and incentives to escape controls, illicit cultivation, production, manufacture, transportation, distribution, and sales of narcotic drugs and psychotropic substances flourished in many parts of the globe. Apart from supplying world markets with potentially harmful substances, especially in South America these criminal

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<sup>162</sup> *Id.* art. 14, amendments to art. 36 §2.

<sup>163</sup> *Id.* art. 7, new art. 14 bis.

<sup>164</sup> McAllister, *Drug Diplomacy*, 237-238.

<sup>165</sup> UNODC, *A Century of International Drug Control*, 65.

networks were increasingly perceived as a threat to public security and the capacity of the state to control what was going on within their territories. In December 1984, the UN General Assembly expressed the rising concern of the international community about the illicit drug trade in a declaration, stating that “illegal production of, illicit demand for, abuse of and illicit trafficking in drugs impede economic and social progress, constitute a grave threat to the security and development of many countries and people and should be combated by all moral, legal and institutional means, at the national, regional, and international levels.”<sup>166</sup> Simultaneously, the UN General Assembly (UNGA) issued a request to the CND to “initiate, as a matter of priority, the preparation of a draft convention against illicit traffic in narcotic drugs.”<sup>167</sup> After years of preparations, the new treaty was first discussed at the 1987 International Conference on Drug Abuse and Illicit Trafficking and Comprehensive Multidisciplinary Outline for Future Activities in Drug Abuse Control. A more detailed negotiation took place from November 25 to December 20, 1988, in Vienna, where 106 states convened and adopted the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

While previous agreements emphasized the dangers of drug use on individuals and society, the 1988 Convention’s preamble stressed the “links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of states.” At the same time, it highlighted that “illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and

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<sup>166</sup> G.A. Res. 39/142, annex, Declaration on the Control of Drug Trafficking and Drug Abuse (Dec. 14, 1984).

<sup>167</sup> G.A. Res. 39/141, Draft Convention against Traffic in Narcotic Drugs and Psychotropic Substances and Related Activities (Dec. 14, 1984).

financial business, and society at all levels.”<sup>168</sup> Based on the objective to “eradicate illicit traffic,” the convening parties gave the 1988 Convention the following purpose: “to promote co-operation among the Parties so that they can address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substance having an international dimension.”<sup>169</sup>

However, several provisions of the treaty were targeted to effectuate domestic legal changes, calling states to criminalize, and penalize more strongly, several drug-related activities. Article 3 elevated activities that previous treaties had treated as punishable offenses (see note 136) to become criminal offenses under domestic laws. Furthermore, it expanded the list of drug-related crimes to include the illicit trade with chemical precursors; and the use, possession, and transfer of properties and possessions, including monetary ones, stemming from drug-related crimes.<sup>170</sup> The last measure was supposed to deprive traffickers of their financial gains.

Another far-reaching change was the criminalization of the possession, purchase, and cultivation of drugs for personal consumption, rejecting explicitly the provisions of the 1961 Single Convention, as amended by the 1972 Protocol, and the 1971 Convention, which only recommended to treat drug possession as a punishable offense.<sup>171</sup> Nevertheless, the treaty contained a loophole, which allowed countries to deviate from the penalization of drug use: “The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the

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<sup>168</sup> U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 preamble, opened for signature Dec. 20, 1988, 1582 U.N.T.S. 95 (entered into force Nov. 11, 1990).

<sup>169</sup> *Id.* art. 2.

<sup>170</sup> For a more complete list of the criminal offenses established by the treaty see: *Id.* art. 3 §1.

<sup>171</sup> *Id.* art. 3 §2.

offender.”<sup>172</sup> Furthermore, the treaty incorporated the idea of aggravating circumstances of drug-related crimes, which had been part of South American drug laws since the early 1970s into the new treaty (see chapter V and chapters VII to IX). These are circumstances that make drug-related crimes particularly serious and therefore justify stronger penalties.<sup>173</sup> The 1988 Convention even went as far as calling upon its parties “to ensure that any discretionary legal powers under their domestic law (...) are exercised to maximize the effectiveness of law enforcement measures” and “that their courts bear in mind the serious nature of the enumerated offenses.”<sup>174</sup>

Similar to regulations on narcotics and psychotropic substances, the 1988 Convention established a new set of rules for the licit trade with chemical precursors, to be monitored by the INCB. Article 12 laid out that trade in precursor chemicals was only allowed between licensed exporters and importers. Information on exports of substances listed in table I had to be supplied to the INCB prior to the transaction. Moreover, the Parties committed themselves to control all persons and enterprises active in the manufacture and distribution of such substances; prevent the accumulation of chemical precursors in the possession of manufacturers and distributors; establish and maintain a system to monitor international trade of such substances; and to report

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<sup>172</sup> *Id.* art. 3 §4 (c).

<sup>173</sup> Among the aggravating circumstances listed by the 1988 Convention are the following: (a) the involvement in the offence of an organized criminal group to which the offender belongs; (b) the involvement of the offender in other international criminal activities; (c) the involvement of the offender in other illegal activities facilitated by commission of the offence; (d) the use of violence or arms by the offender; (e) the fact that the offender holds a public office and that the offence is connected with the office in question; (f) the victimization or use of minors; (g) the fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities; (h) prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party (*Id.* art. 3 §5).

<sup>174</sup> *Id.* art. 3 §6 and §7.

suspicious transactions as well as any seizures and evidence of illicit trade with these chemicals to the INCB.<sup>175</sup>

The Parties also established multiple new rules to prevent trafficking in commercial carriers, illicit traffic by sea, free trade zones and free ports, and the use of mail services.<sup>176</sup> To facilitate international cooperation in dismantling transnational trafficking networks and the investigation of transnational drug-related crimes, the 1988 Convention instituted guidelines for mutual legal assistance, the transfer of proceedings in criminal prosecutions, and police and intelligence cooperation. Aiming to obtain valuable information about trafficking networks and the intellectual authors of drug-related crimes, it also established the possibility of carrying out international controlled deliveries. While the treaty widened the scope for the extradition of criminal offenders, classifying all new drug-related crimes as extradition offenses, the rules for extradition are similar to the ones outlined in previous treaties.<sup>177</sup> Ultimately, though the Convention does not specify any obligations, it extended the principle of assisting developing nations, which may not have the resources to enforce its obligations, to so-called transit states, *i.e.* territories used to transport drugs, raw materials, and precursors (previous treaties had already called for assistance for cultivators and manufacturers).

### **3.15 Conclusion**

With the adaptation of the 1988 Convention, the major contours of the current IDCR had been established, finalizing a lengthy and intricate process of regulating the “legitimate” drug trade, prohibiting recreational drug use, and criminalizing numerous activities that assist in supplying clandestine markets with illicit narcotics. The 1909 Opium Commission identified

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<sup>175</sup> For a more complete list of the controls on trade with chemical precursors see: *Id.* art. 12.

<sup>176</sup> *Id.* arts. 15-19.

<sup>177</sup> *Id.* arts. 6, 7, 8, 9, and 11.

opium use as a grave social problem and recommended several steps to undermine its consumption. The 1912 International Opium Convention introduced the first mechanisms to control “legitimate” trade and called upon states to prohibit the possession of opium, morphine, and cocaine. The Geneva Conventions from 1924 and 1925 required the creation of opium monopolies, called upon states to implement restrictions on opium sales, called upon the contracting parties to pass new laws to limit the production, import, sale, distribution, export, and use of manufactured drugs to scientific and medical needs, and established a new system of import certificates and export authorizations to ensure that trade in narcotic substances was controlled by competent authorities in each country. The 1931 Limitation Convention invented the estimates of needs mechanism, which limited how much narcotics a state could legally import. Moreover, it introduced the mechanism of drug scheduling, which exposed various narcotics to different levels of controls.

Despite its low level of acceptance, the 1936 Convention on Illicit Traffic, classified a series of punishable activities related to the illicit drug trade and established a series of guidelines for the penalization of foreign nationals and extraditions on which subsequent treaties expanded. The 1961 Single Convention incorporated nine previous agreements into a unifying treaty; prohibited the use of opium smoking, opium eating, coca-leaf chewing, and cannabis smoking for recreational purposes; expanded the list of punishable offenses; established new control mechanisms; and allowed trade embargoes against recalcitrant states. Its 1972 Protocol invented new mechanisms to pressure defecting countries and enabled the INCB to deduct illicit cultivations from the amount it was allowed to cultivate legally. Moreover, the Protocol obliged governments to destroy illicit opium and cannabis plants. The 1971 Convention and Psychotropic Substances prohibited the recreational use of psychotropic substances, penalized related activities, and introduced a new set of control mechanisms to regulate the licit trade of these drugs. Building upon the previous treaties, the 1988 Convention against Illicit Traffic undertook a series of

measures to enhance international cooperation against illicit trafficking and, for the first time, criminalized drug-related activities, including drug consumption. It also generated new legal norms about the licit trade with chemical precursors.

While each treaty's provisions reinforced prohibition as the overarching norm in guiding drug policy across the globe, the strengthening of prohibition is also evident in the number of signatures and ratifications of each treaty. As shown in table 1, early drug treaties until the 1950s received fewer signatures (eight to 39) and ratifications (13 to 90) than the drug control treaties of the UN, which received between 34 and 87 signatures and between 184 and 190 ratifications, enjoying almost universal acceptance.

**Table 1: Global Adherence to International Drug Control Treaties**

| <b>Treaty</b>   | <b>Signatures</b> | <b>Ratifications</b> |
|---|-------------------|----------------------|
| 1912 International Opium Convention                               | 13                | 56                   |
| 1925 Agreement concerning the Suppression of the Manufacture ...  | 8                 | -                    |
| 1925 International Opium Convention                               | 21                | 60                   |
| 1931 Convention for Limiting the Manufacture and Regulating ...   | 44                | 67                   |
| 1936 Convention for the Suppression of Illicit Traffic ...        | 26                | 13                   |
| 1948 Protocol Bringing under International Control Drugs ...      | 39                | 90                   |
| 1953 Protocol for Limiting and Regulating the Cultivation of ...  | 34                | 51                   |
| 1961 Single Convention on Narcotic Drugs                          | 61                | 154                  |
| 1971 Convention on Psychotropic Substances                        | 34                | 184                  |
| 1972 Single Convention (...) as Amended by 1972 Protocol          | 54                | 186                  |
| 1988 Convention against Illicit Traffic in Narcotic Drugs and ... | 87                | 190                  |

Data extracted from United Nations Treaty Collection, Status of Treaties, Chapter VI.

Following the 1988 Convention, the IDCR was complemented by a more specific set of recommendations to inhibit the laundering of illegal assets, issued by the Financial Action Task



Force on Money Laundering in 1990, 1996, and 2003.<sup>178</sup> In 2000, UN membership adopted the Convention against Transnational Organized Crime, with new frameworks for mutual legal assistance, extradition, law enforcement cooperation, and technical assistance and training.<sup>179</sup> Despite the numerous efforts of the international community to undermine the illicit drug trade, it became increasingly evident that neither the criminal networks nor drug consumption eroded. This led to an increased questioning of the regime's premises and its overarching norm. The following chapter IV addresses the critiques of prohibition in greater detail and highlights key moments in which the IDCR was challenged.

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<sup>178</sup> UNODC, *A Century of International Drug Control*, 79-80.

<sup>179</sup> U.N. Convention against Transnational Organized Crime, opened for signature Nov. 15, 2000, 2225 U.N.T.S. 209 (entered into force Sep. 29, 2003).

#### IV. CONTESTING PROHIBITION, ADVOCATING HARM REDUCTION: NORMATIVE CHALLENGES TO A FAILING REGIME

While the previous chapter recounted the establishment of prohibition as the principal norm in setting out the IDCR's parameters and guiding drug policies around the world, the present chapter focuses on the other side of the story. From early on, the prohibitionist regime had been challenged by recalcitrant states, seeking to escape from its provisions in pursuance of economic gains. However, prohibition had also been questioned by experts from multiple academic disciplines, civil society, and, increasingly, former and incumbent state officials. Their critiques often point to flaws in the IDCR's underlying assumptions and highlight the regime's incapacity to fulfill its major goal of eradicating non-medical and non-scientific drug use. Some of the most forceful challenges address prohibition's deleterious side effect of fomenting a huge criminal industry, which presents paramount challenges to public security, health, and effective governance. Many critics have converged around the idea of reducing drug harms and risks through pragmatic interventions in drug markets, as an alternative policy model. The framework of harm reduction promotes policies based on empirical evidence rather than moral assumptions, while respecting the rights of drug users to carry out autonomous choices.

Although these challenges have not altered the IDCR's prohibitionist orientation, as shown below contestation from civil society and some governments have made the regime more flexible regarding its members' policy choices. Furthermore, the rising prominence of harm reduction has been accompanied by significant changes in how states and societies are dealing with drug-related challenges. The following section briefly outlines the most prominent critiques of prohibition, ten in total. It is followed by a presentation of harm reduction as a politically feasible alternative to prohibition. The remainder of the chapter displays how different actors have challenged the regime and uplifted harm reduction to become prohibition's most serious normative competitor.

#### 4.1 Ten Critiques of Prohibition

Critiques of prohibition vary significantly. Some of them reject the approach entirely, others focus on particular elements or effects of prohibition. Nonetheless, most critics agree that the current IDCR and its prohibitionist norms constitute a serious policy failure. Therefore, they believe that it needs to undergo far-reaching changes to achieve better results. One of the oldest challenges to prohibition is the liberal notion that individuals' choices should not be constrained by moralistic policies of the state.<sup>180</sup> For many liberals, drug consumption is a matter of personal choice that should not be subject to state control, and even less so state sanctioning. As argued by the prominent economist Milton Friedman: "It's a moral problem that the government is making into criminals people, who may be doing something you and I don't approve of, but are doing something that hurts nobody else."<sup>181</sup>

A second branch of criticism highlights that prohibition has been ineffective in deterring people from using drugs or becoming part of the illicit drugs industry, thereby clearly missing its goal of creating a drug free world. While the threat of legal sanctions may dissuade some individuals from engaging in drug-related activities, both the demand and supply of drugs have remained intact. According to the most recent UN data, an estimated 275 million people, representing 5.6 percent of the global adult population, used illegal drugs at least once during 2016.<sup>182</sup> This is a significant increase from 1997, when an estimated 192.7 million people, representing 3.34 percent of the global adult population, consumed illegal drugs.<sup>183</sup> It is

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<sup>180</sup> This dissertation defines liberalism in its classical sense, *i.e.* as a philosophy advocating for a small state and individual and economic freedoms.

<sup>181</sup> Quote from: Mark J. Perry, "Milton Friedman interview from 1991 on America's War on Drugs," *AEIdeas*, August 6, 2015, <http://www.aei.org/publication/milton-friedman-interview-from-1991-on-americas-war-on-drugs/>.

<sup>182</sup> UNODC, *World Drug Report 2018: Executive Summary, Conclusions and Policy Implications* (Vienna: 2018), 7.

<sup>183</sup> UNODCCP, *Global Illicit Drug Trends 1999* (Vienna: 1999), 95.

reasonable to assume that the real numbers are even higher, given that UN data is based entirely on government estimates.

On the supply side, police, intelligence, and military operations have celebrated impressive short-term successes in destroying illicit crops and manufacturing sights, arresting heads of criminal organizations, and even destroying entire drug cartels. However, none of these actions has been able to eliminate the sophisticated illicit supply networks. Throughout the decades, drug traffickers have shifted their production and established their presence in areas with less state control, even across national borders. Popular analogies for this phenomenon are the balloon and cockroach effect. Moreover, many criminal groups have become smaller and flatter, while carrying out fewer transaction than the classical drug cartels.<sup>184</sup> This makes it easier for them to escape from state control and adapt to new circumstances. Even the most powerful states do not have the capacity to eliminate criminal networks, which can resist persecution through a mix of evasion, corruption, violence, and support of the population.<sup>185</sup>

A third critique emphasizes that prohibition has given rise to powerful criminal industries, which present paramount challenges to effective, let alone democratic, governance. Because drug manufacture and commerce for non-medical and non-scientific purposes is forbidden, illicit drug trafficking has become a highly profitable activity. To protect their illegal operations, traffickers use their resources to corrupt and intimidate state officials, sometimes coopting entire governments agencies. Moreover, in many parts of Latin America criminal groups exercise high levels of control over rural and urban territories, where they impose their own set of rules and social orders. These activities undermine the states' capacity to control what is going on

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<sup>184</sup> Scott Decker and Margaret Townsend, *Drug Smugglers on Drug Smuggling: Lessons from the Inside* (Philadelphia: Temple University Press, 2008), 146-150; and Garzón, *Mafia & Co.*, 108 (see intr., n. 4).

<sup>185</sup> Bailey and Taylor, "Evade, Corrupt or Confront?", 3-29 (see intr., n. 6)

in their territories, thereby facilitating the spread of other criminal activities like the trafficking of arms, human beings, and the provision of multiple illegal goods and services.<sup>186</sup>

A fourth branch of criticism argues that prohibition is prone to cause large-scale violence. Drug-related violence is particularly high when several groups of traffickers compete over the same territories, routes, and markets. Different to legal markets, such disputes are often resolved through the use of force. Drug-related violence is also common when the state goes after criminal groups. On the one hand, repression and persecution can lead to direct violent responses by the traffickers. However, the arrest of criminal leaders may also inspire conflicts of succession in between and within criminal groups.<sup>187</sup> Especially in Colombia and Central America the above-stated dynamics have led to large-scale outbreaks of violence that have caused far more deaths than drug addiction.<sup>188</sup>

A fifth critique highlights that prohibition tends to produce overpopulated prisons. During the “war on drugs,” the U.S. prison population skyrocketed from 196,092 in 1972 to 1,458,173 in 2016 (out of whom 450,345 were incarcerated for drug-related charges).<sup>189</sup> Similar trends are observable elsewhere. In seven Latin American countries the prison population grew on average by 100 percent between 1992 and 2007, with incarceration for drug offenses showing a strong upward trend.<sup>190</sup> Critics point out that incarcerating drug users and low-level drug offenders not

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<sup>186</sup> Garzón, *Mafia & Co.*

<sup>187</sup> Brombacher, *This is What You Get* (see intr., n. 6).

<sup>188</sup> In Colombia, drug-related violence generated a record homicide rate of 80 killings per 100,000 habitants in the early 1990s. In Mexico, the violence surrounding the trafficking of illegal narcotics was responsible for 80,597 assassinations since 2007 (Robert C. Bonner, “The New Cocaine Cowboys. How to Defeat Mexico’s Drug Cartels,” *Foreign Affairs* 89, no. 4 [2010]: 42; and Milenio, “Organized Crime-Related Homicides 2007-2016,” Justice in Mexico, Data Center, <https://justiceinmexico.org/data/>).

<sup>189</sup> The Sentencing Project, “Criminal Justice Facts,” 2018, <https://www.sentencingproject.org/criminal-justice-facts/>.

<sup>190</sup> Metaal and Youngers, *System Overload*, 5 (see intr., n. 7).

only poses great costs on government budgets, but also that overpopulated prisons are often used by criminal groups to recruit their members, thereby exacerbating the above-mentioned problems related to organized crime.<sup>191</sup>

A sixth critique argues that prohibitionist drug control practices violate basic human rights and fundamental freedoms. For these critics, human rights abuses related to drug control mechanisms include the criminalization and penalization of drug users, including the requirement to undergo mandatory treatment; the denial of fair trials to drug offenders; disproportional penalties for drug offenses, including the death penalty; and the violence related to the illicit trafficking of drugs and law enforcement strategies, which often affects innocent civilians. Some also consider that the control of territories by criminal groups further undermines rights-based social orders.<sup>192</sup>

A seventh branch of criticism stresses that prohibition is based on strong moral assumptions, which tend to exaggerate of the harms and risks associated with drug use. According to the critics, these moralist assumptions lead prohibitionists to discount any evidence that contradicts their beliefs.<sup>193</sup> The economist Francisco Thoumi, who presently serves on the INCB, argues that the current IDCR is based on very strong ideological conceptions about drug consumption that have been amply rejected and revaluated by the sciences.<sup>194</sup> More specifically, the critics highlight that only a fraction of drug users develop dependencies, while drug policies

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<sup>191</sup> Lessing, “The Danger of Dungeons,” (see intr., no. 7).

<sup>192</sup> For an overview of the multiple ways in which prohibitionist practices undermine human rights see: Juan C. Garzón and Luciana Pol, “El elefante en la habitación: Drogas y derechos humanos en América Latina,” *Revista Sur* 12, no. 21 (2015): 1-8.

<sup>193</sup> Peter Reuter, “Why Does Research Have So Little Impact on American Drug Policy?”, *Addiction* 96, no. 3 (2001): 373-376.

<sup>194</sup> Francisco E. Thoumi, *Sueños de reforma de las políticas contra las drogas y del Régimen Internacional de Control de Drogas* (Bogotá: Friedrich Ebert Stiftung, Programa de Cooperación en Seguridad Regional, Policy Paper 37, August 2011), 4.

are designed as if all of types of drug consumption inevitably lead to addiction. Furthermore, when discussing the harmful effects of drugs, several authors stress the importance of contextual factors including the social status of the consumer, their relationships with friends and family, their level of education, prior health conditions, the drugs' purity, poly-drug use, and the availability of information and treatment.<sup>195</sup>

The eighth branch of criticism argues that prohibition is not only ineffective in eliminating drug use and trade, but also inefficient. While prohibitionists maintain that law enforcement helps to dissuade potential users by making drugs more expensive, several studies show that providing treatment is much more efficient in reducing drug consumption.<sup>196</sup> Rydell and Everingham estimated that the least costly supply-control program, *i.e.* domestic law enforcement, costs 7.3 times as much as treatment to achieve the same reduction in consumption.<sup>197</sup> In other words, the money invested to enforce prohibition does not even come close to rendering the desired results.

A ninth critique argues that the IDCR is extremely arbitrary in prohibiting the use of marijuana and the coca leaf, while allowing the use of alcohol and tobacco. The coca leaf enjoys widespread use among the indigenous communities of Bolivia, Peru and, to a lesser extent, other South American countries, where it is used as a natural remedy against altitude sickness and a stimulant comparable to coffee. Most importantly, it does not produce any intoxication. Though

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<sup>195</sup> Peter Cohen, "The Concept of Drug Harms," *Drugs and Alcohol Today* 10, no. 4 (2010): 10-12; and Carl Hart and Charles Ksir, *Drugs, Society & Human Behavior* (New York: McGraw Hill [sixteenth edition] 2015).

<sup>196</sup> See: P.G. Barnett, "The Cost-Effectiveness of Methadone Maintenance as a Healthcare Innovation," *Addiction* 94, no. 4 (1999): 479-488; Drug Policy Research Center, Jonathan P. Caulkins, *Response to the National Research Council's Assessment of RAND's Controlling Cocaine Study* (Santa Monica: RAND Corporation, 2000); and Dean R. Gerstein, et al., *Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment* (Sacramento: California Department of Alcohol and Drug Programs Resource Center, 1994).

<sup>197</sup> C. Peter Rydell and Susan S. Everingham, *Controlling Cocaine: Supply Versus Demand Programs* (Santa Monica: RAND Corporation, 1994), xiii.

experts still dispute the risks and side effects of using marijuana, as well as its potential medical qualities, most of them agree that it does not pose greater risks than the use of alcohol and tobacco.<sup>198</sup>

A last critique emphasizes that by prohibiting drug use, the state is giving up its capacity to control what is being sold and promoted as a particular substance. In the areas of food and medicine, as well as legal mood-altering substances like alcohol, tobacco, and coffee, most societies recognize the benefits of regulating quality and purity, while rejecting state regulation of illegal drugs. This enables traffickers to mix drugs with potentially more harmful and addictive ingredients, risking the lives and health of drug users.<sup>199, 200</sup> This last critique is particularly prominent among harm reductionist, who propose making drug use safer rather than focusing on its elimination.

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<sup>198</sup> David J. Nutt and Ruth Weissenborn, “Popular Intoxicants: What Lessons Can Be Learned from the Last 40 Years of Alcohol and Cannabis Regulation?”, *Journal of Psychopharmacology* 26, no. 2 (2012): 213-220.

<sup>199</sup> An example is the use of bath salts, ketamine, and methamphetamine in U.S. ecstasy pills, generating a much more dangerous composition than the traditional ecstasy pill, which is based on MDMA (Olivia Solon, “Ecstasy Sold in US Is Less Pure and More Dangerous than in Europe, Experts Warn,” *The Guardian*, December 10, 2016, <https://www.theguardian.com/society/2016/dec/10/ecstasy-molly-purity-us-synthetic-drugs-mdma>).

<sup>200</sup> This critique was eloquently expressed by a former member of the Uruguayan Chamber of Representatives (MCR), Anibal Gloodofsky, when debating the regulation of recreational cannabis: “We get angry at multinationals, saying that they may be financing and speculating with the production of seeds and transgenics, but we leave all Uruguay, especially our young population, in the hands of the biggest, most perfect, and most perverse multinational: drug trafficking. (...) In the hands of this multinational we leave the regulation, the health, and the lives of our citizens. We regulate the mayonnaise, regulate the ketchup, regulate the salt on the table, regulate absolutely everything, because, furthermore, in Uruguay we have a passion for regulation. But we do not regulate the consumption of cannabis.” Interestingly, due to party ties, Gloodofsky voted against the regulation, but put advanced one of the most memorable defenses of the law. Cited and translated from: Guillermo Garat, *El camino: Cómo se reguló el cannabis en Uruguay según sus actores políticos y sociales*, (Montevideo: Friedrich Ebert Stiftung and Junta Nacional de Drogas, 2015), 93.



## 4.2 Legalization and Harm Reduction

The previous section showed that prohibition has not only fallen short of achieving its primary goal of creating drug free societies but also generated a series of harmful side effects that undermine public security, effective governance, and public health. Some argue that drug legalization is not only favorable to prohibition on moral groups but provides the most effective way of getting rid of illegal drug trafficking and its engrained problems. As stated by Milton Friedman, “Legalizing drugs would simultaneously reduce the amount of crime and raise the quality of law enforcement. Can you conceive of any other measure that would accomplish so much to promote law and order?”<sup>201</sup> However, apart from the questionable political feasibility of legalizing all drugs, not everyone who opposes prohibition favors full-blown legalization. For many critics of prohibition, the framework of harm and risk reduction (short harm reduction) presents a more attractive alternative. The present dissertation defines harm reduction as a strategy to ameliorate the potential harms and risks associated with drug use, both for the individual drug user and society as a whole, without necessarily requiring a reduction of drug consumption.<sup>202</sup> It stems from the belief that drug-free societies are not achievable and that the use of mood-altering substances constitutes an endemic feature of human life. Thus, harm reductionists assume that drug use should not be a punishable, let alone criminal, offense. Moreover, harm reductionists tend to promote a series of policies and services, all of which are targeted to reduce the harms and risks associated with drug use. The most prominent ones include: providing evidence-based information on the effects of particular drugs (rather than moralistic “educational” campaigns that portray all drugs as bad under any circumstance); substitute medication to treat addiction (including methadone, heroin, and buprenorphine);

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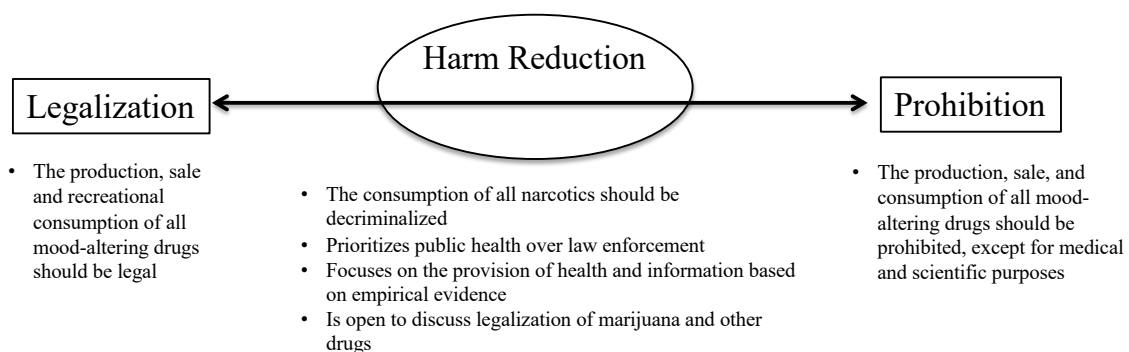
<sup>201</sup> Milton Friedman, “Prohibition and Drugs,” *Newsweek*, May 1, 1972, 104.

<sup>202</sup> For a similar definition see: S. Einstein, “Harm and Risk Reduction: History, Theories, Issues and Implication,” *Substance Use and Misuse* 42, issue 2-3 (2007): 257.

medications to treat drug overdoses (such as naloxone); materials to contain the spread of AIDS/HIV and other diseases transmitted through blood and body liquids (including clean syringes, needles, condoms, cotton and alcohol swabs); free testing for HIV/AIDS and other diseases; treatment, vocational rehabilitation and housing; free testing of the drugs' purity and chemical composition so that drug users have more certainty about what they are consuming; and psychological assistance for individuals that have decided to use drugs for the first time.<sup>203</sup> The list of services based on harm reduction is potentially never-ending and can be adjusted to the particular needs and challenges of a location.

Many harm reductionists also favor the legalization and government-controlled regulation of marijuana and other drugs. However, drug legalization is not a prerequisite for harm reduction policies. Where harm reduction starts and ends is subject to debate and highly amenable to contextual factors. What matters though is that harm reductionists do not want to end drug consumption *per se* but reduce the diverse risks and harms associated with drug use, while basing their decisions on empirical evidence rather than the moralistic views. As highlighted in graph 1 below, harm reduction occupies a *via media* between the opposing normative poles of prohibition and drug legalization. It constitutes, therefore, a more politically viable alternative to prohibition.

**Graph 1: Norms Guiding Drug Policy**



<sup>203</sup> This collection expanded on the services listed in: Einstein, "Harm and Risk Reduction," 260.

Although harm reduction has become more popular since the 1980s, Einstein highlights that some harm reductionist practices date back a long time. In the beginning of the 20<sup>th</sup> century, the United States introduced morphine, and later methadone, clinics to treat heroin addiction. Similarly, in the U.K. doctors prescribed opiates to a relatively small number of functioning addicts. In the 1980s, the Netherlands, Switzerland, Germany, Canada, and Australia, introduced more ambitious harm reduction programs. Many of them were targeted to contain the rising use of heroin and the associated spread of HIV.<sup>204</sup> The Netherlands' idea to separate drug markets by turning a blind eye to marijuana sale and consumption in so-called coffee shops stems out of this logic.<sup>205</sup>

Despite the common criticism that harm reduction facilitates drug consumption, by 2010, a total of 93 countries supported certain harm reduction services in official policy documents or practice. The most popular harm reduction services are needle and syringe exchange program (in 82 countries) and opiate substitution therapy (in 74 countries).<sup>206</sup> These numbers indicate that harm reduction has become increasingly important in guiding drug policies around the world and effectuated significant behavioral changes. The following section provides a brief overview of the principal actors contesting prohibition and advocating harm reduction. These include think tanks and research centers, with close ties to academia and government, permanent advocacy groups, prominent ad-hoc advocacy commissions, and increasingly top-level elected officials and governments. While the former primarily gather data and seek to influence drug policy debates, the latter actors have given their cause an unprecedented level of legitimacy.

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<sup>204</sup> Einstein, "Harm and Risk Reduction," 260-261.

<sup>205</sup> Jean-Paul Grund and Joost Brekxema, *Coffee Shops and Compromise: Separated Illicit Drug Markets in the Netherlands* (New York: Open Society Foundations, 2013).

<sup>206</sup> Harm Reduction International, "International Response," no date, <https://www.hri.global/international-response>.

### 4.3 Actors and Activism

Though drug policy has always been a topic of debate, contestation, and advocacy between multiple actors, critical voices became more pronounced in the 1980s. At that time, President Ronald Reagan not only tightened drug controls domestically but also elevated the “war on drugs” to become a key element of U.S. foreign policy (see chapter V). The negative consequences of the “war on drugs” gave rise to an unprecedented level of critical scrutiny, contestation, and the advocacy of alternative policies. The paragraphs below provide a brief overview of some of the most important actors contesting global prohibition, their missions, and their major claims.

In 1989, the policy think tank RAND Corporation, which had been carrying out studies on drug use and policy since the late 1970s, opened the Drug Policy Research Center (DPRC). The research center sought to bring “an objective, pragmatic perspective to this often emotional and fractious policy arena.”<sup>207</sup> Though RAND Corporation does not take an official position in the debate between prohibition and harm reduction, analyses of the DPRC and their affiliated researchers have provided numerous arguments that question the effectiveness and efficiency of law enforcement and supply-side strategies, while highlighting the cost-effectiveness of approaches based on public health.<sup>208</sup>

In 1995, the Amsterdam-based think tank Transnational Institute (TNI), created the Drugs and Democracy Project. Founded in 1974, TNI describes itself as “committed to building a just, democratic and sustainable world,” while serving as “a nexus between social movements,

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<sup>207</sup> RAND Corporation, “About the Drug Policy Research Center,” Drug Policy Research Center, no date, <https://www.rand.org/multi/dprc/about.html>.

<sup>208</sup> For some examples, see: Phyllis L. Ellickson, and Robert M. Bell, *Prospects for Preventing Drug Use Among Young Adolescents* (Santa Monica: RAND Corporation, 1990); Susan S. Sohler Everingham and C. Peter Rydell, *Projecting Future Cocaine Use and Evaluating Control Strategies* (Santa Monica: RAND Corporation, 1995), [https://www.rand.org/pubs/research\\_briefs/RB6002.html](https://www.rand.org/pubs/research_briefs/RB6002.html); and Robert J. McCoun and Peter Reuter, *What Do We Know About the Likely Effects of Decriminalization and Legalization: A Brief Summary* (Santa Monica: RAND Corporation, 1999), <https://www.rand.org/pubs/testimonies/CT161.html>.

engaged scholars and policy makers.”<sup>209</sup> Although the Drugs and Democracy Project seeks to inform policy choices through rigorous research and evidence, its proposals are explicitly guided by principles of harm reduction and human rights for users and producers. One of its central goals is to analyze, critique, and propose reforms of international drug control policy coordinated by UN bodies.<sup>210</sup>

In the Western Hemisphere, the Washington Office on Latin America (WOLA) has established itself as one of the leading voices in the drug policy field. According to the organization, in the 1990s WOLA was one of the first major actors to warn about the dangers to democracy of the escalating U.S.-backed “war on drugs.”<sup>211</sup> It argues that the “‘war on drugs’ has failed to suppress the production, trafficking, or consumption of illegal drugs, while enriching and empowering criminal enterprises.” WOLA also stresses human rights abuses, overcrowded prisons, and threats to democratic institutions as consequences of “harsh law enforcement.” Moreover, it “advocates for reducing the harms caused by both the drug trade and drug policies.”<sup>212</sup>

In the year 2000, the Drug Policy Foundation (founded in 1987) and the Lindesmith Center (founded in 1994) joined their forces to create the Drug Policy Alliance (DPA), one of the most prominent advocacy groups in the field. The organization campaigns for a society in which “the use and regulation of drugs are grounded in science, compassion, health and human rights, in which people are no longer punished for what they put into their own bodies but only for crimes

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<sup>209</sup> TNI, “Introduction,” no date, <https://www.tni.org/en/page/introduction>.

<sup>210</sup> TNI, “About the Drugs and Democracy Project,” no date, <https://www.tni.org/en/page/about-drugs-and-democracy-project>.

<sup>211</sup> WOLA, “Our History,” no date, <https://www.wola.org/history-of-wola/>.

<sup>212</sup> WOLA, “Drug Policy,” no date, <https://www.wola.org/program/drug-policy/>.

against others, and in which fears, prejudices and punitive prohibitions of today are no more.”<sup>213</sup> They consider it as their mission “to advance those policies and positions that best reduce the harms of both drug use and drug prohibition and to promote the sovereignty of individuals over their minds and body.”<sup>214</sup> Although much of their activism is centered on drug policy reform within the United States, they also provide resources and expertise to international partners. Their policy manager for the Americas spent nine months in Uruguay, working with local partners in their campaign to legalize recreational marijuana.<sup>215</sup>

In 2006, the International Drug Policy Consortium (IDPC) started building a global network of 177 NGOs that support harm reduction, human rights, and evidence-based drug policies at the global, regional, and national levels. The IDPC’s mission is to facilitate networking and collaboration between civil society stakeholder and empower their members to more successfully engage with and influence policy-making processes. Moreover, the organization’s secretariat also intervenes directly in policy making processes by providing their expertise to governments, regional organizations, and UN agencies.<sup>216</sup> According to Gabriel Buitron founding member and voice of Ecuador Cannábico, who is also a member of IDPC, the biggest strength of the network is to channel interests and demands from diverse parts of the world and present them to decision makers within the UN.<sup>217</sup>

One of the main donors of the above-listed organizations is George Soros’ Open Society Foundations (OSF), which helps funding DPA, IDPC, TNI and WOLA. Moreover, since 2008, the OSFs have their own Global Drug Policy Program, which supports “national and regional

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<sup>213</sup> DPA, “About Us,” no date, <http://www.drugpolicy.org/about-us>.

<sup>214</sup> Ibid.

<sup>215</sup> DPA, “Our Victories,” no date, <http://www.drugpolicy.org/about-us#victories>.

<sup>216</sup> IDPC, “Vision and Mission,” no date, <https://idpc.net/about/vision-mission>.

<sup>217</sup> Gabriel Buitron, in discussion with the author, May 2018.

entities in their aim to decriminalize the possession of all drugs, and emphasize alternative approaches to regulated access to a variety of currently illicit drugs.”<sup>218</sup>

While the above-listed organizations have successfully brought the contestation of prohibition and the advocacy of harm reduction into the center of drug policy debates, in recent years two further organizations have provided the growing advocacy network with additional legitimacy. In 2009, former presidents from Brazil (Fernando Henrique Cardoso, 1995-2002), Colombia (César Gaviria, 1990-1994), and Mexico (Ernesto Zedillo, 1994-2000), all of whom supported “drug war” policies while they were in office, created the Latin American Commission on Drugs and Democracy (LACDD). The Commission released a statement and book in which they advocated an in-depth paradigm shift to the drug problem in Latin America, calling for the end of the “war on drugs” and proposing policies based on harm reduction, decriminalization and depenalization, prevention, and public health. The document was supported by 17 well-known personalities from Latin America, including the winner of the Nobel Prize in Literature Mario Vargas Llosa from Peru.<sup>219</sup> Building on the experience of the LACDD, in 2011 its participants helped create and joined the more prominent Global Commission on Drug Policy (GCDP) whose founding members include twelve former heads of state and a former UN Secretary General (Kofi Annan).<sup>220</sup> Since its foundation, the GCDP has published yearly reports. The first three highlighted several negative consequences of the “war on drugs” with a particular emphasis on health-related aspects. The latter ones suggested alternatives to current policies prioritizing

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<sup>218</sup> OSF, “Global Drug Policy Program,” no date, <https://www.opensocietyfoundations.org/about/programs/global-drug-policy-program>.

<sup>219</sup> LACDD, *Drugs & Democracy: Towards a Paradigm Shift*, 2009.

<sup>220</sup> Among the most prominent members are Aleksander Kwaśniewski (former President of Poland), Ricardo Lagos (former President of Chile), George Papandreou (former President of Greece), Ruth Dreifuss (former President of Switzerland), George P. Shultz (former Secretary of State of the United States), Javier Solana (former EU High Representative for the Common Foreign and Security Policy), Jorge Sampaio (former President of Portugal), Kofi Annan (former Secretary of the United Nations), and Paul Volcker (former Chairman of the Federal Reserve, United States).

health-based approaches; ensuring access to controlled medicines; decriminalizing drug use and personal possession; relying on alternatives to punishment for non-violent, low-level actors in illicit drug markets; regulating the drug markets; and lowering the impact of organized crime and “its corruptive and violent influence.”<sup>221</sup>

While retired presidents and politicians have been much more outspoken in their criticism of the “war on drugs,” some presidents have joined their ranks while in office. In 2012, Guatemala’s president, Otto Pérez Molina (2012-2015), argued that drugs should be legally available in highly regulated markets: “Guatemala will not fail to honour any of its international commitments to fighting drug trafficking. But nor are we willing to continue as dumb witnesses to a global self-deceit. 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.”<sup>222</sup> Uruguay’s José Mujica (2010-2015) often defended his country’s marijuana legalization in opposition to traditional “drug war” policies: “In Latin America, the repressive policies we have been practicing for the past 50 years are failing. We have to fight to take back the market from drug traffickers.”<sup>223</sup> During his time in office the Colombian president Juan Manuel Santos (2010-2018) criticized the “war on drugs” and campaigned for new policy models. In his last intervention at the UNGA, Santos characterized the “war on drugs” as a remedy that has been much worse than the disease. He argued that it is necessary to arrive at a consensus not to

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<sup>221</sup> GCDP, “Mission and History,” no date, <http://www.globalcommissionondrugs.org/about-usmission-and-history/>.

<sup>222</sup> Otto Pérez Molina, “We Have to Find New Solutions to Latin America’s Drugs Nightmare,” *The Guardian*, April 7, 2012, <https://www.theguardian.com/commentisfree/2012/apr/07/latin-america-drugs-nightmare>.

<sup>223</sup> Translated from: *El Observador*, “Mujica también llamó la atención de los medios chilenos,” 2 de febrero de 2013, <https://www.elobservador.com.uy/nota/mujica-tambien-llamo-la-atencion-de-los-medios-chilenos-20132213170>.



criminalize addicts and to understand drug consumption as a matter of public health and not criminal policy. He also suggested to discuss responsible regulation, search for new ways to diminish criminal groups, and to confront consumption by dedicating more resources to prevention, attention, and reducing drug harms.<sup>224</sup> Most recently, Mexico's newly elected president, Andrés Manuel Lopez Obrador (2018-), has indicated that he is willing to consider the legalization of certain narcotics during his government.<sup>225</sup>

The increasing shift in the debate on drug policies has also changed the way in which some regional intergovernmental organizations (IOs) discuss drug-related challenges. Following the Sixth Summit of the Americas in 2012 in Cartagena, the Organization of American States (OAS) prepared two reports on the region's drug-related challenges. The first one assessed the extent of different drug-related problems in the Americas, including the negative consequences of current drug-control policies. Moreover, it called for a greater emphasis on public health and a flexibilization of the current IDCR, while considering it "worthwhile to assess existing signals and trends that lean toward the decriminalization or legalization of the production, sale, and use of marijuana."<sup>226</sup> The second report analyzed four different scenarios that could help alleviate the region's drug-related challenges for the period from 2013 to 2025. One of the scenarios, called "pathways," addressed the drug problem by "trying out and learning from alternative legal and regulatory regimes, starting with cannabis," and "reallocation of resources from controlling drugs and drug users to preventing and treating problematic use; shrinkage of some criminal markets

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<sup>224</sup> Presidencia de Colombia, "Palabras del Presidente Juan Manuel Santos ante la Asamblea General de las Naciones Unidas en el 72º Periodo de Sesiones Ordinarias," 19 de septiembre de 2017, <http://es.presidencia.gov.co/discursos/170919-Palabras-del-Presidente-Juan-Manuel-Santos-ante-la-Asamblea-General-de-las-Naciones-Unidas-en-el-72-periodo-de-sesiones-ordinarias>.

<sup>225</sup> *El Universal*, "AMLO a favor de debatir legalización de las drogas," 9 de mayo de 2018, <http://www.eluniversal.com.mx/elecciones-2018/amlo-favor-de-debatir-legalizacion-de-las-drogas>.

<sup>226</sup> OAS, *The Drug Problem in the Americas* (Washington: 2013), 104.

and profits through regulation.”<sup>227</sup> The OAS reports represent a significant departure from the past, in which different variations of prohibition were the only available options to many governments. Today, the legalization of marijuana, and potentially other drugs, is considered a real alternative despite the fact that the existing legal framework considers it illegal.

Taken together, the interrelated the bottom-up activism of civil society stakeholders, the high-profile campaigns by former and incumbent presidents, and the discussion of alternatives to prohibition in the OAS embody significant normative change. Although prohibition remains the most important norm in guiding drug policies across the globe, it has become strongly contested while harm reduction has risen in prominence. Especially in Europe, the Americas, and Oceania, it constitutes a real alternative to policy makers. As outlined in chapter VI on the impact of international norms on policy choices as well as the case study on Uruguay (chapter VII), the rising prominence of harm reduction not only creates new incentives for governments to change their drug policies, but also allows them to justify these changes to domestic constituencies and the international community. However, the changing normative environment does not only affect the policy choices of governments, but, as detailed below, has been accommodated by a certain flexibilization of the IDCR.

#### **4.4 Changes in the System: The Flexibilization of International Drug Control**

As it was highlighted in the previous chapter, global prohibition is not a natural state of affairs but the result of a long-term process that was met with significant resistance and skepticism about its practical feasibility. However, with each new treaty prohibition became stronger and set out more restrictive provisions for the members of the IDCR. The 1961 Single Convention cemented prohibition as the overarching norm in guiding drug policy across the globe. According to McAllister, up to the 1960s “Control officials rarely considered issues of

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<sup>227</sup> OAS, *Scenarios for the Drug Problem in the Americas 2013-2025* (Washington: 2013), 23.

demand, had little knowledge about addicts, and seldom examined the relationship between regulatory measures and illicit activity. Control advocates believed that if only the rules could be drawn out properly, and if only governments carried out their obligations, the problem would recede.”<sup>228</sup> This changed in the late 1960s, when drug consumption became more widespread in different parts of the world. Especially in the U.S. a variety of drugs, including heroin, cannabis, cocaine, and LSD enjoyed growing popularity. As drug consumption entered mainstream society proponents of medical, psychological, and sociological approaches to drug use gained credibility. This meant that the prohibitionist enforcement model came under increased scrutiny.<sup>229</sup> Furthermore, some governments started to devote attention, money, and organizational resources to investigations about the nature of addiction, treatment programs, rehabilitation schemes, and preventive education.<sup>230</sup> The above-mentioned harm reduction policies in Australia, Canada, and Europe grew out of this first wave of envisioning alternative models to drug-related challenges.

The new thinking also left its mark on international treaties. Art. 20 of the 1971 Convention, for the first time, recommended its parties to implement practical measures for the prevention, treatment, education, after-care, and social reintegration of persons involved in “drug abuse.”<sup>231</sup> Similarly, the 1972 Amendment to the Single Convention allowed states to pursue rehabilitation and treatment as alternatives to incarceration.<sup>232</sup> This tendency of acknowledging the complexity of drug-related challenges continued in the 1980s when the WHO, the CND, and

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<sup>228</sup> McAllister, *Drug Diplomacy*, 218 (see intr., n. 3).

<sup>229</sup> Ibid. 220.

<sup>230</sup> Ibid. 238.

<sup>231</sup> U.N. Convention on Psychotropic Substances, *supra* n. 149, art. 20.

<sup>232</sup> U.N. Protocol Amending the Single Convention on Narcotic Drugs, 1961 *supra* n. 157, art. 14, amendments to art. 36, new §1(b).

the INCB increasingly addressed issues of definition, etiology, and prevention.<sup>233</sup> This made an impact on the 1988 Convention on Illicit Traffic. While previous treaties focused entirely on the licit and illicit supplies of drugs, the 1988 Convention sought to “eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances.”<sup>234</sup> Art. 14 §4 stated “The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic.”<sup>235</sup> Such language acknowledged that the “illicit supply” of drugs was actually fueled by an “illicit demand” for these substances and that focusing entirely on the supply side of the problem was not enough. Furthermore, art. 14 §2 issued that measures to eradicate illicit cultivations “shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.”<sup>236</sup> Hence, the 1988 Convention softened, to some extent, the provisions of the 1961 Single Convention, which did not acknowledge any licit uses of narcotic drugs and their ingredients, while implicitly acknowledging the environmental dangers and human rights abuses of militarized eradication campaigns.

In the following decade, the IDCR’s agents continued their dual approach of, on the one hand, defending and advancing prohibition and, on the other, embracing the complexity of drug-related questions while granting its members more flexibility in dealing with drug consumption. Due to rising levels of drug use in the 1990s, the UN General Assembly decided to hold a special

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<sup>233</sup> McAllister, *Drug Diplomacy*, 244.

<sup>234</sup> U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, *supra* n. 168, preamble.

<sup>235</sup> *Id.* art. 14 §4.

<sup>236</sup> *Id.* art. 14 §2.

session (UNGASS) to discuss the regime’s future strategy. Under the slogan “A Drug Free World – We Can Do It,” the Special Session Devoted to Countering the World Drug Problem Together adopted a Political Declaration, a Declaration on the Guiding Principles of Drug Demand Reduction, and a series of Measures to Enhance International Cooperation to Counter the World Drug Problem. The Political Declaration characterized drugs as a “grave threat to the health and well-being of all mankind, the independence of States, democracy, the stability of nations, the structure of all societies, and the dignity and hope of millions of people and their families.”<sup>237</sup> Furthermore, it established “the year 2008 as a target date for States, with a view to eliminating or reducing significantly the illicit manufacture, marketing and trafficking of psychotropic substances, including synthetic drugs, and the diversion of precursors.”<sup>238</sup> However, the document promised a “balanced approach” of reducing “both the illicit supply and the demand for drug” and recognized the “world drug problem” as “a common and shared responsibility.”<sup>239</sup> The IDCR’s increasing flexibility was substantiated in the Guiding Principles of Drug Demand Reduction. Paragraph 5 of the Declaration stated that programs to reduce the demand for drugs “should include a wide variety of appropriate interventions, should promote health and well-being among individuals, families and communities and should reduce the adverse consequences of drug abuse for the individual and society as a whole.”<sup>240</sup>

The above quote constituted the first time a legal UN document made reference to harm reduction.<sup>241</sup> In 1993, the INCB became the first UN body to acknowledge the “importance of

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<sup>237</sup> G.A. Res. S-20/2, annex, Political Declaration (Jun. 10, 1998).

<sup>238</sup> *Id.* §14.

<sup>239</sup> *Id.* §1 and §2.

<sup>240</sup> G.A. Res. S-20/3, annex §5, Declaration on the Guiding Principles of Drug Demand Reduction (Jun. 10, 1998).

<sup>241</sup> UNODC, *A Century of International Drug Control*, 73 (see ch. III, n. 47).

certain aspects of ‘harm reduction’ as a tertiary prevention strategy for demand reduction purposes.”<sup>242</sup> However, it also made clear that “‘harm reduction’ programmes are not substitutes for demand reduction programmes.”<sup>243</sup> In the following years, states were increasingly divided over the status of harm reduction within the regime. On one side of the debate, the United States, Russia, Japan, China, and much of the Arab world favored traditional demand reduction, *i.e.* prevention and user punishment, over harm reduction. On the other side, several European countries and Australia supported harm reduction policies.<sup>244</sup> The 1998 Guiding Principles underlined that harm reduction should be part of the practical application of demand reduction policies, thereby giving its members more flexibility in their policy choices. However, it did not grant harm reduction more than a supplementary role.<sup>245</sup> Most importantly, it did not embrace harm reduction’s core belief that eliminating drug use is not a feasible goal.

In 2008, the Uruguayan delegation, planted to the CND the idea of incorporating human rights as a point of reference in the IDCR.<sup>246</sup> Despite some resistance, the CND adopted a resolution to strengthen the cooperation between the United Nations Office on Drugs and Crime (UNODC) and other UN entities for the promotion of human rights in the implementation of international drug control treaties. The resolution stated that drug control “must be carried out in full conformity with the purposes and principles of the Charter of the United Nations and other

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<sup>242</sup> INCB, *Report of the International Narcotics Control Board for 1993* (Vienna: 1993), §29.

<sup>243</sup> Ibid.

<sup>244</sup> UNODC, *A Century of International Drug Control*, 73.

<sup>245</sup> The exact status of harm reduction continues to be a topic of debate. For a more thorough discussion, see: UNODC, *Reducing the Adverse Health and Social Consequences of Drug Abuse*, Discussion Paper (New York: 2009).

<sup>246</sup> According to Milton Romani, former head of the Uruguay’s National Drugs Board and the country’s delegation to the CND, the idea of promoting and debating the linkage of drug control and human rights emerged after a joined conference on drug-related issues with TNI and WOLA in Montevideo in 2007 (Emb. Milton Romani, in discussion with the author, January 2018).

provisions of international law and, in particular, with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States and all human rights and fundamental freedoms and on the basis of the principles of equal rights and mutual respect.”<sup>247</sup> Following the resolution, human rights has been referenced by several UNODC documents as a guiding principle in implementing drug control requirements.<sup>248</sup> The incorporation of human rights principles into the normative foundation of the drug control regime has not only made it more difficult for states to legitimize torture and the death penalty in reference to the drug control treaties, but also provided states with more flexibility in their policy choices. According to Milton Romani, former secretary general of Uruguay’s the National Drugs Board (“Junta Nacional de Drogas,” JND), who defended Uruguay’s 2013 marijuana legalization as the country’s ambassador to the OAS (2012-2014), the incorporation of human rights into the IDCR allowed Uruguay to prepare and justify its reform to the international community.<sup>249</sup>

The issue of human rights also marked the debates leading up to the 2016 UNGASS on the world drug problem, which took place in New York from April 19 to 21, 2016. In October 2012, the governments of Colombia, Guatemala, and Mexico, issued a joint declaration calling for a new UNGASS to reexamine international drug control mechanisms. Their joint declaration highlighted the failure of the IDCR to limit drug consumption and pointed out the spread of organized crime, corruption, and violence as consequences of the regime’s prohibitionist character. Moreover, it called for an in-depth review of all available options, including regulatory

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<sup>247</sup> C.N.D. Res. 51/12, §1, Strengthening Cooperation Between the United Nations Office on Drugs and Crime and other United Nations Entities for the Promotion of Human Rights in the Implementation of the International Drug Control Treaties (2008).

<sup>248</sup> See: UNODC, *Drug Control Crime Prevention and Criminal Justice: A Human Rights Perspective*, E/CN.7/2010/CRP.6 and E/CN.15/2010/CRP.1 (Vienna: 2010); and UNODC, *UNODC and the Promotion and Protection of Human Rights* (Vienna: 2012).

<sup>249</sup> Romani, in discussion with the author, January 2018.

or market measures, to establish a new paradigm that would impede the flow of resources to criminal groups.<sup>250</sup>

While the proposal for a new UNGASS to discuss the international drug control strategy gained widespread support, it soon became clear that important stakeholders favored the status quo. After the CND started collecting national and regional position papers in order to draft an outcome document, the United States and the European Union both expressed their unequivocal support for the existing UN Conventions.<sup>251</sup> Furthermore, though the initial goal of UNGASS was to have an open debate about drug policy, the outcome document was presented for approval without a formal vote on the first day of the meeting, before the debates of the special session actually begun.<sup>252</sup> The document reaffirmed the international community's support for the goals and objectives of the three international drug control conventions and the determination to "actively promote a society free of drug abuse."<sup>253</sup> Furthermore, despite contradicting evidence, the document cited that "tangible progress has been achieved in some areas," a statement that has received much criticism from reform-oriented actors.<sup>254, 255</sup> The document was also criticized for not mentioning harm reduction, decriminalization, and the abolition of the death penalty for drug offenses.<sup>256</sup>

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<sup>250</sup> Governments of Colombia, Guatemala, and Mexico, *Declaración conjunta* (New York: October 1, 2012), [https://mision.sre.gob.mx/onu/images/dec\\_con\\_drogas\\_esp.pdf](https://mision.sre.gob.mx/onu/images/dec_con_drogas_esp.pdf).

<sup>251</sup> David Bewley-Taylor and Martin Jelsma, *UNGASS 2016: A Broken or B-r-o-a-d Consensus?* (Amsterdam: TNI, June 2016, Drug Policy Briefing 45), 5.

<sup>252</sup> IDPC, *The United Nations General Assembly Special Session (UNGASS) on the World Drug Problem: Report on the Proceedings* (London: September 2016), 3.

<sup>253</sup> G.A. Res. S-30/1, annex, Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem (Apr. 19, 2016).

<sup>254</sup> *Id.*

<sup>255</sup> Bewley-Taylor and Jelsma, *UNGASS 2016*, 4.

<sup>256</sup> *Ibid.* 1.



Nevertheless, reform-oriented voices emphasized a series of advances. As highlighted by the IDPC, the outcome document “refers to the concept of proportionality for the first time, it refers to ‘injecting equipment programmes’, ‘medication-assisted therapy’ and naloxone (an essential medicine used to reverse opiate overdoses), it includes good language on the need to mainstream a gender perspective, and it calls for ‘alternative or additional measures with regard to conviction or punishment’.”<sup>257</sup> Furthermore, a TNI report stated that the document contains “arguably the strongest human rights provision ever adopted by a UN drug control resolution.”<sup>258</sup>

Although the UNGASS outcome document was promoted as a global consensus, the meeting’s country statements underlined how far apart views and positions on drug policy actually are. While several countries from Latin America and Europe explicitly promoted harm reduction and decriminalization, especially countries from Africa, Asia, and the Middle East vehemently opposed these proposals. The strong opposition from these countries highlights that a consensus on these issues will be out of reach in the near future.<sup>259</sup> Nevertheless, the growing dissent to the status quo as well as the flexibilization of the regime in certain areas indicate an international context that has become more favorable to far-reaching policy changes, even if these changes go against the three drug control conventions. This is most evident in Uruguay’s and Canada’s recent legalizations of recreational marijuana, which stand in sharp contrast to the IDCR’s legal framework. It will be fascinating to observe how the regime will respond should more countries discuss legalization as a policy option.

After having outlined the most important steps in the creation of prohibition as the most important drug policy norm (see chapter III), as well as key developments in the contestation of prohibition and the rising prominence of harm reduction through multi-level advocacy, the

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<sup>257</sup> IDPC, *Report on the Proceedings*, 3.

<sup>258</sup> Bewley-Taylor and Jelsma, *UNGASS 2016*, 7.

<sup>259</sup> IDPC, *Report on the Proceedings*, 5-6.

following chapter V relates how these developments played out in South America. The chapter shows how, since the beginning of the 20<sup>th</sup> century, drug policies have become more prohibitionist and how, in recent years, several states have incorporated harm reduction principles in their national drugs policies. However, despite the fact that regional trends in drug policy followed international developments, chapter V also highlights significant intra-regional differences in the penalization and criminalization of drug-related activities as well as the timing of new drug laws. These differences are investigated in greater detail in the case studies of chapters VII to IX, which examine major policy changes in Uruguay, Ecuador, and Peru.

## V. CHANGE AND EVOLUTION OF SOUTH AMERICAN DRUG POLICIES

As detailed in chapter III, the story of international drug control is intimately tied to the opium trade and consumption in Southeast Asia. Nevertheless, primarily due to its large-scale cultivations of the coca crop, South America became an important target for drug control advocates. Despite some resistance, since the early 20<sup>th</sup> century South American governments introduced new laws restricting the production, sale, and consumption of mood-altering substances. Although the region largely followed the parameters of the IDCR, the trend towards criminalization and higher penalties was not a mere imposition. Simultaneous to the advance of global prohibition, several actors from South America were pushing for tighter restrictions. In 1973, governments from the region established the South American Agreement on Narcotic Drugs and Psychotropic Substances (ASEP, “Acuerdo Sudamericano sobre Estupefacientes y Psicotrópicos”), which became an important driving force in advancing prohibition in the region.

In the 1980s, drug policy in South America went through a process of securitization and militarization, with large-scale U.S.-backed military campaigns to eradicate drug production taking place in Bolivia, Colombia, and Peru. As detailed in the previous chapter, the failure of the “war on drugs” to contain the drug trade and its harmful side-effects drove the contestation against prohibition and allowed harm reductionists to make a strong case for alternative policy models. In the following decades, drug policies in South America became increasingly diverse. While several countries stayed firmly within a prohibitionist framework, Brazil, Chile, Colombia, Ecuador, and Uruguay moved closer, or showed signs of moving closer, to harm reduction. However, the move towards harm reduction is far from uniform. Most countries from the region have been displaying partial or complete returns to prohibition in recent years.

In the current context of normative change, the volatility and diversity of policy choices make the region an interesting laboratory to explore why countries pursue different approaches. The present chapter thus sets the stage for the case studies in chapters VII to IX, which examine

in greater detail how domestic and international incentives compelled governments to opt for different policies. The chapter starts with an examination of South America's relationship with INCB and traces how the region as a whole has become more prohibitionist over time. It ends with an assessment of drug policies in the contemporary period and restates why this dissertation chose Uruguay, Ecuador, and Peru for its case studies.

### 5.1 South America in the IDCR

South America's initial engagement with the emerging IDCR was reluctant and pragmatic. Although all ten states from the region signed and ratified the 1912 International Opium Convention, only four (Brazil, Ecuador, Uruguay, and Venezuela) ratified the agreement before its entry into force in 1919. Argentina (1946), Bolivia (1920), Chile (1923), Colombia (1924), Paraguay (1943), and Peru (1920), committed to the treaty after it became accepted internationally. A similar pattern is observable in relation to the International Opium Convention of 1925. Although all countries, except Peru, ratified the agreement, most of them did so in the 1930s and 1940s (see tables 2 and 3).

**Table 2: South America's Participation at International Drug Control Conferences in the Early 20<sup>th</sup> Century**

|           | 1912 | 1925 | 1931 | 1936 |
|-----------|------|------|------|------|
| Argentina | -    | -    | X    | -    |
| Bolivia   | -    | X    | X    | -    |
| Brazil    | -    | -    | X    | X    |
| Chile     | -    | -    | X    | -    |
| Colombia  | -    | -    | -    | X    |
| Ecuador   | -    | -    | -    | X    |
| Paraguay  | -    | -    | X    | -    |
| Peru      | -    | -    | -    | -    |
| Uruguay   | -    | -    | X    | X    |
| Venezuela | -    | -    | X    | X    |

X = was represented; - = was not represented

Data extracted from United Nations Treaty Collection, Status of Treaties, Chapter VI

**Table 3: South America's Ratifications of Early Drug Control Conventions**

|           | 1912 | 1925 | 1931 | 1936 |
|-----------|------|------|------|------|
| Argentina | 1946 | 1946 | 1946 | -    |
| Bolivia   | 1920 | 1932 | -    | -    |
| Brazil    | 1914 | 1932 | 1933 | 1938 |
| Chile     | 1923 | 1933 | 1933 | 1972 |
| Colombia  | 1924 | 1930 | 1934 | 1944 |
| Ecuador   | 1915 | 1934 | 1935 | -    |
| Paraguay  | 1943 | 1941 | 1941 | -    |
| Peru      | 1920 | -    | 1932 | -    |
| Uruguay   | 1916 | 1930 | 1933 | -    |
| Venezuela | 1913 | 1929 | 1933 | -    |

Data extracted from United Nations Treaty Collection, Status of Treaties, Chapter VI.

In the 1930s, South American states became more engaged with the evolving regime. While only Bolivia was present at the negotiation of the 1925 International Opium Convention, seven states (Argentina, Bolivia, Brazil, Chile, Paraguay, Uruguay, and Venezuela) were present at the 1931 Conference for the Limitation of Manufacture of Narcotic Drugs. Moreover, five states (Brazil, Colombia, Ecuador, Uruguay, and Venezuela) were represented at the 1936 Conference for the Suppression of the Illicit Traffic in Narcotic Drugs. However, while all states, except Bolivia, ratified the 1931 Convention, only Brazil (1938) and Colombia (1944) ratified the 1936 Convention, followed by Chile in 1972 (see tables 2 and 3). Despite the relatively high adherence to the 1925 and 1931 Conventions, McAllister upholds that “few submitted the full complement of statistics required by the control organs,” while “Coca production continued unchecked, and various countries became transit centers for opium smuggling.”<sup>260</sup> In the 1950s, under the emerging UN system, many states from South America increasingly cooperated with the regime, “submitting statistics, promoting police cooperation, and taking halting steps towards domestic enforcement.”<sup>261</sup> At the same time, McAllister states, “coca production remained

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<sup>260</sup> McAllister, *Drug Diplomacy*, 119 (see intr., n. 3)

<sup>261</sup> Ibid. 199.

uncontrolled, opium production recurred sporadically, and illicit trafficking might occur anywhere in the region.”<sup>262</sup>

In the 1960s, participation, ratification, and compliance with the IDCR became more widespread. While seven states participated at the 1961 and 1971 conferences, nine and ten states were represented at the 1972 and 1988 conferences, respectively (see table 4). Although all of the treaties and protocols were eventually ratified by all South American states, as shown in table 5 some of them did so reluctantly.

**Table 4: South America’s Participation at Major Drug Control Conferences within the UN System**

|           | 1961 | 1971 | 1972 | 1988 |
|-----------|------|------|------|------|
| Argentina | X    | X    | X    | X    |
| Bolivia   | X    | -    | X    | X    |
| Brazil    | X    | X    | X    | X    |
| Chile     | X    | X    | X    | X    |
| Colombia  | -    | X    | X    | X    |
| Ecuador   | -    | X    | X    | X    |
| Paraguay  | -    | X    | -    | X    |
| Peru      | X    | -    | X    | X    |
| Uruguay   | X    | -    | X    | X    |
| Venezuela | X    | X    | X    | X    |

X = was represented; - = was not represented

Data extracted from United Nations Treaty Collection, Status of Treaties, Chapter VI.

Tables 4 and 5 show that Argentina, Brazil, Chile, Ecuador, and Venezuela were not only most commonly represented at international conferences on drug control but also the region’s fastest states to ratify the treaties negotiated at these conferences. Bolivia, Colombia, Paraguay, Peru, and Uruguay were not represented at all of the conferences and often took more time to ratify the agreements.

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<sup>262</sup> McAllister, *Drug Diplomacy*, 199

**Table 5: South America's Ratification of UN Drug Control Conventions and Amendments**

|           | <b>1961</b> | <b>1971</b> | <b>1972</b> | <b>1988</b> |
|-----------|-------------|-------------|-------------|-------------|
| Argentina | 1963        | 1978        | 1973        | 1993        |
| Bolivia   | <b>1976</b> | <b>1985</b> | 1976        | 1990        |
| Brazil    | 1964        | 1973        | 1973        | 1991        |
| Chile     | 1968        | 1972        | 1975        | 1990        |
| Colombia  | <b>1975</b> | <b>1981</b> | 1975        | <b>1994</b> |
| Ecuador   | 1964        | 1973        | 1973        | 1990        |
| Paraguay  | <b>1972</b> | 1972        | 1973        | 1990        |
| Peru      | 1964        | <b>1980</b> | 1977        | 1992        |
| Uruguay   | <b>1975</b> | 1976        | 1975        | <b>1995</b> |
| Venezuela | 1969        | 1972        | <b>1985</b> | 1991        |

Late ratifications are marked in bold.

Data extracted from United Nations Treaty Collection, Status of Treaties, Chapter VI.

Based on the above data, it is reasonable to assume that, following the IDCR's parameters, the region of South America became more prohibitionist over time. At the same time, the delays in ratification of some states also justify the expectation that not all states implemented prohibition with the same level of intensity. The following sections tend to confirm these assumptions. However, the remainder of the dissertation also shows that prohibition was not a mere imposition from a global regime but enjoyed widespread support throughout the region.

## **5.2 The Emergence of Prohibition**

Coinciding with the formation of the IDCR, prohibition began to emerge in South America in the early 20<sup>th</sup> century when Argentina (1924 and 1926), Brazil (1940), Colombia (1920, 1928, 1936, and 1946), Ecuador (1916, 1923, 1924, and 1926), Peru (1921 and 1949), Uruguay (1908, 1917, 1934 and 1937) and Venezuela (1930, 1934, 1940, and 1943) designed and implemented their first drug laws.<sup>263</sup> These legislations regulated the legal distribution of narcotic substances for medical and scientific purposes, and established first control mechanisms over the export and import of these drugs. Moreover, they penalized the illicit production and commerce

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<sup>263</sup> For an overview of South American drug laws see: Caiuby Labate, Cavnar and Rodrigues, *Drug Policies*, see intr., n. 11; and Metaal and Youngers, *System Overload*, see intr., no. 7.

with narcotic substances with monetary fines or low prison sentences. Peru's Law 4,428 from 1921 and Brazil's Criminal Code from 1940 foresaw the highest penalties, of one to five years of prison for high-level trafficking offenses.<sup>264</sup> Peru's Decree Law (D.L.) 11,005 from 1949 even increased penalties for high-level trafficking offenses up to 15 years.<sup>265</sup> However, while Brazil, Colombia, and Peru (since 1949) did not punish drug consumption, in Argentina and Uruguay (since 1937) the unlawful possession of even small amounts of drugs was considered a punishable, though not a criminal, offense. From the available data, it is not clear to what extent this rather mild form of prohibition extended to Ecuador and Venezuela, as well as Bolivia, Chile, and Paraguay. While the author was unable access the above-cited drug laws from Ecuador and Venezuela, there are no traces of drug laws for Bolivia, Chile, and Paraguay from the early 20<sup>th</sup> century.

The next wave of drug legislations followed the 1961 Single Convention on Narcotic Drugs of the United Nations. During the 1960s, Argentina (1968), Bolivia (1962), Brazil (1966, 1967, and 1968), Colombia (1964), Ecuador (1970), and Venezuela (1964) established new laws. These laws not only enlarged the scope of punishable drug-related activities, but also increased the penalties for drug offenses. Argentina's 1968 reform of the criminal code increased penalties to a range of one to six years of prison, as compared to six months to two years in previous legislations. However, the reform decriminalized the possession of drugs for personal consumption.<sup>266</sup> Bolivia's first drug law penalized participation in the elaboration, commerce, and supply of drugs with three to ten years of prison, and their possession, even if for personal

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<sup>264</sup> Ley N° 4,428 art. 10, Noviembre 21, 1921, Archivo Digital de la Legislación del Perú [ADLP], <http://www.leyes.congreso.gob.pe/Documentos/Leyes/04428.pdf> (Per.); and Luciana Boiteaux, "Drugs and Prisons: The Repression of Drugs and the Increase of the Brazilian Penitentiary Population," in *System Overload*, 30.

<sup>265</sup> D.L. 11,005 art. 6, Marzo 28, 1949, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/11005.pdf> (Per.).

<sup>266</sup> Alejandro Corda, "Imprisonment for Drug-Related Offenses in Argentina," in *System Overload*, 12.



consumption, with two to five years.<sup>267</sup> Although Brazil and Colombia did not increase their penalties, both started punishing the possession of drugs for personal consumption.<sup>268</sup> Venezuela's 1964 Criminal Code sanctioned the illicit commerce, elaboration, storing, acquisition, supply, and traffic of narcotic drugs as well as the sowing, cultivation, acquisition, supply, and traffic of seeds and plants needed for drug production with four to eight years of prison.<sup>269</sup> Ecuador ratified international agreements but did not specify penalties for drug-related offenses until its 1970 "Law of Control and Intervention in the Trafficking of Narcotics" (law 366), which penalized drug offenses with up to twelve years of prison. Although the law did not criminalize drug consumption, it established mandatory treatment for convicted drug addicts. Drug users who declined to be treated were to be penalized with one year of prison.<sup>270</sup> Ecuador's law 366 in many ways set the tone for a new wave of drug laws that emerged during the 1970s, which continued the trend towards stronger versions prohibition.

### **5.3 The Deepening of Prohibition in the 1970s**

In the 1970s, a series of intertwined developments created an increasingly restrictive international context. Apart from the 1971 UN Convention and the 1972 amendment to the 1961 Single Convention, in 1971 President Richard Nixon identified illegal narcotics as a threat to U.S. national security and declared a "war on drugs." As the world's primary producer and exporter of cocaine, South America came under strong pressure to apply more restrictive policies targeting the production, transportation, and consumption of narcotic drugs. However, the advance of

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<sup>267</sup> Ley N° 171 arts. 2 y 3, Febrero 7, 1962, [73] Gaceta Oficial [G.O.] (Bol.).

<sup>268</sup> Boiteaux, "Drugs and Prisons," 34; and Rodrigo Uprimny Yepes and Diana E. Guzmán, "Drug Policy and the Prison Situation in Colombia," in *System Overload*, 40.

<sup>269</sup> Código Penal [C.P.] Venezolano art. 357, Junio 27, 1964, Caracas: Editorial La Torre (Ven.).

<sup>270</sup> Ley N° 366 de Control y Fiscalización del Tráfico de Estupefacientes arts. 22, 25, y 31, Noviembre 23, 1970, [105] Registro Oficial [R.O.] (Ec.).

prohibition did not exclusively come from abroad but was at least partially driven by intra-regional developments. In 1972, representatives of all South American states convened in Buenos Aires to discuss a regional strategy for the enhancement of drug control mechanisms. In the conference's opening speech, the Argentine minister of social welfare, Oscar R. Puiggrós, defined drugs as a powerful biological and psychological threat against humanity while arguing that the future of the Argentine nation was in danger.<sup>271</sup> In one of the meetings, a delegate Peru referred to drugs as "a monstrous vice, capable of undermining society in its morality, good living, and its fundamental cell: the family."<sup>272</sup> The conference's Commission 2 on Illicit Traffic and Control used similar security-heavy language when describing the nature of the problem: "the seriousness of the problem that is invading our society requires and demands the permanent and joint attention of all the South American countries. A single free flank would mean a dangerous discontinuity in the fight against this enemy. We aspire to achieve solidary action in the shortest term, setting clear and well-defined objectives as a starting point for the action to be developed by all countries."<sup>273</sup>

One of the major outcomes of the conference was the decision to establish a regional drug control framework, the South American Agreement on Narcotic Drugs and Psychotropic Substances (ASEP, "Acuerdo Sudamericano sobre Narcóticos y Estupefacientes"). In April 1973,

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<sup>271</sup> Reunión Gubernamental de Expertos Sudamericanos sobre Estupefacientes y Psicotrópicos (ReGESEP) D.T.2, "Discurso pronunciado por el Dr. Oscar R. Puiggrós, Ministro de Bienestar Social, en la sesión plenaria inaugural," 29 noviembre 1972, Ministerio de Relaciones Exteriores de la República Oriental del Uruguay (MREROU), Archivo Histórico-Diplomático (AHD), Embajada Uruguaya en Buenos Aires (URUBA), Carp. E1-14, 1973, Reunión Internacional sobre Problemas Estupefacientes y Toxicomanías 1972.

<sup>272</sup> Translated from: ReGESEP D.T.12, "Comisión 2, Tráfico ilícito y control: Acta resumida de la segunda reunión," 29 noviembre – 4 diciembre 1972, MREROU, AHD, URUBA, Carp. E1-14, 1973, Reunión Internacional sobre Problemas Estupefacientes y Toxicomanías 1972.

<sup>273</sup> Translated from: ReGESEP D.T.18, "Recomendaciones finales de la Comisión 2 sobre tráfico ilícito y control," 1 diciembre 1972, MREROU, AHD, URUBA, Carp. E1-14, 1973, Reunión Internacional sobre Problemas Estupefacientes y Toxicomanías 1972.

a ministerial meeting took place in Buenos Aires to finalize the negotiations. Through ASEP, South American states agreed on a series of measures including the holding of annual meetings to discuss drug-related challenges; creating national drug control agencies; promoting educational plans to prevent drug use; supporting scientific investigations on drug addiction; enhancing the training of security personnel to undermine drug consumption; intensifying measures to eradicate cannabis and coca plantations, and to prohibit the cultivation of opium poppies, except the ones used for medical and scientific purposes; and creating a permanent secretariat to help implement the agreement. Most importantly, ASEP signatories agreed to harmonize the region's drug laws according to a set of norms defined in the treaty's First Additional Protocol.<sup>274</sup> Said protocol defined a series of criminal activities that ought to be included in national drug laws. While there is significant overlap with the punishable offenses listed in UN the Conventions (see chapter III, note 136), ASEP's list was more precise and extensive. For example, it included the organization and financing of drug-related activities and targeted specifically power abuses of professionals who regulated the licit drug trade.<sup>275</sup>

The protocol also listed a series of aggravated forms of trafficking offenses. These are particularly serious offenses that justify higher penalties. They include the promotion and selling of drugs to minors and psychologically disabled people; the promotion and selling of drugs with

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<sup>274</sup> Conferencia Sudamericana Plenipotenciaria sobre Estupefacientes y Psicotrópicos (CONATON) Doc. 12, "Informe final," 27 de abril de 1973, MREROU, ADH, URUBA, Carp. E1-14, 1973, Acta Final Estupefacientes. 8-11.

<sup>275</sup> The complete list includes the following activities: a) related to the process of production: sowing, cultivation, fabrication, extraction, preparation and any other form of production; b) related to the commercialization: importation or exportation, deposit, sale, distribution, storage, transport and any other form of commercialization; c) related to the organizing and financing of the activities outlined in the previous paragraphs; d) supply, application, facilitation or delivery, even without compensation; e) supply, application, facilitation or delivery, by abusive and fraudulent actions of professionals authorized to prescribe medications; f) abusive or fraudulent production, fabrication, preparation, or utilization by professionals with the authority to do so; g) clandestine production, fabrication, preparation, or utilization; h) the possession of drugs, their organic raw material and chemical precursors, not included in the previous paragraphs and without a legitimate reason; i) allocation of goods and properties used for the above-listed crimes, even without any gain; and j) instigation, promotion, or stimulation to employ the substances and their personal use in public spaces (Ibid. 12-13).

the goal to establish or maintain dependencies; the use of violence or scam; the use of unimputable persons like minors to commit drug-related crimes; being a medical professional; holding public office; being a teacher or educator; committing drug-related crimes next to educational or public facilities; and the formation of criminal groups.<sup>276</sup> As highlighted in chapter III, the principle of aggravating circumstances became part of the 1988 Convention, long after it became a standard in South America.

Another aspect that stands out in the protocol is the criminalization of the possession of drugs. In the 1972 meeting, countries were divided on how to deal with the issue of drug consumption and personal possession. While Uruguay made a case for treating drug addiction as a disease that should not be penalized, delegates from Argentina and Brazil warned that if a law became too soft, criminal groups would take advantage of it. Their lowest common denominator was that drug addicts should at least undergo obligatory treatment.<sup>277</sup>

The global and regional push towards prohibition left its mark on national legislations. During the decade, Chile (1973) and Paraguay (1972) advanced their first drug laws. Moreover, Argentina (1974), Bolivia (1972, 1973, and 1976), Brazil (1976), Colombia (1971 and 1974), Ecuador (1974, 1978, and 1979), Peru (1978), and Uruguay (1974) enacted new laws. Fulfilling the requirements of the UN Conventions, as well as guidelines of ASEP's First Additional Protocol, these laws specified numerous drug-related crimes and defined penalties for these offenses. As highlighted in table 6, the lowest penalties for drug trafficking, defined here as the

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<sup>276</sup> CONATON, "Informe final," 13.

<sup>277</sup> See: ReGESEP D.T.7, "Comisión 2, Tráfico ilícito y control: Acta de la primera reunión," 29 de noviembre de 1972, MREROU, AHD, URUBA, Carp. E1-14, 1973, Reunión Internacional sobre Problemas Estupefacientes y Toxicomanías 1972; ReGESEP D.T.6, "Comisión 3, Legislación y uniformidad de normas para el expendio: Acta resumida de la primera reunión," 29 de noviembre de 1972, MREROU, AHD, URUBA, Carp. E1-14, 1973, Reunión Internacional sobre Problemas Estupefacientes y Toxicomanías 1972; and ReGESEP, "2ª reunión plenaria de delegados," 4 de diciembre de 1972, MREROU, AHD, URUBA, Carp. E1-14, 1973, Reunión Internacional sobre Problemas Estupefacientes y Toxicomanías 1972.

active involvement in the cultivation, production, manufacture, import, export, commerce, or selling of illegal narcotics, for nearly all of the countries were in the range of six months to five years of prison. The highest legal sanctions for trafficking offenses could be issued in Bolivia, Peru, and, for a brief period, in Ecuador with up to 25 years of prison (see chapter VII). Peru did not define a highest penalty in its Decree Law 22,095, but established that several activities were to be punished with at least 15 years of prison. In practice, this meant that traffickers were often punished with 25 years of prison, or more (see chapter IX). In the mid-1970s Bolivia began its first campaigns to eradicate illegal coca, followed by Peru towards the end of the decade. Argentina, Brazil, Chile, and Uruguay all defined 15 years of prison as the highest possible sanction, while Colombia and Paraguay issued twelve years to be the highest penalty. Venezuela is the lowest-ranked country in the scale of the highest penalties where traffickers were sanctioned with no more than eight years (not taking into account aggravated forms of trafficking).

All countries except Ecuador and Colombia defined a set of aggravated forms or circumstances that would either increase the sentence (Argentina, Bolivia, Brazil, Colombia, Uruguay, and Venezuela) or instruct judges to issue the highest possible sanction (Chile and Peru). At the same time, the region was split on the possession of drugs for personal consumption. Whereas in Argentina, Bolivia, Brazil, Colombia, and Venezuela, the possession of even small amounts of narcotics constituted a criminal offense, penalized with up to eight years of prison, this was not the case in Chile, Ecuador, Paraguay, Peru, and Uruguay. However, in each of these countries, drug addicts were obliged to undergo mandatory treatment and would suffer further penalties if they denied being treated.

In summary, by the end of the decade strong prohibitionist laws existed in Argentina, Brazil and Colombia whereas Chile and Paraguay had the least severe drug laws. Ecuador, Peru,

Uruguay, and Venezuela (considering the penalization of drug possession for consumption) occupied an intermediate position.

**Table 6: South American Drug Laws at the End of the 1970s**

|   | <b>Lowest<br/>Penalty For<br/>Drug<br/>Trafficking<sup>+1</sup></b> | <b>Highest Penalty<br/>For Drug<br/>Trafficking<sup>+1</sup></b> | <b>Highest<br/>Penalty for<br/>Aggravated<br/>Forms</b> | <b>Criminalization of<br/>Possession</b> |
|---|---|--|---|--|
| Arg. (1974) * <sup>1</sup>                  | 3 years   | 15 years   | 20 years  | Yes (1-6 years)                          |
| Bol. (1976) * <sup>2</sup>                  | 5 years   | 25 years   | 33 years and 4 months                                   | Yes (2-8 years)                          |
| Bra. (1976) * <sup>3</sup>                  | 3 years   | 15 years   | 25 years  | Yes (6 months – 2 years)                 |
| Chile (1973) * <sup>4</sup>                 | 3 years and 1 day   | 15 years   | 15 years  | No                                       |
| Colom. (1974) * <sup>5</sup>                | 3 years   | 12 years   | 21 years  | Yes (1 month – 2 years)                  |
| Ec. (1970, 1974, 1978, 1979) * <sup>6</sup> | 6 months  | 16 years   | --  | No                                       |
| Par. (1972) * <sup>7</sup>                  | 2 years   | 12 years   | --  | No                                       |
| Peru (1978) * <sup>8</sup>                  | 2 years   | at least 15 years  | at least 15 years                                       | No                                       |
| Ur. (1974) * <sup>9</sup>                   | 2 years   | 18 years   | 20 years  | No                                       |
| Ven. (1964) * <sup>10</sup>                 | 4 years   | 8 years  | 10 years and 6 months                                   | Yes (4-8 years)                          |

<sup>+1</sup>For the purpose of this table drug trafficking means the active involvement in the illegal cultivation, production, manufacture, import, export, commerce, and selling of illegal drugs, as well as the planning and financing of these activities. Knowledge of these activities and the unlawful prescription of drugs are not included.

\*<sup>1</sup> Law No. 20,771, Oct. 3, 1974, [23021] Boletín Oficial [B.O.], 2 (Arg.).

\*<sup>2</sup> Most aggravated forms of the Supreme Decree 14,203 will lead to penalties within the 25-year frame. However, when the crimes are committed by a public official, penalties will rise by a third (Decreto Supremo [D.S.] N° 14,203, Ley Nacional de Control de Sustancias Peligrosas art. 80, Diciembre 17, 1976, [896] G.O. [Bol.]).

\*<sup>3</sup> Lei N° 6,368, de 21 de Outubro de 1976, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 22.10.1976 (Braz.).

\*<sup>4</sup> The only aggravating circumstance in Law 17,943 is the sale of drugs to minors. This does not lead to an increase of the sentences but demands from the judge to apply the highest possible penalty of 15 years. Although the law does not criminalize the possession of drugs for personal consumption, addicts have to undergo obligatory treatment. Drug users who are not addicts have to partake in three months of civil service (Law No. 17,943 art. 6, 10, y 12, Mayo 9, 1973, Diario Oficial [D.O.] [Chile]).

\*<sup>5</sup> Ley [L.] 1,188, Junio 25, 1972, [D.O.] (Colom.).

\*<sup>6</sup> Although the possession of drugs for personal consumption is not criminalized, drug users have to undergo obligatory treatment. Addicts who reject being treated were penalized with one year of prison (D.L. de 21 de Agosto de 1971. [36] R.O. (Ec.); D.S. N° 1,139, Febrero 16, 1974, [278] R.O. 1 [Ec.]; D.S. N° 2,636, Julio 4, 1978, [621] R.O. 4 [Ec.]; and Ley N° 366, supra n. 270, art. 22, 24, y 25).

\*<sup>7</sup> Ley N° 357, Septiembre 22, 1972, Biblioteca y Archivo Central del Congreso de la Nación, <http://www.bacn.gov.py/leyes-paraguayas/2565/ley-n-357-reprime-el-trafico-ilicito-de-estupefacientes->

drogas-peligrosas-y-otros-delitos-afines-y-establece-medidas-para-la-recuperacion-de-los-toxicomanos (Par.).

\*<sup>8</sup> Decreto Ley [D.L.] 22,095, Ley de Represión del Tráfico Ilícito de Drogas, Febrero 21, 1978, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/22095.pdf> (Per.).

\*<sup>9</sup> D.L. N° 14,294, Octubre 31, 1974, [Tomo 1, Semestre 2], Registro Nacional de Leyes y Decretos (Uru).

\*<sup>10</sup> Art. 367 of Venezuela's 1964 C.P. is unclear about the possession of drugs for personal consumption and has been interpreted differently by the country's judges. In 1974, a ruling of the Supreme Court stated that any possession of illegal drugs is punishable (C.P. Venezolano art. 357, Junio 27, 1964, Caracas: Editorial La Torre [Ven.]).

## 5.4 Militarization and Prohibition in the 1980s

During the 1980s, the “drug war” became a key element of U.S. foreign policy towards Latin America. In a speech to the International Association of Chiefs of Police in 1981, the country's newly elected president, Ronald Reagan (1981-1989), proposed a new narcotics enforcement strategy, which included “a foreign policy that vigorously seeks to interdict and eradicate illicit drugs, wherever cultivated, processed, or transported.”<sup>278</sup> In the following, between 1981 and 1989, federal spending on international narcotics efforts rose nearly 400 percent, from more 1.2 billion to 5.7 billion.<sup>279</sup> Furthermore, in 1986, Reagan signed the National Security Decision Directive (NSDD) 221, which officially declared drug trafficking to be a threat to the United States. The document stated that:

(...) the national security threat posed by the drug trade is particularly serious outside U.S. borders. Of primary concern are those nations with a flourishing narcotics industry, where a combination of international criminal trafficking organizations, rural insurgents, and urban terrorists can undermine the stability of local government; corrupt efforts to curb drug crop production, processing, and distribution; and distort public perception of the narcotics issue in such a way that it becomes part of anti-U.S. or anti-Western debate.

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<sup>278</sup> Ronald Reagan, “Remarks at the Annual Meeting of the International Association of Chiefs of Police in New Orleans, Louisiana,” September 28, 1981, Ronald Reagan Presidential Library and Museum, <https://www.reaganlibrary.gov/research/speeches/92881a>.

<sup>279</sup> Carpenter, *Bad Neighbor Policy*, 34 (see intr., n. 5)

While these problems are endemic to most nations plagued by narcotics, their effects are particularly insidious for the democratic states of the Western Hemisphere.<sup>280</sup>

To implement the U.S. drug control strategy, the NSDD 221 ordered the Secretary of Defense and the Attorney General to “develop and implement any necessary modifications to applicable statutes, regulations, procedures, and guidelines to enable U.S. military forces to support counter-narcotics efforts more actively.”<sup>281</sup> Furthermore, the document directed narcotics control objectives to be integrated into foreign assistance planning as well as increased support for anti-drug efforts from U.S. intelligence services.<sup>282</sup>

To ensure cooperation from Latin American counterparts, the Reagan administration not only offered military and intelligence assistance to governments from the region, but also invented a unilateral sanctioning mechanism known as the certification process. This procedure, which was invented by the U.S. Congress in 1986 as part of a wider anti-drug legislation, required the President to evaluate each year whether or not the major “producers” and “transit-countries” of illicit drugs have fulfilled U.S. expectations. In case the President did not certify a country, Congress could suspend up to 50 percent of all financial aid for that fiscal year; suspend all aid for the following years; and require U.S. representatives in multilateral development banks to vote against granting loans to the offending country. Moreover, the U.S. could launch further sanctions, including the suspension of the World Trade Organization’s most favored nations clause; the imposition of tariffs of up to 50 percent; and the curtailment of air trafficking between the U.S. and the offending country.<sup>283</sup>

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<sup>280</sup> The White House, “National Security Decision Directive 221: Narcotics and National Security,” April 8, 1986, Homeland Security Digital Library, <https://www.hsdl.org/?abstract&did=463177>, 1.

<sup>281</sup> Ibid. 3.

<sup>282</sup> Ibid. 4-5.

<sup>283</sup> Carpenter, *Bad Neighbor Policy*, 125-26.



Due to the increased pressure, Bolivia and Peru intensified their efforts to eradicate illegal coca, which were met with significant resistance and ultimately unsuccessful. However, the increasing U.S. pressure did not only change the operational side of drug control efforts, but also had repercussions on the region's drug laws. Throughout the 1980s, Argentina (1989), Bolivia (1988), Chile (1985), Colombia (1986), Peru (1981), Paraguay (1988), and Venezuela (1984) created new legislation on drugs.

Hoping to persecute drug-related activities more effectively these laws classified a new set of drug-related crimes and defined more precise penalties for these offenses. Argentina, Bolivia, Chile, Colombia, Paraguay, Peru, and Venezuela updated their laws, introducing new penalties for the illegitimate trade with prescription medicines and the promotion of drug use by traffickers or individuals.<sup>284</sup> Argentina, Bolivia, Colombia, Peru, and Paraguay targeted public officials that facilitate drug trafficking actively and passively. The Venezuelan law targeted specifically the country's military personnel.<sup>285</sup> Argentina, Bolivia, Chile, Colombia, and Paraguay criminalized the allocation of properties, goods, and tools used for the illegal production and manufacture of drugs.<sup>286</sup> Argentina, Bolivia, Paraguay, and Venezuela set up new

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<sup>284</sup> Law No. 23,737 arts. 1, 2, 3, 4, 9, 12 y 29, Oct. 10, 1989, [26737] B.O. 4 (Arg.); Ley N° 1008 Ley del Régimen de la Coca y Sustancias Controladas arts. 54, 58, 62 y 63, Julio 28, 1988, [1558] G.O. (Bol.); Law No. 18,403 arts. 7 y 9, Marzo 4, 1985, D.O. (Chile); L. 30 de 1986 arts. 35, 36, 56 y 57, Enero 31, 1986, D.O. (Colom.); Ley N° 1340/88 arts. 5-11, 17 y 38, Octubre 27, 1988, Biblioteca y Archivo Central del Congreso de la Nación, <http://www.bacn.gov.py/archivos/2562/20140917075233.pdf> (Par.); Decreto Legislativo [D.Leg.] N° 122, Ley sobre Tráfico Ilícito de Drogas art. 1, nuevos arts. 58, 59 y 60, Junio 12, 1981, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/DecretosLegislativos/00122.pdf> (Per.); Ley Orgánica sobre Sustancias Estupefacentes y Psicotrópicas capítulo II y título III, Julio 17, 1984, [3,411] G.A. (Ven.).

<sup>285</sup> Law No. 23,737, supra n. 284, art. 23 (Arg.); Ley N° 1008, supra n. 284, arts. 66-69 (Bol.); L. 30 de 1986, supra n. 284, arts. 39 y 67 (Colom.); Ley N° 1340/88, supra n. 284, arts. 23, 39 y 40 (Par.); D.Leg. N° 122, supra n. 284, art. 1, nuevo art. 55-A (Per.); and Ley Orgánica sobre Sustancias Estupefacentes y Psicotrópicas, supra n. 284, título III (Ven.).

<sup>286</sup> Law No. 23,737, supra n. 284, art. 10 (Arg.); Ley N° 1008, supra n. 284, art. 60 (Bol.); Law No. 18,403, supra n. 284, art. 8 (Chile); L. 30 de 1986, supra n. 284, art. 34 (Colom.); and Ley N° 1340/88, supra n. 284, art. 33 (Par.).

rules and penalties to undermine the diversion of drugs from controlled markets to illicit ones.<sup>287</sup> Argentina, Bolivia, Colombia, and Paraguay introduced new restrictions and penalties on the illicit trade with precursor chemicals.<sup>288</sup> Argentina, Colombia, and Paraguay penalized the use of illegal drugs in sporting competitions.<sup>289</sup> Bolivia, Peru, and Venezuela made punishable the provision of assistance in covering up drug-related crimes.<sup>290</sup> Bolivia and Paraguay penalized the instigation to commit drug-related crimes as well as the failure to inform public officials about the occurrence of such crimes.<sup>291</sup> Colombia and Paraguay penalized the illegitimate use of airports as well the use of clandestine airports. Furthermore, both countries prohibited the production and import of syringes and hypodermic needles, except for authorized medical professionals.<sup>292</sup> Ultimately, Argentina penalized the diffusion of knowledge on how to produce drugs as well as money laundering or any assistance in utilizing assets obtained from the illegal drug trade.<sup>293</sup>

The criminalization of more drug-related activities did not necessarily go hand in hand with higher legal sanctions. Only Paraguay and Venezuela, both of which had relatively low penalties in the previous decade (see table 6), brought these penalties up to the regional standard

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<sup>287</sup> Law No. 23,737, supra n. 284, arts. 8 y 32 (Arg.); Ley N° 1008, supra n. 284, arts. 59 y 64 (Bol.); Ley N° 1340/88, supra n. 284, arts. 11 y 24 (Par.); and Ley Orgánica sobre Sustancias Estupefacientes y Psicotrópicas, supra n. 284, arts. 45 y 47 (Ven.).

<sup>288</sup> Law No. 23,737, supra n. 284, art. 24 (Arg.); Ley N° 1008, supra n. 284, arts. 36 y 44 (Bol.); L. 30 de 1986, supra n. 284, art. 43 (Colom.); and Ley N° 1340/88, supra n. 284, arts. 22 y 26 (Par.).

<sup>289</sup> Law No. 23,737, supra n. 284, art. 37 (Arg.); L. 30 de 1986, supra n. 284, art. 63 (Colom.); and Ley N° 1340/88, supra n. 284, art. 18 (Par.).

<sup>290</sup> Ley N° 1008, supra n. 284, art. 75 (Bol.); D.Leg. N° 122, supra n. 284, art. 1, nuevo art. 60 (Per.); and Ley Orgánica sobre Sustancias Estupefacientes y Psicotrópicas, supra n. 284, título III (Ven.).

<sup>291</sup> Ley N° 1008, supra n. 284, arts. 56 y 61 (Bol.); and Ley N° 1340/88, supra n. 284, arts. 34, 36 y 37 (Par.).

<sup>292</sup> L. 30 de 1986, supra n. 284, arts. 59, 64, and 70 (Colom.); and Ley N° 1340/88, supra n. 284, arts. 12, 45 y 74 (Par.).

<sup>293</sup> Law No. 23,737, supra n. 284, arts. 25-28 (Arg.).

(see table 7). Chile and Colombia also increased legal sanctions for aggravated trafficking offenses. The penalties defined in other countries stayed within the parameters of previous legislations (see tables 6 and 7). Interestingly, Bolivia and Venezuela decriminalized the possession of drugs for personal consumption, whereas Argentina and Colombia lowered the penalties for drug possession. Moreover, the Argentine law allowed for alternative penalties if the convicted drug user was a first-time offender or drug addict.<sup>294</sup> At the end of the decade, Chile, Peru, and Uruguay had the least prohibitionist drug laws, whereas the strongest forms of prohibition existed in Argentina, Brazil, and Colombia.

**Table 7: South American Drug Laws at the End of the 1980s**

|               | <b>Lowest<br/>Penalty For<br/>Drug<br/>Trafficking<sup>+1</sup></b> | <b>Highest<br/>Penalty<br/>For Drug<br/>Trafficking<sup>+1</sup></b> | <b>Highest Penalty<br/>for Aggravated<br/>Forms</b> | <b>Criminalization of<br/>Possession</b> |
|---------------|---|--|---|--|
| Arg. (1989)   | 4 years   | 20 years   | 20 years  | Yes (1 month – 2 years)                  |
| Bol. (1988)   | 1 year  | 25 years   | 33 years and 4 months                               | No                                       |
| Bra. (1976)   | 3 years   | 15 years   | 25 years  | Yes (6 months – 2 years)                 |
| Chile (1985)  | 3 years and 1 day   | 15 years   | 20 years  | No                                       |
| Colom. (1986) | 3 years   | 12 years   | 24 years  | Yes (1 month – 1 year)                   |
| Ec. (1979)    | 6 months  | 16 years   | --  | No                                       |
| Par. (1988)   | 2 years   | 25 years   | 30 years  | No                                       |
| Peru (1981)   | 2 years   | 15 years   | at least 15 years                                   | No                                       |
| Ur. (1974)    | 2 years   | 18 years   | 20 years  | No                                       |
| Ven. (1984)   | 10 years  | 20 years   | 30 years  | No                                       |

<sup>+1</sup>For the purpose of this table drug trafficking means the active involvement in the illegal cultivation, production, manufacture, import, export, commerce, and selling of illegal drugs, as well as the planning and financing of these activities. Knowledge of these activities and the unlawful prescription of drugs are not included.

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<sup>294</sup> *Id.* art. 14-21.

## 5.5 Diversification in the 1990s

The beginning of the 1990s were marked by an increasing propensity of the United States to offer military aid and assistance, as well as the employment of military personnel, to combat drug supply networks. The inclination to use military force was highlighted by the U.S. invasion of Panama, which ousted the country's president, Manuel Noriega (1983-1989). The attack was at least partially driven and justified by the mounting evidence of Noriega's involvement in the illegal drug trade and was widely perceived as an escalation of the U.S.'s anti-drugs campaign.<sup>295</sup> Apart from Panama, the U.S. government increased its drug control efforts in Andean region. Following the assassination of Colombia's presidential candidate Luis Carlos Galán by the Medellín cartel on August 19, 1989, the U.S. offered \$65 million in emergency military aid to the Colombian government. Subsequently, the government of George H. W. Bush (1989-1993) launched the Andean Initiative, which was set to distribute over \$2 billion of military aid in a five-year period.<sup>296</sup> Parallel to the Andean Initiative, President Bush signed a new classified NSDD, which allowed U.S. military personnel to accompany local troops on routine missions outside of military bases.<sup>297</sup>

To enhance international cooperation, two major drug policy summits were held in Cartagena (1990) and San Antonio (1992). While the first one included only the United States and the major producers of cocaine, Bolivia, Colombia, and Peru, the second summit was joined by Ecuador, Mexico, and Venezuela. They were invited because of their geostrategic importance in the transportation of cocaine to the United States. The goal of these summits was to coordinate and implement a multilateral strategy to fight and dismantle the major trafficking cartels so that

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<sup>295</sup> Carpenter, *Bad Neighbor Policy*, 41-42.

<sup>296</sup> Ibid. 38-39.

<sup>297</sup> Michael Isikoff, "Drug Plan Allows Use of Military," *Washington Post*, September 10, 1989, [https://www.washingtonpost.com/archive/politics/1989/09/10/drug-plan-allows-use-of-military/e5093198-7d79-4301-a1ea-529d393672cc/?utm\\_term=.74b152cc6024](https://www.washingtonpost.com/archive/politics/1989/09/10/drug-plan-allows-use-of-military/e5093198-7d79-4301-a1ea-529d393672cc/?utm_term=.74b152cc6024).

criminal networks would have a harder time in supplying drug markets in the U.S. The ambitious goals of these summits eventually fell apart due to different preferences regarding the role of the armed forces in the fight against the cartels; fears that deeper U.S. involvement would undermine national sovereignty; and a lack of U.S. support for alternative development in rural areas that depended on the coca leaf.<sup>298</sup> After the failure of the summits, the United States returned to pressure countries bilaterally to increase efforts against the drug trade.<sup>299</sup> In doing so, the U.S. not only relied on negative incentives such as threatening decertification, but also provided some carrots. In 1991, it enacted the Andean Trade Preference Act (ATPA), which eliminated tariffs for 5,600 products from Bolivia, Colombia, Ecuador, and Peru.

Driven by these measures, Andean countries went through a process of militarization of their drug policies, which included the fumigation (in Colombia) and manual eradication of coca crops, the interdiction of drug supplies, the destruction of cocaine laboratories, and large-scale campaigns against the biggest drug cartels. Apart from these operational changes, the drive towards militarized law enforcement was also reflected in the new drug laws of several Andean countries. Venezuela increased the maximum penalties for high-level trafficking offenses from 20 to 25 years, and for aggravated forms of trafficking from 30 to more than 37 years.<sup>300</sup> Throughout the decade, Peru enacted no less than nine changes to its legal framework on drugs. These laws criminalized numerous activities related to the laundering of illegal assets stemming from the drug trade, as well as any involvement in the investment, sale, pledge, transfer or possession of

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<sup>298</sup> Bruce M. Bagley, "After San Antonio," *Journal of Interamerican Studies and World Affairs*, 34:3 (1992): 7-9.

<sup>299</sup> In 1996 and 1997 this led to the decertification of Colombia due to allegations that its president at the time, Ernesto Samper (1994-98), had accepted money from the Cali cartel for his election campaign.

<sup>300</sup> Ley Orgánica sobre Sustancias Estupefacientes y Psicotrópicas arts. 37, 38 y 43, Agosto 3, 1993, [4,636] G.A. (Ven.).

gains, things or goods stemming from the drug trade.<sup>301</sup> Penalties for drug-related crimes were increased up to perpetual prison for money laundering, heading criminal organizations, and the compulsion and intimidation of others to cultivate coca or opium poppies.<sup>302</sup> Although Ecuador's 1990 "Law of Narcotics and Psychotropic Substances" did not increase the range of penalties for drug-related offenses, similar to the changes in other countries, it criminalized numerous drug-related activities including the laundering of illegal assets and any active or passive assistance to drug traffickers. The most striking aspect about the new law, however, was the criminalization of drug consumption. While previous laws required drug addicts to undergo mandatory treatment, the new law sanctioned it with penalties of up to two years of prison.<sup>303</sup> The country's criminalization of drug use is particularly striking because most countries in the region had given up the penalization of drug use, including Colombia, whose Constitutional Court (C.C.) decided that the penalization of the possession of drugs for personal consumption was unconstitutional.<sup>304</sup>

Outside the Andean region, Brazil and Uruguay started to relax some aspects of their drug laws. Although Brazil's law 8,072 from 1990 declared drug trafficking a heinous crime, which made it incompatible with amnesty, grace, bail, and provisional freedom, Law 9,714 from 1998 allowed to punish drug consumption with alternative penalties, such as communal services or even the suspension of the penalty under some circumstances.<sup>305</sup> Uruguay's law 17,016

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<sup>301</sup> D.Leg. N° 736 art. 1, Noviembre 8, 1991, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/DecretosLegislativos/00736.pdf> (Per.); and D.L. N° 25,428 art 1, Febrero 9, 1992, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/25426.pdf> (Per.).

<sup>302</sup> Ley N° 26,223 art. 1, Agosto 20, 1993, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/26223.pdf> (Per.).

<sup>303</sup> Ley N° 108, Ley sobre Sustancias Estupefacientes y Psicotrópicas art. 65, Agosto 7, 1990, [523] R.O. (Ec.).

<sup>304</sup> C.C., Mayo 5, 1994, C-221/94, C.C. Relatoria, <http://www.corteconstitucional.gov.co/RELATORIA/1994/C-221-94.htm> (Colom.).

<sup>305</sup> Lei N° 8,072, de 25 de Julho de 1990, D.O.U. de 26.7.1990 (Braz.); and Lei N° 9,714, de 25 de Novembro de 1998, D.O.U. de 26.11.1998 (Braz.).

lowered minimal penalties for almost all drug-related crimes (in some cases from six years to 20 months).<sup>306</sup> While Chile's 1994 law updated its provisions on drug-related money laundering and trade with precursor chemicals, it did not increase the sanctioning range in comparison to previous legislations.<sup>307</sup> Thus, towards the end 1990s, the cocaine-producing countries of the Andean region moved towards greater restriction, prohibition, and law enforcement. At the same time, the countries of the Southern Cone (*i.e.* the southern part of South America) showed first signs of relaxing their drug laws. Table 8 provides an overview about the region's drug laws at the end of the 1990s.

**Table 8: South American Drug Laws at the End of the 1990s**

|                     | <b>Lowest<br/>Penalty For<br/>Drug<br/>Trafficking<sup>+1</sup></b> | <b>Highest<br/>Penalty<br/>For Drug<br/>Trafficking<sup>+1</sup></b> | <b>Highest Penalty<br/>for Aggravated<br/>Forms</b> | <b>Criminalization of<br/>Possession</b> |
|---------------------|---|--|---|--|
| Arg. (1989)         | 4 years   | 20 years   | 20 years  | Yes (1 month – 2 years)                  |
| Bol. (1988)         | 1 year  | 25 years   | 33 years and 4 months                               | No                                       |
| Bra. (1976, 1998)   | 3 years   | 15 years   | 25 years  | Yes (6 months – 2 years)* <sup>1</sup>   |
| Chile (1994)        | 3 years and 1 day   | 15 years   | 20 years  | No                                       |
| Colom. (1986, 1994) | 3 years   | 12 years   | 24 years  | No                                       |
| Ec. (1990)          | 3 years   | 25 years   | 25 years  | Yes (1 month – 2 years)                  |
| Par. (1988)         | 2 years   | 25 years   | 30 years  | No                                       |
| Peru (1990, 1993)   | 2 years   | lifelong   | lifelong  | No                                       |
| Ur. (1998)          | 12 months   | 18 years   | 20 years  | No                                       |
| Ven. (1993)         | 6 years   | 25 years   | 37 years and 6 months                               | No                                       |

<sup>+1</sup>For the purpose of this table drug trafficking refers to the active involvement in the illegal cultivation, production, manufacture, import, export, commerce, and selling of illegal drugs, as well as the planning and financing of these activities. Knowledge of these activities and the unlawful prescription of drugs are not included.

<sup>306</sup> Ley N° 17,016, Octubre 22, 1998, [25,142], D.O. [28 Oct./998] (Uru).

<sup>307</sup> Law No. 19,366, Enero 30, 1994, D.O. (Chile).

\*<sup>1</sup> Law 9,714 from 1998 allows for alternative penalties, such as communal services or even the suspension of the penalty under some circumstances (Lei N° 9,714, de 25 de Novembro de 1998, D.O.U. de 26.11.1998 [Braz.]).

## **5.6. Continued Diversification in the First Decade of the 2000s**

In the 2000s, the United States extended trade preferences in exchange for counter-narcotics cooperation through the 2002 Andean Trade Promotion and Drug Eradication Act (ATPDEA) and kept investing billions of dollars in counter-narcotics programs, especially in Colombia and Central America. Nevertheless, two interrelated factors started to create a more favorable context for less prohibitionist drug policies. In the first place, after September 11 and the subsequent “global war against terrorism” combating the illegal drug trade ceased to be a top priority for the U.S. government. In the second place, due to the rampant violence and inefficiency of the militarized drug policies implemented in the previous decade, the criticism of prohibition and the “war on drugs” kept growing. While academics and non-state actors had been raising their concerns for many years, as highlighted in the previous chapter in the 2000s prominent public intellectuals as well as former and incumbent presidents from Latin America, with different ideological inclinations, joined them. The first high-profile call for a radical shift in drug policy came from Uruguay. In the year 2000, the country’s newly elected president Jorge Batlle (2000-2005) issued a statement that called his regional peers to legalize all drugs. His main argument was that drug legalization represented the most effective way to eliminate organized crime. The country’s minister of the Supreme Court, Gervasio Guillot, supported the president, claiming that drug legalization should proceed step-by-step, starting with widely consumed and less dangerous drugs like marijuana.<sup>308</sup> Although Batlle’s government never acted upon its proposals, it paved the way for a more open discussion about drugs in Uruguay and other

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<sup>308</sup> Guillermo Garat, “Uruguay: A Way to Regulate the Cannabis Market,” in *Drug Policies and the Politics of Drugs* (see intr., n. 11), 216.



countries. Some of the region's new drug laws reflected, at least to some extent, the changing international context.

Chile's 2005 Law 20,000 decriminalized, for the first time, the self-cultivation of cannabis exclusively for personal consumption, thereby equivalating it with possession for personal consumption.<sup>309</sup> A year later, Brazil's law 11,343 decriminalized the use and possession of drugs for personal consumption and, similar to Chile, decriminalized self-cultivation for personal consumption. Although the new law increased the sentencing range for drug trafficking from three to 15 years to five to 20 years (as compared to 1976), article 33 §4 allowed to lower penalties up to two thirds if the drug offender had no criminal history and was not part of a criminal organization. Moreover, the law references harm and risk reduction and has incorporated several harm reduction principles. These include "respect for the fundamental rights of human persons, especially with regard to their autonomy and liberty," the "strengthening of individual autonomy and responsibility in relation to the improper use of drugs," and ensuring the "recognition of risk reduction as a desirable result of prevention activities."<sup>310</sup> Peru's drug policy changes were more ambivalent. Although its Law 28,002 from 2003 abolished perpetual prison and limited the penalties for aggravated forms of trafficking to 35 years of prison, it also increased the minimal penalty for micro-trafficking offenses by a year.<sup>311</sup> At the same time, Peru showed an increasing trend in the repression against illegal coca cultivation and cocaine production (see chapter IX). Bolivia, however, started a more tolerant approach to coca

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<sup>309</sup> Law No. 20,000 art. 8, Enero 26, 2005, D.O. (Chile).

<sup>310</sup> Lei Nº 11,343, de 23 de Agosto de 2006 arts. 4, 19, 28, y 33, D.O.U. de 24.8.2006 (Braz.).

<sup>311</sup> Ley Nº 28,002 art. 1, Junio 16, 2003, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/28002.pdf> (Per.)

cultivation, raising the amount of coca that farmers were allowed to cultivate legally from 30,000 to 50,000 acres.<sup>312</sup> In 2017, the new approach was finally incorporated into a new law.<sup>313</sup>

Similar to other countries, Ecuador's 2008 constitution decriminalized the consumption of illegal narcotics and established that addictions were to be treated as an issue of public health.<sup>314</sup> Moreover, in July of the same year, the government of Rafael Correa (2007-2017) enacted a measure called the "drug mule pardon." The pardon applied to people that were sentenced for trafficking offenses, who had declared guilty, were first time offenders, had been found in possession of no more than two kilograms, and had completed at least 10 percent or one year of their sentences. This measure led to the release of 2,221 prisoners.<sup>315</sup> In line with the increasing trend towards depenalization, at the end of the decade a ruling of Argentina's Supreme Court declared the penalization of the possession of drugs for personal consumption as unconstitutional.<sup>316</sup>

Against the regional trend, in 2009 Colombia approved a constitutional reform that prohibited the possession and consumption of a minimal dose. However, the reform did not establish new punishments but obliged drug addicts to undergo a series of educational measures and allowed for the possibility to undergo voluntary treatment.<sup>317</sup> Venezuela's 2005 law went even further. Although possessing a minimal dose of drugs for personal consumption remained

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<sup>312</sup> Linda Farthing and Benjamin Kohl, "Social Control: Bolivia's New Approach to Coca Cultivation," *Latin American Perspectives* Issue 173, Vol. 37, no. 4 (2010): 205.

<sup>313</sup> Ley N° 906, Ley General de la Coca, Noviembre 11, 2017, [0941] G.O. (Bol).

<sup>314</sup> Constitución de la República del Ecuador art. 364.

<sup>315</sup> Álvarez Velasco, "Reformas y contradicciones," 6 (see intr., no. 9).

<sup>316</sup> Corte Suprema de Justicia de la Nación [CSJN], 25/08/2009, "Arriola, Sebastián y otros," Secretaría de Jurisprudencia, <http://sjconsulta.csjn.gov.ar/sjconsulta/9%20documentos/verUnicoDocumento.html?idAnalisis=671140> (Arg.).

<sup>317</sup> Congreso de la República, Acto Legislativo 2 del 2009, Diciembre 21, 2009, [47,570] D.O. (Col.).

decriminalized, it criminalized the possession of drugs with one to two years of prison. Whether or not the dose was for personal consumption was to be decided by a judge.<sup>318</sup> While the 2005 law lowered some penalties for drug-related crimes, these changes were reversed by a new law in 2010 whose penalties superseded the ones of the law from 1993.<sup>319</sup> Under the new legislation, drug traffickers could be penalized with up to 45 years of prison, for aggravated form of trafficking. These legal changes have been accompanied by a sharp increase of drug-related arrests, from only 3,374 in 2001 to 112,010 in 2011.<sup>320</sup>

Overall, at the end of the first decade of the 2000s, the penalties for trafficking offenses stayed largely the same as compared to the previous decade. While Peru moderately lowered penalties for trafficking offenses, Brazil and Venezuela increased theirs. However, the most important development was the continued decriminalization of drug consumption. By the end of the decade, all countries in the region had decriminalized, in one way or another, the possession of drugs for personal consumption. However, most laws did not specify how much possession was legal and left the fate of drug users in the hands of the judges. This meant that drug users were sometimes sent to prison if they could not prove that they were not trafficking drugs. Even when users could convince the judge that they were no traffickers, in most countries they continued to face legal repercussions, especially when they were caught repeatedly, such as monetary fines, community work, educational measures, and obligatory treatment. Nevertheless, the decriminalization of drug users established clear limits on how strongly users could be

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<sup>318</sup> Ley Orgánica Contra el Tráfico Ilícito y el Consumo de Sustancias Estupefacientes y Psicotrópicos arts. 34 y 70, Octubre 5, 2005, [38,337] G.O (Ven.).

<sup>319</sup> Under the 2005 law, the lowest possible penalty for drug trafficking was three years of prison, while the highest one was 20 years, and 30 years for aggravated circumstances. Under the 2010 law, the lowest penalty for trafficking offenses was of 6 years, while the highest one was of 30 years and 45 years for aggravated circumstances (*Id.* art. 31, 32, 33, y 46; and Ley Orgánica de Drogas arts. 149, 150, 151, 152, y 163, Agosto 18, 2010, [37,510] G.O. [Ven.]).

<sup>320</sup> Andrés Antillano, Verónica Zubillaga, and Keymer Ávila, “Revolution and Counter Reform: The Paradox of Drug Policy in Bolivarian Venezuela,” in *Drug Policies and the Politics of Drugs*, 111.

punished. Table 9 summarizes the diverse regional picture of penalizations for drug-related crimes at the end of the first decade of the 2000s.

**Table 9: South American Drug Laws at the End of the First Decade of the 2000s**

|                     | <b>Lowest<br/>Penalty For<br/>Drug<br/>Trafficking<sup>+1</sup></b> | <b>Highest<br/>Penalty<br/>For Drug<br/>Trafficking<sup>+1</sup></b> | <b>Highest Penalty<br/>for Aggravated<br/>Forms</b> | <b>Criminalization of<br/>Possession</b> |
|---------------------|---|--|---|--|
| Arg. (1989, 2009)   | 4 years   | 20 years   | 20 years  | No                                       |
| Bol. (1988)         | 1 year  | 25 years   | 33 years and 4 months                               | No                                       |
| Bra. (2006)         | 5 years   | 20 years   | 33 years and 4 months                               | No                                       |
| Chile (2005)        | 3 years and 1 day   | 20 years   | 20 years  | No                                       |
| Colom. (1986, 2009) | 3 years   | 12 years   | 24 years  | No                                       |
| Ec. (1990, 2008)    | 3 years   | 25 years   | --  | No                                       |
| Par. (1988)         | 2 years   | 25 years   | 30 years  | No                                       |
| Peru (2003)         | 3 years   | 30 years   | 35 years  | No                                       |
| Ur. (1998)          | 12 months   | 18 years   | 20 years  | No                                       |
| Ven. (2010)         | 6 years   | 30 years   | 45 years  | No                                       |

<sup>+1</sup>For the purpose of this table drug trafficking refers to the active involvement in the illegal cultivation, production, manufacture, import, export, commerce, and selling of illegal drugs, as well as the planning and financing of these activities. Knowledge of these activities and the unlawful prescription of drugs are not included.

### **5.7 The Legalization of Marijuana and Cannabis-Based Medicines**

The most important development of the most recent decade is an increasing trend towards the legalization of cannabis and cannabis-based medicines. The most far-reaching initiative in this regard is Uruguay's 2013 drug policy reform. The law 19,172 legalized and regulated the sale and use of marijuana for recreational purposes by allowing registered users to purchase up to 40 grams of marijuana a month in registered pharmacies; growing up to six plants on their own; or joining a so-called grower's club with up to 45 members that are allowed to cultivate up to 99

plants.<sup>321</sup> Through these measures, Uruguay has become the first country in the world to have legalized recreational marijuana, followed most recently by Canada. However, Uruguay is not the only country in the region that has made important steps towards the legalization of cannabis.

In 2012, Colombia's Constitutional Court declared that the possession of drugs for personal consumption remained legal and that it understands the consumption of drugs as an activity that is protected by the right to the free development of personality.<sup>322</sup> The decree 2467 of 2015, issued by President Juan Manuel Santos (2010-2018), not only legalized and regulated the market for medical marihuana, but also legalized the self-cultivation of up to 20 cannabis plants without having to apply for a license and register with state authorities.<sup>323</sup> These changes were refined and further integrated into the country's legal framework by the law 1,787 from 2016 and the decree 613 from 2017.<sup>324</sup> In 2015, Chile's lower house approved a legislative project that allowed for the legalization of medical marijuana and the self-cultivation of up to six cannabis plants for personal consumption. Although the project was stalled in the country's Senate, Chile's Supreme Court issued a ruling that not only confirmed the legality of cultivating cannabis plants for personal consumption, but also the legality of collective cannabis cultivation if it is exclusively for personal consumption.<sup>325</sup> Furthermore, in the same year, the Chilean government issued a decree that allowed for the production and sale of cannabis-based medicines, under

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<sup>321</sup> Ley N° 19,172, Marihuana y sus derivados, Diciembre 20, 2013, [28,878] D.O. [7 ene/014] (Uru.).

<sup>322</sup> C.C., Junio 28, 2012, C-491/12, C.C. Relatoria, <http://www.corteconstitucional.gov.co/relatoria/2012/c-491-12.htm> (Colom.).

<sup>323</sup> D. 2,467 de 2015, Diciembre 22, 2015, D.O. (Colom.).

<sup>324</sup> L. 1,787 de 2016, Julio 6, 2016, D.O. (Colom.); and D. 613 de 2017, Abril 10, 2017, D.O. (Colom.).

<sup>325</sup> BBC, "Chile Lawmakers Approve Marijuana Legalization Bill, July 8, 2015, <https://www.bbc.com/news/world-latin-america-33438405>; and Corte Suprema de Justicia [C.S.J.], Junio 4, 2015, "Paulina Patricia González Céspedes," RIT N° 14-2015, Poder Judicial, <http://www.pjud.cl/documents/396729/0/CULTIVO+MARIHUANA+RITUAL.pdf/9f4ac14a-464c-485c-9adb-cc2b46721478> (Chile).

certain restrictions.<sup>326</sup> In 2017, both Argentina and Peru enacted new laws that established a regulatory framework for medical and scientific investigations, as well as the import and possible national productions, of cannabis-based medicines. However, different to the developments in Colombia and Chile, these laws do not tolerate the self-cultivation of cannabis plants.<sup>327</sup> Table 10 summarizes the most recent developments regarding the legality of cannabis and cannabis-based medicines.

**Table 10: Legality of Cannabis and Cannabis-Based Medicines**

|                           | <b>Legalized Cannabis-Based Medicines</b> | <b>Legalized Self-Cultivation of Cannabis</b> | <b>Legalized Sale for Recreational Use of Cannabis</b> |
|---------------------------|---|---|--|
| Arg. (2017)               | Yes                                       | No  | No   |
| Bolivia                   | No  | No  | No   |
| Brazil                    | No  | No  | No   |
| Chile (2015)              | Yes                                       | Yes   | No   |
| Colom. (2012, 2015, 2017) | Yes                                       | Yes   | No   |
| Ecuador                   | No  | No  | No   |
| Paraguay                  | No  | No  | No   |
| Peru (2017)               | Yes                                       | No  | No   |
| Ur. (2013)                | Yes                                       | Yes   | Yes  |
| Venezuela                 | No  | No  | No   |

Although the trend towards the decriminalization of drug use and greater tolerance towards cannabis and cannabis-based medicines indicates a softening of prohibition, this is not a uniform development. Bolivia, Paraguay, and Venezuela, for instance, stayed firmly within a prohibitionist framework. Moreover, some countries that have moved closer to a framework of

<sup>326</sup> Decree No. 84, Octubre 30, 2015, D.O. (Chile).

<sup>327</sup> Law No. 27,350, Mar. 29, 2017, [33607] B.O. 1. (Arg.); and Ley N° 30,681, Noviembre 16, 2017, ADLP, [http://www.leyes.congreso.gob.pe/Documentos/2016\\_2021/ADLP/Normas\\_Legales/30681-LEY.pdf](http://www.leyes.congreso.gob.pe/Documentos/2016_2021/ADLP/Normas_Legales/30681-LEY.pdf) (Per.).

harm reduction enacted a partial return towards harder forms of prohibition. The most prominent case in this regard is Ecuador. After having decriminalized drug use in its 2008 constitution and pardoned 2,221 convicted “drug mules” (see above), in 2014 the country deepened its less repressive approach in a new criminal code (“Código Orgánico Integral Penal,” COIP). The new piece of legislation not only confirmed the depenalization of drug use and distinguished between different levels of responsibility within the drug trade, but also lowered penalties for several trafficking offenses. According to the new COIP, the highest penalty that small-scale traffickers could receive was six months of prison, while medium-size traffickers could be penalized with one to three years.<sup>328</sup> However, soon after the COIP was passed Ecuador enacted a new piece of legislation, which uplifted the penalties for small-scale trafficking to one to three years of prison, and for medium-level trafficking to three to five years.<sup>329</sup> Moreover, the National Council on the Control of Psychotropic Substances and Narcotic Drugs and (“Consejo Nacional de Control de Sustancias Psicotrópicas y Estupefacientes,” CONSEP) presented a new table, which limited the possession for low-level trafficking to 0.1 grams for heroin, 1 gram for cocaine, and 20 grams for marijuana.<sup>330</sup> Critics of the new scale argue that it became so restrictive that it is effectively punishing drug consumption, thereby violating the 2008 constitution, and the 2014 COIP, both of which propose the opposite.<sup>331</sup>

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<sup>328</sup> COIP art. 220, Enero 28, 2014, [180] R.O. Suplemento [Feb. 10, 2014] (Ec.).

<sup>329</sup> Ley Orgánica de Prevención Integral del Fenómeno Socio Económico de las Drogas y de la Regulación y Control del Uso de Sustancias Catalogadas Sujetas a Fiscalización, disposiciones reformativas, primera, Octubre 1, 2015, [615] R.O. Suplemento [Oct. 25, 2015] (Ec.).

<sup>330</sup> Narcisa Redón, “CONSEP presentó nuevas escalas sobre tráfico de drogas,” *El Comercio*, 9 de octubre de 2015, <http://www.elcomercio.com/actualidad/consep-escalas-trafico-droga-ecuador.html>.

<sup>331</sup> Arron Daugherty, “Ecuador Toughens Drug Laws, Muddles Policy,” *InSight Crime*, September 10, 2015, <https://www.insightcrime.org/news/brief/ecuador-president-proposes-tougher-punishment-for-microtraffickers/>.

A similar trend is observable in Colombia where the newly elected president, Ivan Duque (2018-) issued a decree that ordered the police to confiscate and destroy any quantity of drugs it encounters, even if it is for personal consumption.<sup>332</sup> Critics argue that this administrative measure constitutes a new form of penalizing drug use and that it goes against personal liberties guaranteed by the constitution.<sup>333</sup> Argentina is another case where law enforcement and prohibition are defining the country's drug policy. In 2015, the country's newly elected president Mauricio Macri (2015-) declared the extinction of the drug trade as one of the three main goals of his presidency. In January 2016, as one of his first measures, Macri legalized by decree and without any parliamentary negotiations the shooting of airplanes used for drug trafficking.<sup>334</sup> In the same year, he sent 3,000 additional forces of the National Gendarmerie, a military style police force, to the province of Santa Fe, one of the most affected areas by the drug trade. Ultimately, he launched a plan called "Argentina Without Drug Trafficking," which suggests increasing sentences for drug traffickers and plans to specialize federal and provincial police forces for the fight against drugs.<sup>335</sup>

The most recent developments in Argentina, Ecuador, and Colombia indicate a growing diversity and volatility in drug policy choices. This raises the question of what explains the growing diversity and what factors induced governments to change, or abstain from changing, their drug policies in a particular way. Moreover, the developments outlined in chapter IV draw attention to the query of how the international contestation of prohibition and the rising

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<sup>332</sup> D. 1844 de 2018, Octubre 1, 2018, D.O. (Colom.).

<sup>333</sup> *Semana*, "'El gobierno está penalizando el consumo de drogas por la puerta atrás': Sandra Borda," 6 de septiembre de 2018, <https://www.semana.com/nacion/articulo/entrevista-a-sandra-borda-sobre-decreto-de-decomiso-a-drogas/582123>.

<sup>334</sup> Carlos E. Cué, "Macri aprueba un decreto que permite derribar aviones," *El País* (España), 21 de enero de 2016, [https://elpais.com/internacional/2016/01/20/argentina/1453307002\\_112304.html](https://elpais.com/internacional/2016/01/20/argentina/1453307002_112304.html).

<sup>335</sup> *El País* (España), "Mauricio Macri declara la guerra al narcotráfico en Argentina," 30 de agosto de 2016, [https://elpais.com/internacional/2016/08/30/argentina/1472580597\\_174995.html](https://elpais.com/internacional/2016/08/30/argentina/1472580597_174995.html).



prominence of harm reduction affect drug policies of particular states and why harm reduction policies appear to be taking root in some countries but not in others. In other words, as stated in the introduction, the present dissertation seeks to explain different policy choices within a similar international normative environment.

To tackle this issue, it examines in greater detail the drug policies of Uruguay, Ecuador, and Peru. These cases were selected because each of them has chosen a different approach regarding their drug-related challenges. Uruguay's 2013 regulation of the recreational cannabis market has brought the country closer to a framework of harm reduction and a tolerance of drug consumption than any other state in the region. Ecuador is relevant for this dissertation because it presents the clearest case of a country that has moved closer to a framework of harm reduction and decided to abandon this approach. Peru was selected, because, against the regional trend and despite its recent legalization of cannabis-based medicines, it has become more prohibitionist in recent years, eradicating more hectares of coca and arresting more drug users.

Although all cases were selected on the basis of developments of the past two decades, each country's drug policy trajectory offers additional incentives for in-depth research. Despite increasing penalties for drug-related crimes in 1974, Uruguay's 14,294 constituted one of the mildest forms of prohibition of the 1970s. Furthermore, despite the country's previous penalization of drug consumption, lawmakers legalized the possession of drug for personal consumption. In the 1990s, when several other countries advanced "drug-war" policies, Uruguay lowered several penalties for drug-related crimes. Ecuador's trajectory is striking because it modernized its legal framework on drugs in 1970, ahead of its regional peers and prior to the UN treaties of the early 1970s as well as the negotiations of ASEP in Buenos Aires. Moreover, against the regional trend, Ecuador's 1990 law 108 criminalized, for the first time in the country's history, the possession of drugs for personal consumption. Peru's case is relevant because it constitutes the last country that implemented UN and regional rules in the 1970s. However, after

it did so, it joined the “war on drugs” with full force. In the 1990s, Peru established one of the most restrictive legal frameworks in the region, allowing lifelong prison sentences for some drug-related crimes. Hence, the three countries represent a strong degree of diversity in policy choices in different time-frames, which elevates their importance for the present dissertation. The following chapter VI establishes a theoretical framework that enables me to study and trace empirically the causes of puzzling drug policy changes.

## VI. INTERNATIONAL NORMS AND POLICY CHANGE: A THEORETICAL FRAMEWORK

The present chapter picks up on the theoretical discussion of chapter II, with a more specific emphasis on how norms affect the policy choices of particular states rather than explaining the spread of similar policies across different contexts. While the mechanisms outlined in chapter II aim at explaining similarity (in policy) despite difference (referring to the different characteristics of particular cases), this chapter seeks to provide a framework to explain different policy choices in a similar normative environment. As outlined in the previous chapter, although all South American states became more prohibitionist over time, there are significant differences in the timing, the degree of penalization, and the criminalization of drug consumption. These variations are even more pronounced in the current era in which some states are moving more closer to a framework of harm reduction, whereas others have stayed or returned to a more prohibitionist model. The framework outlined below seeks to show how international norms and their advocacy interacts with domestic actors and processes. Therefore, it is not only better equipped to illustrate how the regional prominence of the same norm (such as prohibition) can lead to different policy outcomes, but also how the contestation and advocacy of competing norms (like prohibition and harm reduction) influence policy choices across different cases.

The framework engages and draws inspiration from the three major theoretical and epistemological paradigms that have shaped the debates on international norms: rationalism, sociological institutionalism, and post-positivism. While the framework is based on strong rationalist assumptions, it incorporates insights from the other two paradigms. Specifically, it includes considerations about governments' identities, the uniqueness of particular cases, and the fluidity of norms as an analytical category. In doing so, it illustrates new ways in which the three approaches can be combined to study empirical cases. Before discussing in detail, the role of norms in each approach, the following section briefly outlines their epistemological differences.

## 6.1 Epistemological Differences

Rationalism and sociological institutionalism are based on a positivist epistemology, which assumes that we can explain the social world objectively if we follow strict methodological procedures of theory building and hypothesis testing. Embedded in this view is the hope we can detect in the social world the same law-like generalities that we can observe in the natural world. Post-positivism is more skeptical or agnostic about the existence of an objective reality and recognizes that our perception of the social world is biased by our senses, language, and the concepts that we use. Thus, for them, knowledge is always contextual and circumstantial and depends on our interpretation rather than actual, value-free facts. Moreover, post-positivists are more cognizant about the complexity of the social world, in which entities are hardly ever fixed and multiple processes are in constant interaction, which makes it more difficult to identify the precise causes of social events and outcomes. According to this view, rather than explaining the social world, social inquiry should try to understand outcomes from the perspective of the actors involved, taking into account their desires, beliefs, and reasons for acting in a certain way.<sup>336</sup> Scholars from each of these traditions attach important roles to norms but differ in their assumptions on how these norms affect political outcomes.

## 6.2 Norms from a Rationalist Perspective

The concept of rationality comes with a lot of baggage and is employed in different ways by scholars discussing the impact of norms on policy outcomes. One group of scholars envisions rationality as a way of lesson learning from other country's policy choices.<sup>337</sup> According to this view, if evaluated correctly, norms in terms of policy proposals may help governments to

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<sup>336</sup> On the difference between explaining and understanding as two distinct traditions in the social sciences, see: Martin Hollis and Steve Smith, *Explaining and Understanding International Relations* (Oxford: Oxford University Press, 1990), 2-3.

<sup>337</sup> See: Sharman, "Power and Discourse," 641-643 (see ch. II, no. 42); and Weyland, "Theories of Policy Diffusion," 278-281 (see ch. II, n. 42).

improve the effectiveness and cost-effectiveness of their policies. Though not discarding the fact that sometimes governments show evidence of rational learning, this dissertation employs a broader notion of rationality, which assumes that the social and political behavior of actors is motivated by strategic, utilitarian, and instrumental means-ends calculations.<sup>338</sup> According to this logic, policy makers may “rationally” opt for an inefficient policy if it helps them to stay in office or advance objectives.

Rationalism’s ontology is strongly individualistic and based on a cost/benefit calculation of self-interested actors.<sup>339</sup> March and Olsen have described this theory of political and social action as a logic of anticipated or expected consequences (LoC): “Those who see actions as driven by expectations of consequences imagine that human actors choose among alternatives by evaluating their likely consequences for personal or collective objectives, conscious that other actors are doing likewise.”<sup>340</sup> According to this logic, preferences are usually taken as given, and expectations of consequences are taken as determined by the state of the external world.

Within this framework, norms are vital because in their presence, actors recalculate how to achieve their given interests.<sup>341</sup> In other words, norms create and alter incentives for governments to act in particular ways. As outlined below, they often do so by influencing the preferences and strategies of domestic actors or creating different types of international

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<sup>338</sup> See: Robert O. Keohane, “International Institutions: Two Approaches,” *International Studies Quarterly* 32, no. 4 (1988): 379-96.

<sup>339</sup> Checkel, “Why Comply?,” 556 (see ch. II, n. 39).

<sup>340</sup> James G. March and Johan P. Olson, “The Institutional Dynamics of International Political Orders,” *International Organization* 52, no. 4 (1998): 949.

<sup>341</sup> Checkel, “International Norms and Domestic Politics,” 475 (see intr., n. 12).

pressure.<sup>342</sup> Norms are particularly important in this approach when they are advocated or enforced by powerful international actors, including states and formal international organizations.

### **6.3 Norms from a Sociological Institutional Perspective**

Sociological institutionalism is a major alternative to rationalism in the social sciences. Whereas rationalist approaches explain social action on the basis of aggregations or consequences of individuals' attributes or interests, sociological institutionalists follow a structuralist ontology according to which the actors, their interests, and preferences must be analyzed and explained as the products of intersubjective structures and social interaction.<sup>343</sup> They regard the international system as an institutional environment regulated by social factors (including norms, identities, rules, values, ideas, and beliefs), and reject rationalism's main assumption that states and other actors generally act egoistically and instrumentally.<sup>344</sup> Instead, they see rationality as constructed and context-bound, while social actors are following a logic of appropriateness (as opposed to a rationalist logic of consequences [see above]). In a logic of appropriateness (LoA), actions are seen as rule-based: "Human actors are imagined to follow rules that associate particular identities to particular situations, approaching individual opportunities for action by assessing similarities between current identities and choice dilemmas and more general concepts of self and situations."<sup>345</sup> Hence, scholars committed to this position, "see political actors as acting in accordance with rules and practices that are socially constructed, publicly known, anticipated, and

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<sup>342</sup> Checkel, "Why Comply?," 555-557; and Cortell and Davis Jr., "Understanding the Domestic Impact of International Norms," 65-87 (see intr., n. 12).

<sup>343</sup> Because of this assumption, sociological-institutionalists are often labelled, or identify themselves, as constructivists. However, constructivism constitutes a broader paradigm and not all of them share the sociological institutionalists' epistemological premises and causal arguments.

<sup>344</sup> Schimmelfennig, "The Community Trap," 58 (see intr., n. 13).

<sup>345</sup> March and Olsen, "The Institutional Dynamics," 951.

accepted.”<sup>346</sup> According to Sending, “The implications following from this line of thought are directly connected to the idea that actions are directed towards being appropriate, since standards of appropriateness cannot be established apart from the institutional context in which these actions take place, the meaning of which is defined by certain constitutive rules.”<sup>347</sup>

In this perspective, states that share a collective identity of an international community tend to adhere to its values and norms: “This collective identity generates a general commitment to the community and a general interest in upholding and disseminating its values and norms.”<sup>348</sup> Some scholars even go as far as arguing that there is a world culture, which sets standards of behavior in multiple issue areas and has led to a high degree of sameness across multiple regions. According to Meyer et al., “Worldwide models define and legitimate agendas for local action, shaping the structure and policies of nation-states and other national and local actors in virtually all domains of rationalized social life—business, politics, education, medicine, science, even the family and religion.”<sup>349</sup>

While most institutionalist scholars recognize that there may be good instrumental reasons for becoming part of an international organization or community of states (such as economic gains), and thereby committing to its norms and values, they also stress that under some circumstances actors can be persuaded rather than incentivized to follow certain norms. This argument is based on notions of complex learning, drawn from cognitive and social psychology, where individuals, when exposed to new information and values, promoted by international norms, adopt new preferences and interests. According to them, this often happens

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<sup>346</sup> March and Olsen, “The Institutional Dynamics,” 952.

<sup>347</sup> Sending, “Constitution, Choice and Change,” 447 (see intr., n. 14).

<sup>348</sup> Schimmelfennig, “The Community Trap,” 62.

<sup>349</sup> John W. Meyer, John Boli, George M. Thomas, and Francisco O. Ramirez, “World Society and the Nation-State,” *American Journal of Sociology* 103, no. 1 (July 1997): 145.

in the absence of obvious material incentives to do so.<sup>350</sup> Checkel refers to this process as norm empowerment: “Norm empowerment occurs as agents are taught new values and interests; their behavior comes to be governed by logics of appropriateness that are learned, through a process of interaction, from global norms.”<sup>351</sup> While many authors highlight how states themselves socialize other states into new normative structures, Nadelmann emphasizes the role of transnational moral entrepreneurs in the creation of prohibitionist norms.<sup>352</sup> Keck and Sikkink highlight the socializing role of transnational advocacy networks.<sup>353</sup>

Several authors committed to a sociological institutionalist framework have recognized that despite forming part of an international community with a strong common identity, “actors often develop and instrumentally pursue egoistic, material interests that compete with their commitment to the community values and norms.”<sup>354</sup> However, they can be brought to focus on their collective interests and honor their community’s obligations through rhetorical strategies that undermine the deviant actors’ reputation and standing. Shaming, the public exposure of illegitimate goals and behaviors, is a prominent tool to remind such actors of their community’s

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<sup>350</sup> Checkel, “International Norms and Domestic Politics,” 477.

<sup>351</sup> Ibid.

<sup>352</sup> According to the author, “These groups mobilize popular opinion and political support both within their host country and abroad; they stimulate and assist in the creation of like-minded organizations in other countries; and they play a significant role in elevating their objective beyond its identification with the national interests of their government. Indeed, their efforts are often directed toward persuading foreign audiences, especially foreign elites, that a particular prohibition regime reflects a widely shared or even universal moral sense, rather than the peculiar moral code of one society. Although the activities that they condemn do not always transcend national borders, those which do go beyond borders provide the proselytizers with the transnational hook typically required to provoke and justify international intervention in the internal affairs of other states” (Nadelmann, “Global Prohibition Regimes,” 482 [see intr., n. 13]).

<sup>353</sup> For the authors, “*A transnational advocacy network includes those actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services. (...) What is novel in these networks is the ability of non-traditional international actors to mobilize information strategically to help create new issues and categories, and to persuade, pressurize, and gain leverage over much more powerful organizations and governments*” (Keck and Sikkink, “Transnational Advocacy Networks,” 89 [see intr., n. 13]).

<sup>354</sup> Schimmelfennig, “The Community Trap,” 62.



obligations. Schimmelfennig argues that in order to be effective, “shaming requires that actors have declared their general support of the standard of legitimacy at an earlier point in time—either out of a sincere belief in its rightfulness or for instrumental reasons. When, in a specific situation, actors would prefer to deviate from the standard because it contradicts their self-interest, members of their community can shame them into compliance by exposing the inconsistency between their declarations and their current behavior.”<sup>355</sup> Through shaming and similar techniques, the failure to comply with a norm may result in a loss of international standing and prestige, especially among those states that share a common identity. In this sense, actors do not necessarily follow a LoA because of a deeply held-conviction, but because of the social pressure upheld by other actors.

In addition to the regulative function of norms, which tends to constrain political behavior through an overarching social structure that induces actors to follow them, Klotz highlights that norms also have a constitutive role.<sup>356</sup> According to her, under certain conditions, global norms have the capacity to reconstitute state interests, even of the most powerful states.<sup>357</sup> She presents evidence for her claim in a case study of how global norms on racial equality have entered the domestic political debate in the United States, where prominent civil society organizations pressured congressional leaders to take a tougher stance on the apartheid regime. This led to congressional sanctions against the South African government, even though these sanctions contradicted U.S. economic and strategic interests. According to Klotz, “Focusing in this way on transnational transmission mechanisms and connecting congressional sanctions policy with a global norm opens domestic political processes directly to systemic influences and

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<sup>355</sup> Schimmelfennig, “The Community Trap,” 64.

<sup>356</sup> On the constitutive role of norms also see: Ruggie, John G. “What Makes the World Hang Together?”, 871-874 (see ch. II, n. 20).

<sup>357</sup> Klotz, “Norm Reconstituting Interest,” 453 (see intr., n. 13).

demonstrates a broader role for norms, including substantive effects on states' definitions of their interests. (...) Norms are not simply an ethical alternative to or constraint on self-interest. Rather, in the constructivist view, system-level norms play an explanatory role.”<sup>358</sup>

The theoretical and empirical illustrations that norms play important regulative and constitutive roles in world politics raise the question of how norms come into existence, and how scholars explain their varying influence over time? Recognizing that norms come in various levels of strength and with different levels of agreement, Finnemore and Sikkink argue that one way to understand the dynamics of normative influence is by a model they call the “life cycle of norms.”<sup>359</sup> The “life cycle” consists of three stages, each of which entails a different logic of how norms are expanded, and how they come to matter. During the first stage, ‘norm emergence,’ so-called norm entrepreneurs, inspired by altruism, empathy, and ideational commitment, seek to establish norms by persuading other actors to follow them. In other words, norms are actively built by agents having strong notions about appropriate or desirable behavior in their community. This stage does not proceed in a normative vacuum, but a highly contested normative space, where they compete with other norms and perceptions of interest. To challenge existing logics of appropriateness, activists may need to be explicitly inappropriate.<sup>360</sup> A common tool used by norm entrepreneurs is framing, the construction of a cognitive frame, which calls attention or creates issues by “*using language that names, interprets, and dramatizes them.*”<sup>361</sup> One way of exerting pressure on governments is through linkages with domestic actors that are able to put pressure on their respective governments and push for a policy change.

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<sup>358</sup> Klotz, “Norm Reconstituting Interest,” 460.

<sup>359</sup> Finnemore and Sikkink, “International Norm Dynamics,” 892 (see intr., n. 13).

<sup>360</sup> Ibid. 896-98.

<sup>361</sup> Ibid. 897.

The second stage, labelled as ‘norm cascade,’ follows after a critical mass of states has been persuaded to become norm leaders and adapt new norms. At this moment, the norm reaches a threshold or tipping point: “What happens at the tipping point is that enough states and enough critical states endorse the new norm to redefine appropriate behavior for the identity called “state” or some relevant subset of states.”<sup>362</sup> After the tipping point has been reached, more countries begin to adopt new norms, even without strong domestic pressure. During this second stage, a process of international socialization induces norm breakers to become norm followers.<sup>363</sup> Motives for following and advancing norms include legitimacy, reputation, and esteem.

In the third stage, called ‘internalization,’ norms become so deeply embedded in institutions and social practices that they cease to be a topic of debate and contestation. According to the authors, it is because of this “taken-for-granted quality” that political scientists often ignore internalized norms.<sup>364</sup>

Checkel has called attention to the fact that even though sociological institutionalists often rely on social pressure (through international organization and social movements) rather than direct material incentives to explain norm following, the choice mechanism is highly rationalist based on a consequentialist theory of action:

Although not using the same terminology, constructivists have documented how compliance—especially at the elite level—is a game of cost/benefit analysis, with the diffusion of new social norms changing such calculations. Like many regime and bargaining theorists, these scholars emphasize the role of sanctioning in promoting

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<sup>362</sup> Finnemore and Sikkink, “International Norm Dynamics,” 902.

<sup>363</sup> Ibid.

<sup>364</sup> Ibid. 904.

compliance. The sanctioning force (a social norm) and the mechanism (NGO shaming) are different, but the behavioral logics and choice mechanisms appear similar.<sup>365</sup>

Following Checkel's critique, this dissertation views a large part of the sociological institutionalist scholarship as an extension of rationalism. While sociological institutionalists acknowledge that social actors sometimes pursue non-material goals and may dedicate their lives to moral and idealistic causes, most actors adapt and follow norms not necessarily because they believe in them, but because they have material and social incentives to do so. This behavioral claim is also present in some of the post-positivist scholarship. However, as outlined in the following paragraphs these scholars pay more attention to agency and the diffuse nature in which norms emerge, change, and affect behavior.

#### **6.4 Norms from a Post-Positivist Perspective**

While post-positivists reject rationalism's epistemological assumptions and methodological tools, much of their scholarship seeks to contest the concepts, theories, and methods embedded in sociological-institutionalist approaches and its logic of appropriateness. Sending argues that the LoA has a structural bias regarding both the explanation and understanding of individual action, despite claiming to be a theory of individual action.<sup>366</sup> According to him, in the LoA the actor is motivated to follow rules that specify appropriate actions only and exclusively by a norm with objective authority over the agent. Hence, the actor in the LoA does not have the capacity to reflect upon, evaluate and possibly challenge the

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<sup>365</sup> Checkel, "Why Comply?", 558.

<sup>366</sup> Hofferberth and Weber clarify that Sending's critique targets a particular interpretation of the LoA (*i.e.* its use in mainstream constructivist research), which ignores the role March and Olsen attributed to agency in their initial formulations: "March and Olsen do not neglect choice and they do not overemphasise the determining effect of cultural structures and 'given identities'. In their view, actors are by no means 'norm dopes' as situations always involve multiple roles, various appropriate actions as well as a dynamic institutional setting in which actions take place. As such, the original version of the logic of appropriateness acknowledges and takes into consideration the indeterminacy of moral prescriptions and the situational character of normative choices" (Hofferberth and Weber, "Lost in Translation," 83 [see intr., n. 14]).

structurally or institutionally defined norms explaining why actors act appropriately.<sup>367</sup> Moreover, the LoA can neither account for the process by which changes in ideational structures get off the ground and are advocated by social agents, nor “the process by which certain actors advocate, disseminate and in some way get others to accept and internalize new norms.”<sup>368</sup>

As outlined above, Finnemore’s and Sikkink’s “norm life cycle” model seeks to overcome some of these shortcomings by theorizing about the processes that may lead to the development of well-established norms (see above). However, Krook and True problematize the static and unitary conception of norms and their content within the prominent model. They argue that “the norms that spread across the international system tend to be vague, enabling their content to be filled in many ways and thereby to be appropriated for a variety of different purposes.”<sup>369</sup> In contrast to more fixed notions, they view norms as ‘processes,’ as works-in-progress, rather than finished products: “Our contention is that norms diffuse precisely — rather than despite the fact that — they may encompass different meanings, fit in with a variety of contexts, and be subject to framing by diverse actors.”<sup>370</sup> Furthermore, they consider norms as anchored in language and revealed by repeated speech acts, leading to a semblance of permanence or institutionalization. Through the ongoing constitution of norms, social agents identify and give meaning to policy problems. Thus, scholars should focus on how norms get constructed and evolve over time, first, in response to debates over their ‘internal’ definition, related to competing meanings of the norm (internal dynamism), and, second, in interaction with the ‘external’ normative environment, consisting of other norms that are themselves ‘in process’

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<sup>367</sup> Sending, “Problems with the ‘Logic of Appropriateness,’” 458 (see intr., n. 14).

<sup>368</sup> Ibid. 459.

<sup>369</sup> Krook and True, “Rethinking the Life Cycles,” 104 (see intr., n. 14).

<sup>370</sup> Ibid. 105.

(external dynamism).<sup>371</sup> Therefore, “The life cycles of international norms do not resemble linear models of norm emergence and diffusion; rather, these trajectories are fraught with contestation and reversals as state and non-state actors compete to identify, define and implement these norms.”<sup>372</sup> Ultimately, they argue that dynamism is a double-edged sword. While it promotes the creation of new norms, it also increases possibilities for advocates to lose control over their meanings and, in turn, over how new norms are implemented.<sup>373</sup>

Building on the critiques expressed by Sending, and Krook and True, Hofferberth and Weber propose to conceptualize norms as points of moral orientation and reference for creative social agents. For them, norms can be utilized by agents in two major ways:

Firstly, by drawing on norms, actors are able to make sense of indeterminate situations with which they are constantly confronted. As conscious and familiar manifestations of often unconscious, deep-seated beliefs and patterns of interpretation, agents refer to norms for guidance. Needless to say, in all but the most routinised situations, agents can — and at the same time have to — choose from a variety of different and often conflicting norms and relate them creatively to the situation at hand. Secondly, in the process of referring to norms in a particular context, actors not merely invoke them as they are, but reinterpret their meaning. While every reference to a norm, whether it be affirmative or critical, acknowledges and in this sense strengthens the existence of the norm, these references together have significant implications for its content because they offer particular readings. By virtue of being referred to, norms are constantly in the

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<sup>371</sup> Krook and True, “Rethinking the Life Cycles,” 105.

<sup>372</sup> Ibid. 106.

<sup>373</sup> Ibid. 109.

making; they are neither ‘internalised’ by agents nor do they have a particular meaning independent of varying interpretations and references.<sup>374</sup>

In this sense, while norms structure human action, they are also being structured by human action.<sup>375</sup> Given the dynamic nature of norms and the capacity of agents to alter their content, post-positivists encourage researchers to focus on the communicative processes that accompany social interactions with a particular focus of how social agents refer to norms to legitimize their actions.

While post-positivist scholarship shows a greater flexibility in their assessment of how norms operate and affect political outcomes, similar to sociological institutionalism, some of its scholarship is based on strong notions of rationality. For example, Hofferberth’s and Weber’s view of norms as guiding devices in indeterminate situation is a mechanism of imparting rationality in uncertain settings. Though norms may not provide perfect solutions for a specific problem, given the constraints of time and resources norm-based decision making may help governments to understand and tackle a pressing issue. As argued by Kratochwil, in choice situations with many uncertainties, norms reduce complexity and impart rationality by offering practical guidance and delineating the factors governments must take into account.<sup>376</sup>

Another example is Towns’ work on international norms and the introduction of female suffrage, national women’s bureaus, and gender quotas in national parliaments.<sup>377</sup> Towns argues

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<sup>374</sup> Hofferberth and Weber, “Lost in Translation,” 85-86.

<sup>375</sup> Ibid. 89.

<sup>376</sup> Friedrich V. Kratochwil, *Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989), 4-10.

<sup>377</sup> See: Ann E. Towns, *Women and States. Norms and Hierarchies in International Society* (Cambridge: Cambridge University Press, 2010); and Ann E. Towns, “Norms and Social Hierarchies: Understanding International Policy Diffusion from ‘Below,’” *International Organization* 66, no. 2 (Spring 2012): 179-209.

that norms not only “set the terms for what can be said and done as a certain kind of actor,” and “set out what has to be said and done in order to be regarded as a certain type of actor,” but also rank actors in terms of a social hierarchy,” meaning “the ordering of actors as superior or inferior to one another in socially important respects.”<sup>378</sup> According to her, “In defining what is normal and desirable, norms set the terms for what is abnormal and undesirable behavior and provide the means for ranking those states that do not meet a norm as deficient and inferior.”<sup>379</sup> This provides small states that lack rank and status with incentives to promote normative change: “States that are devalued in some respect, identified as a less developed or less civilized than other states, may be under more pressure to initiate change than those validated through their performance. Devalued social agents may attempt to rise in rank within the existing order, they may challenge the belittling interpretation of their behavior or they may reject the normative context that debases their performance more fundamentally.”<sup>380</sup>

Towns finds evidence for her claim in the fact that female suffrage was first introduced “in lesser places in the geography of wealth and power,” namely New Zealand (1893), Australia (1902), Finland (1906), and Norway (1907), and then spread to more central locations of the world.<sup>381</sup> Similarly, parliamentary gender quotas, which were considered to improve a state’s perception as a modern market democracy and attract foreign investment, developed primarily out of Latin America in the 1990s.<sup>382</sup> The mechanism she uses to explain these policy choices is highly rationalist. Governments do not advance them because they believe that this is the right

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<sup>378</sup> Towns, *Women and States*, 44-45.

<sup>379</sup> Towns, “Norms and Social Hierarchies,” 180.

<sup>380</sup> Towns, *Women and States*, 50-51.

<sup>381</sup> *Ibid.* 83.

<sup>382</sup> Towns, “Norms and Social Hierarchies,” 180 and 183.



thing to do but because they want to gain in international standing, rank, and prestige as well as improving the country's outlook to foreign investors.

After having summarized the principal characteristics of the main approaches on international norms, the following sections combine these approaches and create a theoretical framework, which can be applied to study drug-policy changes in different cases.

### **6.5 Towards a Rationalist Framework**

While all three perspectives offer important insights about how norms work and affect political outcomes, the framework established in this chapter sides most with the rationalist view. It assumes that policy changes are more likely to occur as a result of norm-driven incentives that influence the power-based calculations of governments. Prioritizing rationalist choice mechanisms is not only based on the recognition that all three perspectives on international norms employ them (see above), but also on the assumption that governments have two overarching objectives that are relatively fixed: First and foremost, all governments' predominant objective is to stay in office. Even though governments have numerous goals and preferences, which may vary according to party ideology, personal preferences of presidents and ministers, the political culture of a country, its relations with its neighbors, and numerous other factors, none of them can be realized if it loses power. Therefore, the present dissertation considers other goals and preferences as less important. To achieve the primary objective of staying in power, governments' members—including presidents, ministers, parliamentarians, and state officials—will have to sacrifice some of their normative and moral preferences and desist from actions that would undermine their shared goal.

A second reason why this dissertation sides with the rationalist approach is that it expects most governments and state officials to care about the international standing and long-term strategic objectives of their states. Even without direct and immediate security threats, states are constantly affected by developments outside of their borders, be they in the areas of inter and

transnational security, trade and finance, the environment and cross-national ecosystems, and socio-cultural developments. In general, governments tend to be better off when cooperating with other governments. Therefore, being seen as reliable, stable, cooperative, innovative, and able to compromise can be a valuable asset. In this sense, to the extent that governments worry about their states' international standing, they may feel compelled to implement, or refrain from implementing, particular policies even if these decisions may be unpopular domestically. This is particularly relevant for small states with few resources given that these states tend to be more vulnerable to external influences.

Despite following a rationalist perspective, this dissertation acknowledges that there is a role for considerations of appropriateness (in comparison to interest-driven considerations) in explaining norm-driven policy changes. However, as mentioned above, policy makers' considerations about what is good or bad are relevant only to the extent that they are not expected to impose great costs on their governments.<sup>383</sup> Therefore, the present dissertation argues that any analysis of (drug) policy changes (or the lack thereof) should start with an examination of the incentives that governments encountered. But what are the incentives may drive a government to change a particular policy, and how are they related to international norms? Considering that (drug) policy choices have both domestic and international repercussions, the following two sections provide an attempt to flesh out the three most important domestic and international incentives and discusses how these incentives are related to international norms.

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<sup>383</sup> For example, even though leaders may seek to implement new policies, which reflect their normative preferences or which they conceive to provide better solutions to drug-related problems, they can do so only to the extent to which their citizens are willing to follow them. Certainly, leaders can use their popularity and political capital to design and implement unpopular policies. However, this may affect their capacity for leadership in other issue areas, or even result in electoral losses. Similarly, there may be international repercussions for implementing some policies.

## 6.6 Domestic Incentives

On the domestic side, changes in drug policies may respond to three types of incentives. In the first place, a policy change may reflect, or try to please, the overall preferences of the public (incentive D1). This dissertation assumes that governments prefer to design and implement policies that are popular in their societies, especially when policy issues become entrenched in national debates and prominent domestic actors mobilize in favor of a certain policy. An example is the current wave of legalizing medical and recreational marijuana in the United States, as well as Canada, which has been driven by public support and referenda. The other way around, going against the will of the public carries the risk of losing popularity or votes in upcoming elections. Therefore, legalizing or decriminalizing a drug in a society that prefers prohibition and punishment may result in high political costs. Global or regional norms may play into this type of incentive in two interconnected ways: First, transnational debates, norm advocacy and contestation, and policy changes elsewhere have the potential to shape opinions and influence the preferences of a society. Second, international norms constitute a strategic and discursive resource that domestic actors can utilize when pressing for their claims and campaigning for public support.<sup>384</sup>

In the second place, even if the majority of a population favors the status quo or another type of policy, governments may be compelled to push for a policy shift to satisfy the demands of important domestic actors such as parts of the state bureaucracy, civil society organizations, religious affiliations, or important demographic groups (incentive D2). Demands from such actors are particularly important when these groups have the potential to affect effective governance or facilitate the survival of a government. Once again, the demands or preferences of significant domestic actors may be shaped by regional and global norms, while providing these actors with

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<sup>384</sup> Cortell and Davis Jr., “How Do International Institutions Matter?”, 453 (see intr., n. 12).

discursive resources. Furthermore, powerful international actors may compel important domestic actors to push for the following of a particular norm by offering them resources they need or desire. Logically, such a manipulation of the domestic incentive structure is easier in environments where resources are scarce. As shown in the three case studies, the United States was able to alter domestic incentive structures by providing financial support, access to technologies, and specialized training to anti-narcotics units in the police and military, as well as the countries' judiciaries, in return for their support of prohibitionist drug policies.

In the third place, governments may be confronted with a new challenge or crisis, which incentivizes them to act and respond in unprecedented ways (for example, a sudden increase of drug consumption; the emergence of a new drug; the spread of a criminal network; an increase of drug-related violence, etc. [incentive D3]). As outlined above, Kratochwil and others argue that norms reduce complexity and import rationality in choice situations with many uncertainties by offering practical guidance and delineating the factors governments must consider.<sup>385</sup>

The impact of international norms on domestic preferences and incentives is strongly related to the domestic strength or salience of a particular norm; in other words, the extent to which a global or regional norm, or the values attached to them, are shared by domestic-level actors matters. Norms that are reflected in the overall preferences of a society are more likely to have an impact than norms that represent the preferences of a minority. However, as laid out above, strong normative preferences of an articulate minority may also incentivize a policy. This may be the case when the rest of society has other views on an issue like drug use but does not defend or express them with the same rigor as the minority or is further detached from decision-making processes.

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<sup>385</sup> Kratochwil, *Rules, Norms, and Decisions*, 4-10.

While international norms, their advocacy and contestation, and the promise of resources attached to norm-following may alter the domestic incentive structure, there also is a high degree of overlap and interaction between the three domestic incentives. For example, an unexpected event or crisis (corresponding to incentive D3) may alter the preferences of important domestic actors (incentive D2) or the public in general (incentive D1). At the same time, the preferences and proclamations of influential domestic actors may lead to changes in public opinion (D1) or alter the perception of a problem, thereby compelling the government to act in unprecedented ways (D3). Yet, as the following three case studies show, all three domestic incentives offer possible independent pathways to a policy choice.

### **6.7 International Incentives**

This section outlines three types of international incentives that may influence the drug policies of states. In the first place, incentives to follow global or regional norms are particularly strong when the norm reflects the interests of the most powerful state, or group of states, in a specific region (incentive I1). Governments may decide to follow the interests of more powerful states to maintain a good relationship with them. However, in case a weaker state is hesitant, stronger states can try to pressure them to follow norms through material incentives (offering additional, or threatening to withdraw, military aid, market access, and economic assistance and sanctions). A prominent example of this logic, which comes close to the ‘coercion’ or ‘external pressure model’ outlined in chapter II, is the U.S. role as a driving force in South America’s drug policies since the 1970s. As highlighted in chapter V, whether or not a state followed the U.S.-led “war on drugs” had significant material implications in terms of market access, financial aid, as well as military assistance and training. Although Florini is right in arguing that the spread of norms cannot be explained by the mere exercise of material power, direct material repercussions certainly provide a strong incentive to follow a particular norm, especially if the norm-following

state is in a situation of dependency with the one advocating it.<sup>386</sup> As outlined in the previous section on domestic incentives, powerful states can also push for norm-following by altering the domestic incentive structure, offering resources to domestic actors that can help them to achieve their goals. This raises the question of when the offering or the threat to withdraw resources is an international incentive or a manipulation of the domestic incentive structure. Although in practice the two processes cannot always be separated, this dissertation views offers that are made from government to government (such as market access or the provision of credits) as international incentives, and offers that are made to specific domestic actors (such as the police or the military) as alterations of the domestic incentive structure. As highlighted in the three case studies, the United States usually tried to influence policy choices through both mechanisms.

In the second place, norm following may result from a state's fear of losing its international standing and reputation when failing to adhere to a specific norm (incentive I2). As outlined by the sociological institutionalist literature (see above), this is most likely the case, when a norm is deeply internalized and engrained in the identity of a group of states or the international community as a whole. For example, the decade-long dominance of prohibition in the international community made it harder for countries to implement policies that deviated too much from this guiding norm. The other way around, the declining prominence of prohibition and the "war on drugs" in Latin America decreased the costs of implementing alternative drug policies.

In the third place, states may decide to follow a norm to claim a leadership role in their region or among a group of states that is important to their interests (incentive I3). Leadership opportunities through norm-following usually arise when new norms offer alternative policy choices that have yet to be explored. For example, when dominant policy models, such as

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<sup>386</sup> Florini, "The Evolution of International Norms," 365 (see ch. II, n. 28).

prohibition, are in crisis, a country that is able to implement alternative policies successfully might be able to offer guidance and function as a model for others. Such a leadership role may help this country to increase its international standing and prestige, provide it with an important voice in collective decision-making, and allow its interests and ideas to be taken seriously by the states that form part of the same regional order.

However, international policy leadership can also be exercised through the degree of which long-established norms are followed. As highlighted in the previous chapter, although prohibition took hold in all South American states, some of them embraced the approach much forcefully more than others. While the embrace of prohibition could be the result of domestic incentives, or material or social international pressures, government may also advance prohibition to claim a leadership role in advancing this approach. In doing so, they can appeal to stronger states or the international community, showing that they are worthy of further support. In the area of drug policy, indicators of such leadership are quick implementations of new UN regulations, enacting disproportionately high penalties in drug laws, seeking elections into IDCR bodies, or any other behavior that is not done out of necessity or pressure, but to appeal to other actors. A clear example of this type of leadership was Ecuador's successful attempt to gain access to the ATPA in the early 1990s by underlining its commitment to the "war on drugs" through a highly prohibitionist new drug law (see chapter VIII).

Similar to manipulations of the domestic incentive structure by stronger states, small states with fewer resources can be expected to be more susceptible to international incentives. Yet, as shown in the three case studies, international incentives are most effective, when they interact and overlap with domestic ones. After having outlined and discussed the most important domestic and international incentives that may induce governments to change their drug policies (see table 11 for a summary), the following section discusses how this framework can be applied.

**Table 11: Domestic and International Incentives to Change Drug Policies**

|           | <b>Domestic Incentives</b>   | <b>International Incentives</b>   |
|-----------|--|---|
| <b>1.</b> | Overall preferences of the public (D1)                             | Pressures and material incentives by a regional leader (I1)                           |
| <b>2.</b> | Demands of parts of important domestic actors (D2)                 | Loss of international standing and reputation when failing to comply with a norm (I2) |
| <b>3.</b> | Crisis or choice situation that requires a new state response (D3) | Leadership through norm-following to gain prestige or resources (I3)                  |

### **6.8 Applying the Framework**

The above-outlined framework is theoretical in the sense that it follows a rationalist logic of how international norms work, specifies the most important incentives for governments to change their drug policy, and discusses how each of these incentives are related to international norms. Moreover, after having outlined the most important domestic and international incentives, it is possible to make a series of theoretically founded claims to further specify how these incentives may influence drug policies: First, logically, the more incentives there are for a government to follow a norm, the more rises the likelihood that it will happen. Second, the incentive structure may pull governments in different directions. In such cases it matters, which incentives a government views as more important. Third, in general, domestic incentives are more important than international ones. This is because the goal to stay in power outweighs the goal to maintain good international standing and relationships. And fourth, as outlined above countries with fewer resources are more likely to respond to international incentives or be subject to manipulations of their domestic incentive structure, given that they are more vulnerable to outside influences, and depend more on cooperation with others.

Though these assumptions provide some guidance on when governments may opt for a policy change, which types of international or domestic incentives matter most cannot be assumed *a priori* but needs to be detected through in-depth research. Moreover, as the above-stated incentives exemplify diverse ways in which norms operate, this dissertation's framework



does not offer a coherent and parsimonious theory of how drug-policy changes happen. In its stead, it constitutes a theory-driven research strategy and toolkit to investigate different policy choices of states that form part of the same normative environment. In this framework, each incentive constitutes a possible cause for a policy change. Through the analysis of the process and sequence of events that have preceded major policy changes, researchers can gather evidence in favor or against each of these incentives, thereby detecting which of them mattered, and evaluating which ones were more important than others. This includes an assessment of the domestic and international actors that have advocated (or rallied against) policy changes; the strategies these actors used to bring about policy change, including their utilization of international norms; how governments responded to domestic and international demands; and how governments justified changes of their respective policies. To detect and reconstruct which types of incentives induced governments to change their policies at a given moment, researchers can draw from a wide range of sources, including newspaper articles and media reports; the communicative trails of the actors involved in the debates on drug policy (policy briefs, position papers, statements to the public, etc.); public opinion data; parliamentary debates and protocols of parliamentary commissions; diplomatic cables; expert interviews; and the available secondary literature.

### **6.9 Why Rationalism Is Not Enough: Identity, Context, and the Dynamic Content of Norms**

As explained above, this dissertation's framework is rationalist in the sense that it assumes that political decisions are primarily based on instrumental means-ends calculations, rather than considerations of appropriateness and goodwill. However, when determining which types of calculations and incentives mattered most to a government, researchers inevitably have to confront considerations about identity, which are central to sociological institutionalism, as well as several unique characteristics of the cases, which are prominent in post-positivism. This

dissertation also acknowledges the post-positivist insight that the content of norms is fluid and contested rather than fixed. The following paragraphs will explain in greater detail how these considerations interact with rationalism's key assumption, thereby combining and reconciling the three approaches.

Identity-related questions are important, for example, when considering how governments relate to their regional peers, especially the most powerful states. Rationalism in its purest form would expect most governments to follow the instructions and policy prescriptions of the most powerful states in their region (except if drug-related activities are so deeply embedded in national culture that it becomes an issue of resistance). This fits nicely with the 1970s, 1980s, and 1990s, when most countries in South America accepted U.S. policy prescriptions while facing serious and direct material repercussions if they did not cooperate (although the case studies below illustrate that U.S. pressure only tells half of the story). However, since the late 1990s several governments in the region came to power on a strong anti-U.S. discourse, adapting an anti-hegemonic identity. Often these governments cited the "war on drugs" as a case of U.S. imperialism and were quick to expel DEA agents, shut down military bases, and, in the case of Bolivia, provided a new legal framework for the cultivation of coca plants, which is at odds with U.S. interests. This indicates that even small states with few material capabilities do not necessarily follow the policy prescriptions of the region's most powerful state, especially if their identity is based on opposing its influence in the region. At the same time, holding an anti-U.S. identity does not necessarily mean that these governments will adapt less prohibitionist drug policies and embrace harm reduction. In fact, as outlined in chapter V, Bolivia, Ecuador, and Venezuela tend to see drug users as criminals and focus their law-enforcement efforts on low-level traffickers. This implies that, considering their anti-U.S. identity, these policies are unlikely the result of U.S. pressure and that researchers need to consider other causes.

Apart from paying attention to questions of identity, researchers should be equally attentive to the unique characteristics of particular cases. Understanding the socio-political context in which a government operates may turn out to be crucial to explain a country's drug policy trajectory and particular policy choices. Contextual features range from the characteristics of the political system, party behavior, institutional cultures, relationships between the government and civil society, demographics, and geographic features. Post-positivism stresses the uniqueness of specific cases and political phenomena and therefore encourages researchers to acquire in-depth knowledge of their cases while going beyond the consideration of only a few "variables." Even though this dissertation does not share post-positivism's suspicion of research seeking to identify the conditions and causes of social outcomes, and analyzing the world as objectively as possible, it identifies with its skepticism of the possibility to detect law-like generalities as well as its emphasis on the distinctive characteristics of states and other units of analysis.

Another influence of post-positivism is its depiction of the content of norms as dynamic and fluid, embodying different meanings in different contexts. Although some drug policy norms are relatively static and leave less room for interpretation (see chapter II), this does not apply to its most prominent guiding norms, prohibition ("governments should prohibit all activities facilitating recreational drug use") and harm reduction ("governments should accept drug use and try to deal with its most dangerous effects"), which can be interpreted and applied in various ways. For example, prohibition can range from very high penalties for the possession of particular drugs (or substances used for their production) to comparatively mild ways of punishing their possession. However, a change from strong to milder penalties can be interpreted as a move away from prohibition towards harm reduction. Moreover, a decision by a government to enforce with greater rigor its relatively mild drug laws, can be construed as a move towards prohibition. Similarly, increasing the funding for addiction treatment can be associated with prohibition and

harm reduction, depending on whether or not the treatment is voluntary or forced, or by what mechanism it seeks to assist drug users. Ultimately, the paradigm of harm reduction includes a multiplicity of measures, including the distribution of clean syringes, testing the content of drugs, and legalizing and regulating drug markets. Thus, how harm reduction should be done can lead to various interpretations, even in one and the same cultural setting. These examples highlight that intimate knowledge of context and meaning are extremely important when it comes to evaluating the impact of global and regional norms on drug policies at the domestic level, as well as the precise nature of the analyzed policies.

After having outlined the most important influences of sociological institutionalism and post-positivism on the primarily rationalist framework, the following section goes a step further highlighting how the three perspectives can be merged into a common framework.

#### **6.10 Merging the Parts**

Rationalism, sociological institutionalism and post-positivism represent the three major perspectives on international norms. These perspectives differ in terms of their epistemological foundations, ideas about what motivates political action, conceptualization of international norms, and theorizing of how they work. Even though some of their positions are difficult to reconcile, especially their epistemological assumptions and ideas about what motivates political action, researchers should pay attention to all three perspectives when trying to explain policy outcomes.

While rationalism provides the most convincing logic of how drug policy changes happen and how they are related to international norms, in and of itself rationalism is not enough to explain why sometimes governments go against the will of the public, pick up fights with states that are much stronger than them, or advance policies that will hurt the country's long-term interests. To understand why and how a particular policy was designed, and why a government valued some incentives over others, scholars need to comprehend the political and social environment in which they operate, as well as their identity and intrinsic characteristics. While

many empirical studies do so implicitly, the present dissertation tries to make these influences more explicit.

Most importantly, sociological institutionalism and post-positivism raise awareness, and take note, of the contextual features in which policy decisions are taking place. In other words, the two paradigms are useful to think about and structure the underlying conditions of policy changes. In doing so, they help to specify, which types of incentives mattered to a particular government. Of course, the universe of factors influencing a country's socio-political context is huge and without being a country expert, it is impossible to know the crucial ones beforehand. However, when tracing the process and events that have led to policy changes, these issues will come to light and thereby find their way into the final work.

After having completed the establishment of a theoretical framework, the following chapters, VII to IX, will apply the framework to analyze drug policy changes in Uruguay, Ecuador, and Peru since 1971. As outlined in the introduction, the author selected each of these cases because, despite being from the same region and therefore exposed to the same normative environment, in recent years each of them has selected a different approach in dealing with their drug-related challenges. Moreover, all three cases have a different historic trajectory of drug policies, thereby offering a high degree of variance in this dissertation's dependent variable. Each chapter will start with a small reminder of why the country was selected and a summary of what is known about their drug policies prior to 1971. The following parts of the chapter will present the main characteristics of policies to be analyzed and carry out a detailed analysis of the incentives driving major policy changes.

## VII. URUGUAY'S PATH TOWARDS MARIJUANA LEGALIZATION

The Uruguayan case is relevant for the analysis of South American drug policies in three major aspects. First, despite being ruled by a military government from 1973 to 1985, during that period the country never criminalized the use of drugs and established lower penalties for drug-related crimes than the rest of the region. Second, in the 1990s, when several South American countries were increasing penalties for drug-related offenses, Uruguay was one of the first ones to lower its legal sanctions. Third, despite domestic opposition, in 2013 it became the first country worldwide to legalize and regulate the market for recreational marijuana. Therefore, analyzing the Uruguayan case will provide new insights on the factors that help explain why a country may decide to move closer to a framework of harm reduction and potentially provide some answers on how new drug policy norms take hold in the international community.

Based on the above reasons for selecting Uruguay, the chapter focuses on the country's three most important drug policy reforms since 1971: the Decree Law 14,294 from 1974, Law 17,016 from 1998, and Law 19,172 from 2013. At the beginning of each analysis, there is a brief summary of the laws' major changes and aspects that are puzzling and deserve special attention. In the following, the chapter will lay out, which types of domestic and international incentives best explain the reform process. The chapter starts with a brief summary of Uruguay's drug policy trajectory prior to 1971.

### **7.1 Uruguay's Drug Laws Before 1971**

Similar to the United States, at the beginning of the 20<sup>th</sup> century, most narcotic drugs were legally available at pharmacies without prescription. According to Garat, drugs enjoyed a relatively high level of tolerance in Uruguayan society: "In the public sphere, drugs were used as a medicine. In the private context of households, drugs were used for recreational purposes."<sup>387</sup>

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<sup>387</sup> Garat, "A Way to Regulate the Cannabis Market," 210 (see ch. V, n. 308).

The first measure to limit their use was introduced in 1908 when President Claudio Williman approved a decree that prohibited selling a drug for a second time without medical prescription.<sup>388</sup>

The next measures to control drugs resulted from Uruguay's interaction with the nascent and increasingly important IDCR. In 1914, Uruguay ratified the 1912 Opium Convention. Subsequently, in 1917, the country's National Board of Health created the first commission to regulate drug use and trade and comply with the Convention's instructions.<sup>389</sup> In the following, both conservative and left-leaning media outlets heavily campaigned against recreational drug use, which was portrayed as a grave problem for public health and security.<sup>390</sup>

Uruguay's interaction with the IDCR not only led to administrative changes but also to new linkages with international civil society groups campaigning for prohibition. The small country maintained a strong diplomatic representation at the League of Nations and, since 1933, integrated in its OAC. In the League, Uruguay presented itself as a regional leader in advancing prohibition and IDCR regulations, and announced plans for a Latin American initiative to contain the illicit drug trade.<sup>391</sup> Although such an initiative did not emerge until the 1970s, when the countries from South America formed ASEP (see chapter V), in the 1930s the dictatorship of Gabriel Terra launched two decree laws that restricted recreational drug use and the illicit narcotics trade. The country's criminal code from 1934 contained an article that penalized the illicit trade with narcotics drugs with six months to five years of prison.<sup>392</sup> Backed by Uruguayan

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<sup>388</sup> Garat, "A Way to Regulate the Cannabis Market," 209.

<sup>389</sup> According to Garat the administrative tasks related to implementing the regimes' rules may actually have favored the expansion of the illegal drug trade: "Police complained that their hands were tied with procedures so that traffickers could carry out their business freely" (Ibid. 210).

<sup>390</sup> Guillermo Garat, *Marihuana y otras yerbas. Prohibición, regulación y uso de drogas en Uruguay* (Montevideo: Random House Mondadori, 2012), 27-31.

<sup>391</sup> Ibid. 47-52.

<sup>392</sup> Ley N° 9,155, C.P. de 1934 art. 223, Diciembre 4, 1933.

diplomats, in 1937 the country's General Assembly approved a more complex law, which sought to implement IDCR regulations. Law 9,692 regulated the licit trade of narcotic drugs, prohibited all drug use for non-medical purposes, codified a series of drug-related offenses and specified penalties for these offenses. Art. 9 and 10 declared the possession of drugs without medical prescription as an infringement, punishable with one to two years of prison. Although convicted drug users did not face time in jail, they had to undergo mandatory treatment. The sale of drugs to minors was punished with two to four years of prison, while repeated offenses would double the sanction.<sup>393</sup> The highest penalties, however, could be issued if drug use would lead to a serious illness (six to eight years) or death (ten to twelve years).<sup>394</sup> The law also stipulated occupational bans for drug offenders working in the public sector, a medical profession, or the arts.<sup>395</sup>

Despite the introduction of new penalties for drug-related crimes, surprisingly, law 9,692 was not applied in criminal trials until the early 1970s.<sup>396</sup> At the time, Uruguayan politics was shaped by the emergence and terrorist attacks of left-wing guerilla groups like the “Tupameros,” rising authoritarianism, and, since 1973, a military dictatorship. According to Silva Forné, within this setting drugs were increasingly associated with a disobedient lifestyle called “mala vida,” which was persecuted and repressed by the authorities.<sup>397</sup> This domestic development coincided with the rising prominence of drug control efforts both globally (see chapter III) and regionally (see chapter V). In this context, at the end of 1972, Uruguay's president, Juan Maria Bordaberry, who in 1973 became the country's dictator, created a parliamentary commission on drug

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<sup>393</sup> Ley N° 9,692 arts. 9, 10 y 13, Septiembre 7, 1937, Poder Legislativo, <https://legislativo.parlamento.gub.uy/temporales/leytemp7468156.htm>.

<sup>394</sup> *Id.* art. 14.

<sup>395</sup> *Id.* arts. 12 y 14.

<sup>396</sup> Diego Silva Forné, *Drogas y derecho penal en el Uruguay* (Montevideo: Fundación de Cultura Universitaria, 2016), 199-200.

<sup>397</sup> *Ibid.* 202-203.



addiction (“Comisión de Toxicomanía”), which was set up to create a draft for a comprehensive drug policy reform. In April 1973, the draft was presented to the Uruguayan parliament to be discussed by the Commission on Constitution, Codes, General Legislation and Administration. On April 26, the commission approved the law’s first nine articles.<sup>398</sup> After the dissolution of the parliament, following a coup d’état from June 27, the same legislative project was presented to the State Council, the dictatorship’s legislative body, where it was treated and discussed on March 19, June 12, August 20, August 27, and October 23 of 1974, when it was ultimately approved.<sup>399</sup> The following section provides a brief overview of the Decree Law 14,294 and highlights aspects that are puzzling and deserve special attention.

## **7.2 The Decree Law 14,294 from 1974**

Uruguay’s first legislation on drugs since 1937 translated the prescriptions of the UN conventions from 1961 (and its amended protocol from 1972) and 1971, as well as the guidelines established by ASEP into a comprehensive document of domestic legalization. In doing so, it generated major changes to the country’s institutional and legal framework on narcotic drugs and psychotropic substances.

Chapter I created a state monopoly for the import and export of all substances included in the schedules I and II of the 1961 Convention, and schedule I of the 1971 Convention; issued that all substances included in the schedules III and IV of the 1961 Convention and II, III, and IV of the 1971 Convention could only be imported with prior authorization of the Ministry of Public

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<sup>398</sup> Guzmán Castro, “Narcotizando la Guerra Fría: orígenes históricos del control de drogas en Uruguay,” *Contemporánea* 6 (2015): 92-95.

<sup>399</sup> República Oriental del Uruguay (ROU), *Diario de sesiones del Consejo del Estado*, 24<sup>a</sup> sesión ordinaria, 19 de marzo de 1974, 143-144; ROU, *Diario de sesiones del Consejo del Estado*, Tomo 4, 48<sup>a</sup> sesión ordinaria, 12 de junio de 1974, 314-316; ROU, *Diario de sesiones del Consejo del Estado*, Tomo 6, 66<sup>a</sup> sesión ordinaria, 20 de agosto de 1974, 364-365; ROU, *Diario de sesiones del Consejo del Estado*, Tomo 6, 69<sup>a</sup> sesión ordinaria, 27 de agosto de 1974, 460; and ROU, *Diario de sesiones del Consejo del Estado*, 83<sup>a</sup> sesión ordinaria, 23 de octubre de 1974, 441-467.

Health; introduced numerous regulations regarding the import, export, and distribution of these substances; and prohibited the cultivation of any plant from which narcotic drugs could be processed, except for medical and scientific purposes and with prior authorization.<sup>400</sup>

Chapter II assigned the Ministry of Public Health with the authority to carry out educational campaigns and prophylactic measures to prevent drug use; provide medical assistance and social rehabilitation to drug users; typify and classify all drugs that produce dependency; control the distribution of drugs for medical and scientific purposes; and elaborate the statistics that are to be submitted to the drug control organs of the UN. Moreover, chapter II created the National Commission to Combat Drug Addiction (“Comisión Nacional de Lucha contra las Toxicomanías”), which was empowered to prepare plans for preventing drug use; supervise these plans; propose legal changes to the Ministry of Public Health; promote the creation of specialized clinics to tackle drug addiction, and assure that all treatments are free of charge; and create a register of all cases of drug addiction.<sup>401</sup>

Chapter III committed the Ministry of the Interior to prevent, control, and repress all activities related to the illicit import, export, production, fabrication, trafficking, commercialization, and use of illegal drugs, as well as the collaboration with the international community to fight back drug trafficking networks. To fulfill this purpose, it created the Honorary Commission and the General Directorate for the Suppression of Illicit Drug Trafficking. The General Directorate was tasked to form a National Anti-narcotics Brigade; train its personnel; create a register to keep track of all drug-related crimes; establish a laboratory to analyze suspicious substances; supervise customs controls; prepare and train customs personnel; cooperate with the international community; and produce the required reports for the UN drug

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<sup>400</sup> D.L. N° 14,294 capítulo I, Octubre 31, 1974, [Tomo 1, Semestre 2], Registro Nacional de Leyes y Decretos.

<sup>401</sup> *Id.* capítulo II.

control organs. The Honorary Commission was set up to establish the overall guidelines according to which the Directorate should work; provide advice to the Directorate; evaluate all programs and activities to combat the illicit drug trade; and coordinate joint activities with the National Commission to Combat Drug Addiction.<sup>402</sup>

Chapter IV classified several drug-related crimes and established penalties for each of them. Most importantly, art. 30 and 31 penalized the illicit production, as well as the import, export, transportation, distribution, storage, and sale of illicit drugs, including their organic ingredients, with three to ten years of prison. However, despite the law's prohibitionist orientation art. 31 stated the possession of a minimal quantity of drugs for personal consumption was exempt from any prison sentence. Art. 32 penalized the organization and financing of the above-listed activities with six to 18 years. Art. 33 and 34 sanctioned with two to eight years the illegal introduction of drugs to other countries, and several activities related to the supply of drugs. Art. 36 listed a series of aggravating circumstances that justified penalties of four to 15 years, including the following conditions: the selling of drugs to minors; a serious illness or death as the consequence of illicit drug sales; forced drug consumption or drug use without consent; illegal drug sales by someone working in the medical sector; and carrying out of drug offenses close to educational, medical, athletic, and cultural facilities, as well as prisons. Furthermore, art. 40 imposed that drug addicts had to undergo mandatory treatment, including social rehabilitation.<sup>403</sup>

Another important novelty of the decree law was its art. 48, which allowed members of the General Direction to Repress Illicit Trafficking to inspect pharmacies, restaurants, shops, cafés, bars, and hotels without a search warrant if they suspected drug-related activities to be taking place. Although these changes entrenched prohibition in the Uruguay's legal framework, the penalties for drug-related crimes were lower than in most parts of the region (see table 6).

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<sup>402</sup> *Id.* capítulo III.

<sup>403</sup> *Id.* capítulo IV.

This aspect deserves particular attention in the following section, which not only establishes the main incentives for Uruguay's government to reform its drug laws but also seeks to explain the law's most puzzling elements.

### **7.3 Analysis of the Decree Law 14,294 and Its Aftermath**

Although Uruguay's rising authoritarianism as well as the military dictatorship's tough stance against the "mala vida" lifestyle, disobedient behavior, and political opponents favored the government's decision to change its drug laws, U.S. pressure and support for domestic drug-control efforts appear to be the principal driving force behind the reform. The changing international context in the early 1970s (see chapters III and V) provided additional incentives for Uruguay to reform its drug policy. The following paragraphs briefly discuss each one of the domestic and international incentives outlined in the previous chapter. It then moves on to analyze the most puzzling aspects of the law, namely the decision not to criminalize drug consumption as well as the comparatively lower penalties. The section ends with an evaluation of the law's application and developments in the drug policy field until the 1990s.

Representatives from the Uruguayan government claimed that the law's multiple institutional and regulatory novelties constituted a comprehensive response to combat a sudden rise in drug trafficking and consumption (corresponding to incentive D3). Castro cites a statement of the minister of the interior, Néstor Bolentini, claiming that the government was compelled to act facing a new set of facts: "As the drug problem kept growing and infiltrated Uruguay, we discovered international connections, and, therefore, for reasons of fact, we began taking on the problem. When we saw that Uruguay was a center of drug distribution—and, where there is distribution there is also consumption—we decided to analyze the problem."<sup>404</sup>

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<sup>404</sup> Translated from: Castro, "Narcotizando la Guerra Fría," 85 (see n. 398).

An examination of the country's most influential newspaper, "El País," provides some evidence that drug consumption and trafficking activities were possibly increasing. In January, February, and June 1971 there were no reports on drugs, except for an article on the apparent drug-related death of the boxer Charles Sonny Liston from January 8."<sup>405</sup> In April 1973, when the Commission on Drug Addiction handed a first draft of the new drug law to the country's parliament, the newspaper featured several reports related to drug trafficking, the content of the law, and drug consumption.<sup>406</sup> Similar to the statement of Bolentini, an op-ed from the newspaper claimed that police information showed rising levels of drug consumption and that Uruguay was transforming into a hub for traffickers, introducing drugs into the entire Southern Cone. However, it did not provide any data or numeric evidence to back up the claim.<sup>407</sup> During March, July, and October 1974, prior to further discussions of the law within the military dictatorship's State Council, the reporting on drugs was less frequent.<sup>408</sup> "El País" did not even mention the State Council's sessions on the new law. The relatively scarce reporting on drugs during these months seems to corroborate Garat's claim that "Although drug use was on the rise, its relevance was marginal in Uruguay," adding that "There were no dealers, and the common population didn't know but what they heard from the media about drugs. Few people had access to drugs, with only some travelers, mostly artists, having occasional possibilities to access cannabis, LSD, or

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<sup>405</sup> These months were analyzed to find out if Uruguay's biggest newspaper reported about the 1971 UN Convention and Nixon's declaration of the "war on drugs." None of the events was mentioned.

<sup>406</sup> From April 1 to 13, 1973, "El País" featured six articles on trafficking activities involving Uruguayans, four articles on the propositions of the new law (two of them on the front page), and one op-ed on the rising level of drug consumption.

<sup>407</sup> *El País*, "El consumo de drogas," 7 de abril de 1973, 5

<sup>408</sup> From March 15 to 25, 1974, the newspaper featured an article about a training course offered by the U.S. DEA to the Uruguayan police and personnel of the Defense Ministry. From July 5 to 12, 1974, there was only one article about the confiscation of 3,844 kilos of marijuana in Colombia. From October 14 to 31, 1974, there were four articles related to trafficking activities. The November editions of "El País" were not available at the National Library.

cocaine.”<sup>409</sup> In April 1974, a cable from the U.S. embassy confirmed: “There is little addiction here, although there are some cases of cocaine users.”<sup>410</sup>

Castro argues that the “drug problem” was actually created by the government, through a promotion of prohibitionist discourses and its influence on the media. According to him, the government’s goal was to provide a justification for the new law, rather than reacting to a real problem.<sup>411</sup> Further evidence suggests, that the U.S. embassy was one of the driving forces behind creating an awareness. Due to its large coast and navigable rivers, in 1970 a report from the U.S. embassy in Uruguay identified the country as a potential hub for the trafficking of illicit narcotics and raised concerns that Uruguayan authorities were not taking the problem seriously enough. Subsequently, officials from the U.S. embassy began alerting government agencies and local media about the possibility of becoming a trafficking hub (see above).<sup>412</sup> According to Ambassador Siracusa, “Inasmuch as this country had had [*sic.*] little experience with drug abuse, we used various elements of the country team to create an awareness of the world problem both among the public and in the government. Given our success in creating an attitudinal base, a variety of domestic and international initiatives became possible.”<sup>413</sup>

In any case, although “El País” and “El Diario” (another major newspaper in the 1970s) frequently reported in highly moralistic terms about drug use and trafficking as a serious social problem, as highlighted above, even when Uruguayan authorities discussed the new law, drugs did not constitute a major issue in some of the country’s most important media outlets. This

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<sup>409</sup> Garat, “A Way to Regulate the Cannabis Market,” 213.

<sup>410</sup> U.S. Embassy in Montevideo to Department of State/UN Geneva, “Narcotics: Congressional Query,” April 26, 1974, Public Library of U.S. Diplomacy (PLUSD).

<sup>411</sup> Castro, “Narcotizando la Guerra Fría,” 85.

<sup>412</sup> Ibid. 88.

<sup>413</sup> U.S. Embassy in Montevideo to Department of State/Secretary of State, “Presidential Directive in Narcotics Control Activities,” November 1, 1974, PLUSD.

shows that although the generation of awareness helped create a more favorable context, the law was not driven by public opinion (incentive D1). Moreover, there are no traces of demands and advocacy for the law by important social and political actors, or evidence of government actors pushing for the law internally (incentive D2). However, the United States cooperated and supported numerous domestic actors, providing scholarships and support for individuals showing leadership in the area of drug control, offering regular training to custom and police officials, and helping finance drug control operations of Uruguay's Anti-narcotics Brigade.<sup>414</sup> In March 1974, the U.S. held a two-week DEA seminar in Montevideo. "Police officers from every department in Uruguay, maritime police, army, navy and air force personnel, customs officers and representatives of other government agencies" were among the 80 participants.<sup>415</sup> It is reasonable to assume that police units and other actors that received U.S. support were favorable to a reform of Uruguay's drug laws.

Ultimately, the government's claim that D.L. 14,294 was taking a tough stance against rising levels of drug consumption was very likely to be popular among conservative Uruguayans and supporters of the dictatorship. On November 1, 1974, "El Diario" reported that through D.L. 14,294 the fight against drugs would be more effective, stressing the new control mechanisms on pharmacies, the institutions created within the government, and tougher penalties.<sup>416</sup>

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<sup>414</sup> Castro, "Narcotizando la Guerra Fría," 88; U.S. Embassy in Montevideo to Department of State/Secretary of State, "Narcotics Training, Customs," January 9, 1974, PLUSD; U.S. Embassy in Montevideo to Department of State/Secretary of State/Argentina Buenos Aires, "Request for Funds for Narcotics Operations," March 26, 1974, PLUSD; and U.S. Embassy in Montevideo to Department of State/DEA Washington/ Secretary of State/Buenos Aires Argentina, "DEA Six-Week International Enforcement Officers School No. 5," April 17, 1975, PLUSD.

<sup>415</sup> U.S. Embassy in Montevideo to Department of State/Secretary of State/Buenos Aires Argentina/Paraguay Asunción, "Monthly Narcotics Summary-March 74," April 1, 1974, PLUSD.

<sup>416</sup> *El Diario*, "Con la ley aprobada ayer, la lucha contra la droga será más efectiva," 1 de noviembre de 1974, 5.

In any case, although strong domestic incentives for the reform existed, it is unlikely that Uruguay would have reformed its drug law without the changing international context reflected in an increasing U.S. interest in drug control and global and regional pushes towards prohibition. By 1974, a total of 100 countries had ratified the 1961 Single Convention, thereby creating new standards of behavior in the area of drug control.<sup>417</sup> In 1971, UN membership negotiated a new convention prohibiting several synthetic drugs (see chapter III). Moreover, under Argentine leadership, in 1972 and 1973 representatives of South American countries met, negotiated, and established ASEP, the first regional mechanism to take on drug-related challenges. Uruguay not only participated intensely in the negotiations of the agreement, but by signing it, its government committed itself to modernize its drug laws under the principles elaborated together with its South American peers (see chapter V). The 1974 law explicitly references the UN conventions and translated their instructions, as well as those of ASEP's first additional protocol, into domestic legislation. Although Uruguay could have resisted pressures of the international community for some time (as did Peru [see chapter IX]), sooner or later it would have led to a loss of standing and reputation (incentive I2).

Furthermore, the United States not only altered the domestic incentive structure by influencing public opinion and key domestic actors, but also made a series of attempts to influence the Uruguayan government directly. In May 1972, a delegation of the FBN visited Uruguay. Although they encountered Uruguayan authorities well-disposed to cooperate with the United States, they highlighted the government's principal concern was left-wing terrorism. The delegation also concluded that Uruguay's current legislation was too soft, that the failure to treat drug users as criminals provided loopholes for traffickers, and that President Bordaberry should

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<sup>417</sup> United Nations Treaty Collection, Status of Treaties, Chapter VI, 18. Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-18&chapter=6&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-18&chapter=6&clang=_en).



be pressured to ratify the 1961 Single Convention.<sup>418</sup> Furthermore, in July 1972 Uruguay's ambassador to the United States, Héctor Luisi, was invited to participate at a conference of the Bureau of Narcotics and Dangerous Drugs (BNDD), where he interacted with the Bureau's director John Ingersoll. A month later, Luisi sent a letter to President Bordaberry in which he recommended the establishment of an anti-narcotics body to fulfill intelligence and repressive functions; a revision of national legislation; a quick ratification of the 1961 Convention and its amended protocol; a quick ratification of a bilateral anti-narcotics agreement with the U.S.; a strengthening of police and intelligence activities; and a reactivation of an inter-ministerial commission to coordinate the government's activities in the area of drug control.<sup>419</sup> Few months later, President Bordaberry set up the Commission on Drug Addiction—integrated by a lawyer, two medical professional, and a representative of the Ministry of the Interior (see below)—which elaborated the first draft of the law. In an embassy cable to Secretary of State Henry Kissinger, Siracusa stated that “Largely through U.S. efforts there has been created a public and official awareness of the drug problem which has resulted in improved local legislation and enforcement, the assumption by the GOU of increased international obligations and positive GOU cooperation which has helped us to interdict international trafficking.”<sup>420</sup> Overall, the U.S. did not encounter great difficulties to convince the Uruguayans. As highlighted by the Ambassador, “The GOU has since the inception of our Narcotics Control Actionprogram [*sic.*] taken one important step after another, both domestically and internationally, to meet our program objectives and has cooperated fully in our enforcementefforts [*sic.*] as well.”<sup>421</sup>

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<sup>418</sup> Castro, “Narcotizando la Guerra Fría,” 88.

<sup>419</sup> Ibid. 92.

<sup>420</sup> U.S. Embassy in Montevideo, “Presidential Directive in Narcotics Control Activities,” 1974 (see n. 413).

<sup>421</sup> U.S. Embassy in Montevideo to Department of State/Secretary of State, “GOU Request for Assistance in Establishing Early Intervention Program,” December 16, 1974, PLUSD.

Given the above account, Uruguay's decision to reform its legislation on drugs in 1974 can be well explained by the favorable international and domestic contexts, creating multiple incentives for the Uruguayan government to advance the reform. However, there are two aspects of the law that are puzzling and deserve further attention. First, the law did not criminalize the possession of drugs for personal consumption. Second, the law's minimum penalty for activities related to the trafficking of drugs, of two years, is among the lowest in the region. At the end of the 1970s, only Paraguay and Peru allowed for the possibility to penalize convicted traffickers with only two years. These decisions are striking given that high penalties and a criminalization of drug users was not only favored by the United States but would have provided the military dictatorship with a more repressive legal framework.

A first answer to this puzzle lies in Uruguay's liberal political culture. According to Garat, liberalism was an important principle for politicians since the governments of José Battle y Ordoñez (1903-1907 and 1911-1915), which allowed divorce only by the will of the woman, separated the church from the state, and tried to build a state monopoly on alcohol.<sup>422</sup> A second, and more direct, answer lies in the composition of the Commission on Drug Addiction, which redacted the first draft of the law. The commission was directed by the law professor and head of Uruguay's "Children's Council," Dr. Adela Reta. Garat highlights that Dr. Reta believed that personal conduct, as long as it does not affect others, should always be licit. Moreover, as a lawyer she defended drug users in trials, and wrote several articles defending recreational drug users, even during the military dictatorship.<sup>423</sup> The other members of the commission Dr. Ofelia Bianchini and Dr. Susana Cano from the Ministry of Public Health, and Dr. Santos Veiga from the Ministry of the Interior shared the view that drug addiction constituted a disease that ought to be cured and not punished. As Dr. Reta explained in an article in "El País:" "The drug addict will

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<sup>422</sup> Garat, "A Way to Regulate the Cannabis Market," 209 and 213.

<sup>423</sup> Ibid. 213.

be treated as someone who he is, a sick person, and in this sense he has to be given special considerations that disappear when confronting the true criminal of the sad story of drug addiction: the trafficker, the organizer, the capitalist, and the trader, who for their personal gain take advantage of human misery.”<sup>424</sup>

When the State Council finally discussed the reform, Mario Gaggero, a member of the organ’s Commission on Public Health, which had reviewed the law, presented it to the Council’s 23 members. Gaggero emphasized the importance of education and treatment in preventing drug use. Furthermore, he shared the interpretation that drug users are no criminals but sick people and should be treated as such.<sup>425</sup> None of the Council’s other members sought to defy this logic. Chapter IV on the law’s penalties was the only chapter of the law that was approved without a single dissenting vote.<sup>426</sup>

Despite the law’s strong emphasis on treatment and the decriminalization of drug use, the implementation of D.L. 14,924 was much more repressive. Especially article 34 and 35 gave the police a strong mandate to arrest drug users. These articles penalized the supply of schedule I and II, and schedule III and IV drugs of 1961 Convention, with two to eight years and 24 months to four years, respectively. As marijuana was often consumed in groups, in which a marijuana cigarette was passed from one person to the next, the police frequently arrested groups caught smoking, accusing its members of illegally supplying drugs to others. Although several times judges declined to apply the law, due to the heavy minimum penalties for supplying drugs, most of the arrested consumers were still facing preliminary time in jail.<sup>427</sup> Between 1972 and 1978,

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<sup>424</sup> Translated from: *El País*, “Futura ley antitoxicomana implanta terapia compulsiva para drogadictos,” 6 de abril de 1973, 6.

<sup>425</sup> ROU, *Diario de sesiones del Consejo del Estado*, 83ª sesión ordinaria, 23 de octubre de 1974, 453.

<sup>426</sup> *Ibid.*

<sup>427</sup> For a summary of the problem see the exposition of the professor in criminal law, Dr. Ofelia Grezzi at the parliamentary commission on drug addiction: ROU Cámara de Representantes, Comisión Especial

Uruguay's police arrested 1054 drug users, most of whom were young adults. 425 of them went to criminal courts where they had to prove that they were no traffickers. 217 of them went to a psychiatric hospital.<sup>428</sup>

In December of 1980, the military government created another repressive tool for the police. Through the Decree 690/980, it allowed the detention of suspects when investigating crimes.<sup>429</sup> Within the framework of said decree, the police often arrested drug user, which later had to prove their innocence in a criminal court.<sup>430</sup> This type of repression continued even after Uruguay returned to democracy in 1985. Between 1986 and 1987, the police made 1,470 drug-related arrests.<sup>431</sup> Between 1987 and 1990, 3,613 such detentions were carried out. According to government data, more than 60 percent of them were marijuana users.<sup>432</sup> Julio Calzada, who worked with drug users in the 1990s and was secretary general of the National Drugs Board ("Junta Nacional de Drogas," JND) from 2010 to 2015, explains that many of these arrests happened because the police had to fulfill a certain quota of detentions and drug users, although not committing any crime, constituted easy targets.<sup>433</sup>

However, the return to democracy also paved the way for more critical voices. These included leftist youth organizations such as "Brigada Luca Pradon," associated with the Socialist

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Sobre Drogadicción, "Versión taquigráfica de la sesión realizada el día 11 de mayo de 1988," División de Impresiones y Compaginación N° 1043 de 1988, Carpeta N° 2052 de 1987, 1-2.

<sup>428</sup> Garat, "A Way to Regulate the Cannabis Market," 213-214.

<sup>429</sup> D. N° 690/980, Reglamentación de las Facultades de la Policía en los Procedimientos Administrativos de Averiguación de Delitos, Diciembre 30 de 1980, [Tomo 2, Semestre 2] Registro Nacional de Leyes y Decretos [1980/1678].

<sup>430</sup> Silva Forné, *Drogas y derecho penal*, 249-254 (see n. 396).

<sup>431</sup> Garat, "A Way to Regulate the Cannabis Market," 214.

<sup>432</sup> Garat, *Marihuana y otras yerbas*, 145 (see n. 390).

<sup>433</sup> Julio Calzada, in discussion with the author, January 2018.

Youth, campaigning for a liberation and less severe persecution of marijuana smokers;<sup>434</sup> sociologists like Rafael Bayce, who published studies highlighting flaws in the dominant discourses, police statistics, and media reports on drugs;<sup>435</sup> and lawyers and legal experts criticizing the penal persecution of drug user while promoting the legalization of cannabis for personal use.<sup>436</sup> The early 1990s also witnessed the emergence of NGOs like “El Abrojo” or “Grupo de Cavia,” which provided help and social services to drug users, based on harm reduction. For the first time, these groups provided a practical alternative to the dominant approach that drug users should undergo mandatory treatment in a psychiatric clinic.<sup>437</sup> In this context, the first debates on a new drug policy reform emerged.

During the first presidency of Julio Maria Sanguinetti (1985-1990) from the centrist Colorado Party, in 1987 the Uruguayan Chamber of Representatives created a Special Commission on Drug Addiction to obtain a more complete picture of the drug-related challenges that Uruguay was facing. The commission was integrated by members of all major parties, and met several times during 1987, 1988, and 1989. One of the commission’s mandates was to discuss possible reforms to D.L. 14,294.<sup>438</sup> Although the Commission upheld that Uruguay’s drug-related problems were negligible compared to the ones in other countries, its members expressed concern about the rising consumption of cocaine, heroin, as well as legally available gases that could be inhaled. They also noted that law enforcement efforts concentrated on drug

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<sup>434</sup> Garat, *Marihuana y otras yerbas*, 157-157.

<sup>435</sup> Rafael Bayce, *Drogas, prensa escrita, y opinión pública* (Montevideo: Fundación Cultura Universitaria, 1990).

<sup>436</sup> Garat, “A Way to Regulate the Cannabis Market,” 214-215.

<sup>437</sup> Garat, *Marihuana y otras yerbas*, 174.

<sup>438</sup> ROU Cámara de Representantes, Comisión Especial Sobre Drogadicción, “Versión taquigráfica de la sesión realizada el día 4 de mayo de 1988,” División de Impresiones y Compaginación N° 1030, Carpeta N° 2052 de 1987, 1.

users and low-level suppliers, while no drug trafficker was in jail.<sup>439</sup> Both among the Commission's members, as well as their invited speakers, there was no agreement on how much repression was adequate, whether or not the possession of drugs for personal consumption should be legal, how to carry out effective prevention and treatment, whether or not Uruguay should follow the UN drug schedules or create national ones, and how to conduct scientific studies about drug use without generating curiosity among the study's subjects. However, all members shared the view that the minimal penalties for drug-related offenses were too high.<sup>440</sup> The commission also analyzed and discussed two proposals for a new legislation on drugs that were submitted to the commission by the executive. The first one made a series of adjustments to D.L. 14,294. The second one incorporated three instructions from the UN 1988 Convention, including an article on chemical precursor chemicals, an article regulating the destruction of highly profitable confiscated drugs like cocaine, and an article on the possible extradition of foreign traffickers.<sup>441</sup>

Even though the discussions of the new law were far advanced, Uruguayan legislators were running out of time as their term finished at the end of 1989. On November 26, Uruguay held general elections and, led by the new president, Luis Alberto Lacalle Herrera (1990-1995), the more conservative National Party became the strongest political force. This signified changes at all levels of the government, including the composition of the parliamentary commission on drug addiction. The new members were no experts in the field and out of touch with the debates that had taken place before. In a meeting with the newly appointed minister of the interior, Raúl

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<sup>439</sup> As stated by the invited speaker, the criminal law professor Dr. Ofelia Grezzi: "However, we have never seen a drug trafficker going to jail. We only know the small suppliers" (translated from: ROU Cámara de Representantes, Comisión Especial Sobre Drogadicción, "11 de mayo de 1988," 2 [see n. 427]).

<sup>440</sup> ROU Cámara de Representantes, Comisión Especial Sobre Drogadicción, "Versión taquigráfica de la sesión realizada el día 21 de septiembre de 1988," División de Impresiones y Compaginación N° 1197 de 1988, Carpeta N° 2052 de 1987, 10.

<sup>441</sup> ROU Cámara de Representantes, Comisión Especial Sobre Drogadicción, "Versión taquigráfica de la sesión realizada el día 2 de octubre de 1989," División de Impresiones y Compaginación N° 1471 de 1989, Carpeta N° 2052 de 1987, 1-4.

Itarria, and representatives of different sections of the ministry, held on December 2, 1993, the commission's members inquired several times about the ministry's views on the current legal framework, an issue that the minister declined to answer, explaining the he needed to study it first.<sup>442</sup>

Although Uruguay's Chamber of Representatives rejected a reform of the country's drug laws, which had been approved by the country's Senate in 1992, during the legislative period from 1990 to 1995 its parliament approved bilateral treaties of mutual judicial assistance between Uruguay and Paraguay, the United States, and Brazil, as well as the U.N. Convention on the Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances from 1988.<sup>443</sup>

On April 8, 1996, the government of Julio M. Sanguinetti, who was elected for a second time in November 1994, submitted a new proposal for a drug policy reform to the Uruguayan parliament. On September 17, 1997, the Uruguay's Senate unanimously approved a slightly modified version of the reform, and, a year later, on October 7, 1998, the country's Chamber of Representatives gave the reform the final, unanimous, approval. The following section briefly highlights the most important novelties of the law and outlines those aspects that deserve particular attention.

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<sup>442</sup> ROU Cámara de Representantes, Comisión Especial para el Estudio de la Prevención y Consecuencias de la Drogadicción, "Versión taquigráfica de la sesión realizada el día 2 de diciembre de 1993," División Dactilografía y Confrontación N° 1515 de 1993.

<sup>443</sup> Ibid.; Ley N° 16,355, Paraguay – Uruguay: Acuerdo sobre prevención, control, fiscalización y represión del consumo y tráfico ilícito de estupefacientes, Abril 13, 1993, [23,786] D.O. [27 abr/993]; Ley N° 16,424, Brasil – Uruguay: Acuerdo para la reducción de la demanda, prevención del uso indebido y combate de la producción y tráfico ilícito de estupefacientes, Octubre 4, 1993, [23,907] D.O. [18 oct/993]; Ley N° 16,431, Estados Unidos de América – Uruguay: Tratado de asistencia jurídica mutua en asuntos penales, Noviembre 23, 1993, [23,942] D.O. [7 dic/993]; and Ley N° 16,579, Tráfico ilícito de estupefacientes y sustancias sicotrópicas: Convención de la Naciones Unidas, adoptada en la ciudad de Viena, Septiembre 7, 1994, [24,155] D.O. [19 oct/994].

#### **7.4 Law 17,016 from 1998**

Law 17,016 constituted a modification and extension of the 1974 decree law. While the legislators kept several of the original articles, they slightly modified the articles 3, 15, 30 to 35, and 50 from the original law and added five new chapters, updating Uruguay's legislation according to the standards of the 1988 Convention. Similar to D.L. 14,294, Uruguayan legislators decided not to penalize the carriage of a minimal quantity of drugs to be used exclusively for personal consumption, with the novelty that it was up to the judge's "moral conviction" to decide whether a specific quantity was for consumption or other purposes.<sup>444</sup> The lawmakers hoped that this would prevent drug traffickers from using this liberty as a loophole to avoid penalization.

The most important innovations of the law were outlined in article 5, which included all five new chapters. Chapter IX typified crimes related to the laundering of illegal assets stemming from the drug trade and specified legal sanctions for these crimes, with penalties between twelve months and ten years of prison. Aggravating circumstances could increase these penalties up to 15 years. Chapter X established new guidelines for the decommission and destruction of goods prevailing from drug trafficking, as well as the destruction of drugs themselves. Chapter XI created new procedures and licensing requirements for legal uses of narcotic drugs and psychotropic substances in the areas of medicine and research, as well as the use of precursor chemicals that can be used to produce drugs that require chemical processing. Hoping to undermine the laundering of illegal assets, Chapter XII set forth new guidelines and rules for financial institutions (registration, information and identification of account holders; establishing records of financial transactions; following the guidelines of the Uruguayan Central Bank; and

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<sup>444</sup> Ley N° 17,016 art. 3, Octubre 22, 1998, [25,142] D.O. [28 Oct./998].



capacitation of personnel). Ultimately, chapter XIII laid out new guidelines and rules for international judicial cooperation in drug-related cases.<sup>445</sup>

As outlined above, the new chapters followed from Uruguay's ratification of the 1988 Convention, which committed the country to carry out comprehensive reforms to undermine the profitability of the drug trade (by making it harder to launder and use illegal assets). The most interesting part of the law, however, is a modification of the scale of the penalties for the drug-related crimes typified in D.L. 14,294. Although Uruguay was already among the countries with the lowest minimum penalties for trafficking offenses, the country's government decided to lower these penalties even further. The minimum penalties for the offenses outlined in art. 30 and 31 were dropped from three years to 20 months of prison; the ones in art. 32 from six years to 20 months; the ones in art. 33 and art. 34 from two years to 20 months, and the ones in art. 35 from two years to 12 months.<sup>446</sup> Under Uruguayan criminal law, listing the minimum penalties in months, as compared to years, allowed the country's judges to issue alternative penalties or probation so that minor offenders did not necessarily have to face time in jail. This introduced a greater degree of proportionality and flexibility to the sentencing scale.

Uruguay's decision is particularly interesting, because at the time only Bolivia had a similarly low minimum penalty, of one year, for the illegal cultivation of coca. However, the lowest penalties for the fabrication and supply of drugs in Bolivia were much more severe, with five and eight years respectively.<sup>447</sup> As shown in table 8, the minimum penalties of the other South American countries were between eight years (Ecuador) and two years (Paraguay and

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<sup>445</sup> *Id.* art. 5.

<sup>446</sup> *Id.* art. 3.

<sup>447</sup> Ley N° 1,008 arts. 46, 47 y 51, Ley del Régimen de la Coca y Sustancias Controladas, Julio 28, 1988, [1558] G.O. (Bol.).

Peru). The following section analyzes in some detail the principal incentives for the reform and in particular the decision to lower the minimum penalties.

### **7.5 Analysis of Law 17,016 and Its Aftermath**

Similar to D.L. 14,294, Uruguay's domestic context provided several incentives to reform the country's legislation on drugs. However, the more important ones were international. Despite some reservations, Uruguay saw itself obliged to ratify the 1988 Convention. Moreover, at a time when the United States intensified the militarization of the "war on drugs," Uruguay acquired a reputation for being a safe haven for the laundering of assets stemming from the illegal drug trade, which created strong pressure on the government to criminalize multiple activities related to the laundering of illegal assets and increase regulations for the financial sector. The paragraphs below analyze, one by one, to how the different incentives outlined in the previous chapter contributed to the new law.

Although there is no reliable data on the public's perception of drug-related challenges from the 1990s, Uruguayan legislators and government representatives often mentioned that the public was becoming increasingly concerned about rising levels of drug consumption (incentive D1).<sup>448</sup> However, rather than favoring a reform, public opinion was considered as a constraining element to some legislators, which, overall, supported a lowering of the sentencing scale (see below). In one of the last meetings of the Chamber of Representative's Special Commission on Drug Addiction, which lasted from 1987 to 1989, its ad-hoc president, Dr. Mario D. Lamas, stated the following:

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<sup>448</sup> For example, in a meeting with the Special Commission on the Study of Prevention and Consequences of Drug Addiction, held on December 2, 1993, the newly appointed minister of the interior, Raúl Iturria, mentioned the rising concern of the public about drugs and drug use. In a message to the Uruguayan parliament, the country's executive also stressed the public's interest in combating crime (ROU Cámara de Representantes, Comisión Especial para el Estudio de la Prevención y Consecuencias de la Drogadicción, "2 de diciembre de 1993," 1; and ROU Senado, Comisión de Constitución y Legislación, "Estupefacientes y drogas: Mensaje y proyecto de ley del poder ejecutivo," Abril de 1996, Carpeta N° 401 de 1996, Distribuido N° 705 de 1996, 18).

I have some doubts regarding the last paragraph of article 31 of the decree law, contained in article 2 [of the new proposal], although I basically agree with the proposition to lower the minimum penalties included in the same article.

As far as I understand, this is a controversial topic considering public opinion and I do not think it is reasonable that, at a moment when the public expects severe measures from the parliament, the only one that the parliament advances can be interpreted as something that makes the current legislation more benign.<sup>449</sup>

It is not difficult to encounter traces of the legislator's concerns in the country's media. An op-ed from "El Observador" titled "Uruguayans Have Fear" argued that Uruguayans were increasingly concerned about the country's deteriorating public security situation, including robberies and acts of violence.<sup>450</sup> In another op-ed, the same newspaper advocated lowering the age at which minors can be convicted.<sup>451</sup> Within this context, drugs, drug users, and traffickers were constantly characterized as instigators of the worsening security situation.<sup>452</sup>

Given this setting, it is highly unlikely that public opinion was the primary cause or incentive for a law that lowered the minimum penalties for drug-related crimes. A more likely scenario is that the criminalization of multiple activities related to the laundering of illegal assets, new rules on international judicial cooperation, as well as tighter restrictions on banks and the

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<sup>449</sup> ROU Cámara de Representantes, Comisión Especial Sobre Drogadicción, "Versión taquigráfica de la sesión realizada el día 14 de junio de 1989," División de Impresiones y Compaginación N° 1369 de 1989, Carpeta N° 2052 de 1987, 5.

<sup>450</sup> *El Observador*, "Los Uruguayos tienen miedo," 7 de abril de 1996, 6.

<sup>451</sup> *El Observador*, "Edad de impunidad," 4 de abril de 1996, 2.

<sup>452</sup> See: *El Diario*, "Cayó 'number one' de la droga en el Este y contratista del horror," 8 de octubre de 1998, 8; *El País*, "Robaban y estafaban para obtener drogas: 34 personas detenidas," 23 de noviembre de 1988, 10; *El País*, "Narcotraficante y asesino uruguayo cayó junto a una companiche que también homicida," 20 de diciembre de 1988, 14; *El País*, "Alarma en Maldonado aumento de robos para comprar drogas," 5 de octubre de 1988, 20; *El Observador*, "Detienen a Lilio Martínez en Sayago," 7 de octubre de 1998, 10; and *La República*, "Procedimiento que comenzó por un robo en una panadería derivó en tráfico de alucinógenos," 3 de octubre de 1998, 24.

trade with chemical precursors chemicals allowed the government to brand the reform as a repressive law, which was popular among the population. In line with this interpretation, in a message of the Executive to Uruguayan legislators, the Uruguayan government stated that the law would “situate the country within the scheme of frontal action against drugs and the financial-economic activities that help to sustain them.”<sup>453</sup> The reporting of two of Uruguay’s biggest newspapers provides further evidence of this view. A day after the Chamber of Representatives passed the law, “El País” titled on page one: “Total Combat Against Drug Trafficking.” The newspaper characterized the new law as one of the most important laws of the legislative period and highlighted the heavy legal sanctions for drug-related crimes.<sup>454</sup> “El Observador” even reported twice that the law was actually increasing legal sanctions, even though this was untrue.<sup>455</sup>

The branding of law 17,016 as a repressive piece of legislation raises the question why the government decided to lower minimum penalties for drug-related crimes. The answer lies in the persistent advocacy of lawyers and legal experts, which almost unanimously denounced the minimum penalties for the supply of drugs, which, in their view, were disproportionate (incentive D2). As outlined above, the criminalization of supplying drugs led to numerous arrests of marijuana smokers, who were simply sharing the drug with their friends. All experts invited to the Special Commission on Drug Addiction (1987-1989) agreed that the minimum penalties for the supply of drugs were disproportionately high, and essentially obliged judges to jail marijuana users, even though consumption was technically legal. Experts in criminal law and drug use did not only consider this type of penalizing consumption as ethically wrong, but also pointed out that

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<sup>453</sup> ROU Senado, Comisión de Constitución y Legislación, “Estupeficientes y drogas” 3-4 (see n. 448).

<sup>454</sup> *El País*, “Combate total al narcotráfico,” 8 de octubre de 1998, 1.

<sup>455</sup> *El Observador*, “Mayores penas para los narcotraficantes,” 18 de septiembre de 1997, 7; and *El Observador*, “Parlamento sancionó ley sobre narcotráfico,” 8 de octubre de 1998, 4.

almost all judges stopped applying the law due to these concerns. Although some legislators raised concerns that the public might consider a lowering of the penalties as unfavorable (see above), none of them opposed the opinion of the legal experts. While the persistent advocacy of legal experts, such as Adela Reta, who had been Minister of Culture and Education from 1985 to 1990, and the entire faculty of criminal law professor from the University of the Republic, as well as the practical problems in the application of the law that they pointed out, provided a strong incentive for the government, it was not decisive. If it would have been a primary cause, the reform would have happened much earlier.

However, the lowering of the minimum penalties enabled the government to accompany the repressive discourse by a more liberal and rights-based one. This likely helped the government to obtain the support of legislators that believed that drug users should not be repressed. In the message of the executive to Uruguayan legislators, the government stressed that the law was based on liberal and democratic values and that the revision of articles 30 to 35 took in mind the most modern requirements of criminal policy. It also referenced the criteria that informed previous efforts to reform Uruguay's drug laws from 1988 and 1989.<sup>456</sup>

When expressing his support for the law, Carlos Pita, a member of the Chamber of Representatives (MCR) for the leftist Broad Front party (FA, "Frente Amplio") criticized the ongoing "satanization of drug consumption."<sup>457</sup> Furthermore, he criticized the definition of drug use as a social vice, and argued in favor of a multidisciplinary, health-based approach. Ultimately, he issued a critique of repressive strategies, which have confused trafficking, abuse and consumption as one and the same thing.<sup>458</sup> It is highly unlikely that the law would have received

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<sup>456</sup> ROU Senado, Comisión de Constitución y Legislación, "Estupeficientes y drogas," 4 a. 11.

<sup>457</sup> ROU, *Diario de sesiones de la Cámara de Representantes, XLIV Legislatura, Cuarto Período Ordinario, 54º sesión*, 7 de octubre de 1998, 24.

<sup>458</sup> Ibid. 25-26.

unanimous support in both chambers, had the government not accommodated the views of Pita and other parliamentarians favoring less repression.

Similar to incentives D1 and D2, the third domestic incentive outlined in chapter VI was not decisive. Although, as outlined above, Uruguay's media and citizens were increasingly concerned about drug use and public security, these concerns were expressed since the late 1980s and thus do not help to explain the reform. Although, according to most experts, Uruguay experienced more drug consumption, including cocaine and heroin, they also felt that Uruguay's problems were negligible in comparison to other countries.<sup>459</sup> The justification for the law from the executive included five pages of references to Uruguay's international commitments, while citing recent laws from other countries as a point of reference. However, there was only one vague sentence on the situation of the problem in Uruguay: "Known is the degree to which the activity referred to in this legislative project affects contemporary society, with the Executive Branch particularly concerned about the qualitative and quantitative growth of activities linked to this topic."<sup>460</sup> The following paragraphs substantiate that international factors, especially concerns about Uruguay's prestige and international standing, were more decisive for the reform.

Since the late 1980s, the international context was shaped by an intensification and militarization of the U.S.-led "war on drugs." Simultaneously, the international community negotiated a new convention, which aspired to dismantle criminal networks through international judicial cooperation, new restrictions on trade with precursor chemicals, and, most importantly, a series of new tools that would make it more difficult for criminal groups to use their assets in the

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<sup>459</sup> As highlighted by Dr. Amadeo Ottati Folle, who represented Uruguay at the ASEP conferences: "I would like to point out that if we compare our reality—I had the opportunity to do so at the conference—with the ones of other countries, it feels like we are worrying about nonsense ('tonterías')" (translated from: ROU Cámara de Representantes, Comisión Especial Sobre Drogadicción, "4 de mayo de 1988," 6 [see n. 438]).

<sup>460</sup> ROU Senado, Comisión de Constitución y Legislación, "Estupefacientes y drogas," 2-3.

licit economy (see chapter III). Hence, the centerpiece of the new convention were new regulations and restrictions for each country's financial sector.

Due to the low level of restrictions for all types of banking operations, in the late 1980s Uruguay gained a reputation for being a fiscal paradise and a potential hub for money laundering. In a meeting with the Special Commission on Drug Addiction in 1989, Jonathan Mueller from the U.S. Bureau of International Narcotics and Law Enforcement Affairs raised his government's concerns to Uruguayan authorities: "In Uruguay, what worries me the most are the possibilities of laundering, which are given because of its banking laws, and their modification, which facilitate drug trafficking."<sup>461</sup> Accusations of money laundering were also raised by Argentina, whose minister of the interior, José Luis Manzano, accused Uruguay of being the Western Hemisphere's principal center for money laundering, next to the Bahamas, and the Caiman Islands.<sup>462</sup> Furthermore, in November 1994, the Argentine judge Juan José Galeano confirmed that Uruguay was laundering US\$ 70 million for the Medellín cartel, leading to the arrest of 12 subjects.<sup>463</sup>

There are some traces that the pressures and accusations of the United States and Argentina (incentive II) played into the calculations of Uruguayan decision makers. In a report to the Uruguayan Senate, Sen. Reinaldo Gargano from FA, head of the Commission on International Matters ("Asuntos Internacionales"), referenced U.S. denunciations as one of the reasons for supporting the ratification of the 1988 Convention: "the Ministry of Justice of North America refers to our country as an area for the laundering of narcodollars, and where huge anomalies in

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<sup>461</sup> Translated from: ROU Cámara de Representantes, Comisión Especial Sobre Drogadicción, "Versión taquigráfica de la sesión realizada el día 11 de septiembre de 1989," División de Impresiones y Compaginación N° 1458 de 1989, Carpeta N° 2052 de 1987, 1.

<sup>462</sup> *La Mañana*, "Manzano acusó Uruguay de ser plaza para el lavado de narcodólares," 7 de octubre de 1992, 2 de primera.

<sup>463</sup> ROU Ministerio de Relaciones Exteriores a Embajada del Uruguay en la República Argentina, Fax Vs. 212, "Lavado dólares (artículo publicado en 'La República' – Montevideo)," 4 de noviembre de 1994, MREROU, AHD, URUBA, Carp. 2.1.10, 1994, Cooperación en Materia de Narcotráfico.

the balance of payments have been detected by the International Monetary Fund. All of this proves the existence of money from criminal activities. Our country cannot be indifferent to this type of accusations that appear in international publications that study the issue.”<sup>464</sup> However, Gargano’s statement also reveals that he appears to be more concerned about Uruguay’s international standing and prestige (incentive I2) than direct pressure of the U.S. and other states. An analysis of the legislative documents accompanying the reform provides further evidence that Uruguay’s international obligations, standing, and prestige, were decisive in the country’s decision to reform its drug laws.

The message of Uruguay’s executive to the country’s lawmakers justified the need to reform the country’s drug laws primarily on Uruguay’s obligation as an active member of the United Nations. According to the text, Uruguay’s adaptation of the 1988 Convention, through law 16,579 from November 1994, obligated the country to reform its drug laws and implement the Convention’s regulations.<sup>465</sup> The same argument was echoed by the senator Walter Santoro (National Party) from the Commission of Constitution and Legislation, who presented the law to the entire Senate.<sup>466</sup> Therefore, the parliamentary debates of the ratification of the 1988 convention reveal further insights about why Uruguay decided to create a new legislative framework.

During the above-cited report by Gargano, the senator explained that the Commission on International Matters was ready to approve the treaty, but not without some objections. Most importantly, he criticized that all legal instruments at the time were focusing exclusively on producer countries, and not on consumer countries, which shared a large portion of the

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<sup>464</sup> Translated from: ROU, *Diario de sesiones de la Cámara de Senadores*, N° 366, Tomo 362, *Quinto periodo de sesiones ordinarias de la XLIII legislatura*, 39° sesión ordinaria, 7 de septiembre de 1994, 496.

<sup>465</sup> ROU Senado, Comisión de Constitución y Legislación, “Estupefacientes y drogas,” 3.

<sup>466</sup> ROU, *Diario de sesiones de la Cámara de Senadores*, N° 191, Tomo 384, *Tercer periodo ordinario de la XLIV legislatura*, 52° sesión ordinaria, 17 de septiembre de 1997.



responsibility. Second, he stressed that the Convention relied entirely on repression, which, he believed, was unlikely to work: “it will not eliminate the presence of the ‘cartels’ that are trafficking drugs, which have immense economic power as well as political corruption.”<sup>467</sup> After his critique, he explained: “Nevertheless, there are political reasons that explain our affirmative vote, although with reservations.”<sup>468</sup> Alberto Zumaran from the conservative National Party, who described drugs as the biggest scourge (“flagelo”) facing humanity, explained his affirmative decision in the following terms: “Uruguay subscribes to this Convention and becomes one of the countries that lines up to fight against drug trafficking or remains out of this international effort. We think that the prestige and the good name of the country can only place us in one side: in those who are determined to face drug trafficking.”<sup>469</sup> The explanation of Juan Carlos Blanco Estradé from the Colorado party went in a similar direction: “After what has been expressed, I believe it opportune for our country to approve this Convention as a political expression of our firm will to fight drug trafficking.”<sup>470</sup> After his statement, the Senate approved the ratification unanimously.

Uruguay’s legislators also stressed that law 17,016 was adapted to Uruguay’s own national context, values, and legal standards. However, as mentioned above, these did not constitute a primary cause of the reform, but an adaptation and translation of international norms into a domestic legislation. New regulations and the establishment of new drug-related crimes allowed the government to promote the law as a repressive tool, even though it lowered many minimum penalties. As highlighted, this helps to explain the unanimous support for the reform in both chambers.

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<sup>467</sup> Translated from: ROU, *Diario de sesiones de la Cámara de Senadores*, 7 de septiembre de 1994, 496.

<sup>468</sup> Translated from: Ibid.

<sup>469</sup> Translated from: Ibid. 497.

<sup>470</sup> Translated from: Ibid. 498.

The last international incentive, of gaining prestige and recognition through leadership (I3), is the only incentive that does not have any explanatory power. Apart from highlighting Uruguay's obligations as a UN member, the message of the executive explaining the need to reform the country's drug laws also made reference to recent reforms by Argentina, Chile, Colombia, Ecuador, Venezuela, and Panamá, indicating that Uruguay was lagging behind the rest of the region.<sup>471</sup> A report from the Commission on Constitution and Legislation of Uruguay's Senate, also highlighted that, apart from the above-mentioned countries, current laws from Germany, Japan, and the United States informed the reform. The innovative parts of law, *i.e.* the introduction proportionality and flexibility in the sentencing scale, were a consequence of domestic pressures and deliberations and not designed to acquire a leadership role. However, they may have served as an example for other countries that introduced more flexible penalties.

While international incentives played a crucial role in explaining Uruguay's 1974 and 1998 reforms, the type of incentives leading to Uruguay's 2013 decision to reform its marijuana market changed dramatically in comparison to previous laws. A public security crisis (D3), advocacy from important domestic actors (D2), and, to some extent, the possibility to gain international prestige through leadership and innovation (I3) became important driving forces. Public opinion (D1), direct pressure other states (I1), and the potential loss of international standing (I2) ceased to be important factors. The following section outlines the most important elements of the new law, followed by another section, reconstructing the processes and incentives that explain the reform.

## **7.6 The Regulation of the Marijuana Market through Law 19,172**

By regulating the production, sale, and recreational consumption of marijuana, Law 19,172 from 2013 constitutes one of the most far-reaching drug policy reforms in recent history.

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<sup>471</sup> ROU Senado, Comisión de Constitución y Legislación, "Estupefacientes y drogas," 5-6.

Under the new legislation, recreational marijuana users have three legal ways of obtaining the previously forbidden narcotic: (1) it allows the self-cultivation of up to six marijuana plants, producing no more than 480 grams of psychoactive cannabis; (2) cannabis users may become part of a cannabis club, which can have between 15 and 45 members and are allowed to cultivate up to 99 plants containing flowers with THC content; and (3) cannabis users can purchase up to 40 grams a month at a pharmacy licensed to sell marijuana.<sup>472</sup> The three mechanisms are mutually exclusive meaning that any person who decides to purchase state-controlled marijuana is not allowed to grow plants or be part of a cannabis club. To control that a person does not exceed the limits provided by the law, every consumer needs to register with the Institute for the Regulation and Control of Cannabis (IRCCA, “Instituto de Regulación y Control del Cannabis”), which also gives licenses to businesses wanting to grow marijuana as well as pharmacies wanting to sell the product to consumers.<sup>473</sup>

According to the text, the reform is embedded in a framework of harm reduction. Art. 1 states: “It is in the public interest to protect, promote, and improve the public health of the population through a policy oriented in minimizing the risks and reducing the harms of the use of cannabis, promoting appropriate information, education, and prevention, on the consequences and harmful effects linked to such consumption as well as the treatment, rehabilitation and social reintegration of problematic drug users.”<sup>474</sup> An entire chapter deals with the health and education of the population and drug users. Another official objective of the law is to protect Uruguay’s citizens from the risks implied in the illegal commerce and trafficking of drugs, by reducing drug trafficking and organized crime. As highlighted below, both objectives played an important role in the political process that led to the new law.

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<sup>472</sup> Ley N° 19,172, *supra* n. 321, art. 5.

<sup>473</sup> *Id.* título IV, capítulo III.

<sup>474</sup> *Id.* art. 1.

The law entered the parliament on August 8, 2012, containing a single article stating that the executive will take charge of the regulation of the marijuana market. The Chamber of Representative's Special Commission on Drugs and Addiction studied the proposal and, instead of giving the executive a free pass, in the process of 15 session redacted an entirely new draft. The law was discussed by the Chamber of Representatives on July 31, 2013 and approved on the following day with a tiny majority of 50 out of 99 votes all of which came from the governing party FA. On December 12, 2013, the Senate gave the final approval with 16 FA Senators voting in favor and 13 Senators against the law.<sup>475</sup>

After both chambers approved the reform, the implementation of the new law was relatively slow but steady. In August 2014, IRCCA began registering home growers and in October of the same year cannabis clubs were allowed to register.<sup>476</sup> Despite a change in the presidency in early 2015, from José “Pepe” Mujica, a crucial supporter of the reform (see below), to Tabaré Vázquez, who, although from the same party never supported it, the implementation of the law continued. In October 2015, IRCCA issued two licenses, out of twenty applicants, for the production of marijuana in Uruguay, to supply the sale in pharmacies. However, due to quality controls and the introduction of a new fingerprint system, to confirm that buyers were registered at IRCAA, it took until July 2017, until the first marijuana was sold.<sup>477</sup> The fingerprint system became necessary to avoid that foreigner could buy marijuana, which carried the potential of upsetting Argentina and Brazil.

Despite reservations that marijuana consumers may be unwilling to register at a government agency to have legal access, the registry did not become an obstacle for the reform.

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<sup>475</sup> Parlamento del Uruguay, “Trámite parlamentario: Asunto 113662,” sin fecha, <https://parlamento.gub.uy/documentosyleyes/ficha-asunto/113662/tramite>.

<sup>476</sup> John Hudak, Geoff Ramsey, and John Walsh, *Uruguay's Cannabis Law: Pioneering a New Paradigm* (Washington D.C.: WOLA Center for Effective Public Management at Brookings, March 2018), 4.

<sup>477</sup> Ibid. 5-6.

Within the first month, registrations to purchase marijuana rose from 4,900 to 14,900.<sup>478</sup> As of January 2019, 35,513 individuals have registered to purchase marijuana in one of the 17 licensed pharmacies. Furthermore, there are 6,870 registered home growers and 114 cannabis clubs.<sup>479</sup> Although there are still numerous challenges in terms of guaranteeing a steady supply to the registered consumers, finding pharmacies willing to sell the product, sanctions from U.S. banks (see below), and facilitating better access to cannabis-based medicines, marijuana has become part of public life and Uruguayan culture, which will make the reversal of the above-outlined measures very difficult. Furthermore, over time public opinion has become more favorable. According to the latest data, at the end of 2017, for the first time more Uruguayans supported the regulation of the marijuana market (44.3 percent) than the ones that were against it (41.4 percent).<sup>480</sup> However, as illustrated below this was not always the case. The following section analyzes, one by one, each of the possible incentives that could have led to law 19,172. The analysis shows that despite the ongoing support of civil society groups and state officials (incentive D2), the determinant cause of the law was a public security crisis, which provided strong incentives for the government to act in unprecedented ways (incentive D3). However, the reform depended on a complex set of domestic and international conditions, which fulfilled a multiplicity of functions and were necessary for the reform to occur.

## **7.7 Analysis of Law 19,172**

Discussions about marijuana legalization are nothing new to the Uruguayan public. In a 1988 meeting of the Special Commission on Drug Addiction, the ad-hoc president of the commission, Daniel Lamas from the Colorado party, noted: “there is a movement, which is

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<sup>478</sup> Hudak et al., *Uruguay’s Cannabis Law*, 6.

<sup>479</sup> IRCCA, “Licencias aprobadas,” no date, <https://www.ircca.gub.uy/>.

<sup>480</sup> Monitor Cannabis Uruguay, “Primeros resultados sobre la aprobación de la regulación,” 2018, <http://monitorcannabis.uy/cambios-en-la-opinion-publica-sobre-la-regulacion-del-cannabis/>.

organizing at the international level and has its representatives at the local level, which proclaims the necessity to depenalize or liberalize the consumption of marijuana.”<sup>481</sup> The commission’s invited speaker, Dr. Ottati Folle, responded that although he holds this position to be absurd it is supported by very intelligent people and academics of high prestige.<sup>482</sup>

In 1998, during the debate of law 17,016 in the Chamber of Representatives, Daniel Gallo from “Frente Amplio” stressed that if the new regulation failed to undermine drug trafficking, in the new century the parliament should consider and discuss new solutions, including drug legalization.<sup>483</sup>

In March 2000, the newly elected president Jorge Battle, a liberal in the European sense, expressed his position in favor of legalizing drugs in a meeting with the leftist magazine “Brecha.” According to him, drug legalization was the only feasible way to end illicit trafficking.<sup>484</sup> In June of the same year, the sub-secretary of the presidency, Leonardo Costa, clarified that the president only expressed a personal philosophic opinion and that Uruguay will not act unilaterally without reaching an agreement with other states from the region first. At the same time, he explained a discussion about the legalization of drug consumption was taking place within MERCOSUR, South America’s principal trading bloc.<sup>485</sup>

At the 56<sup>th</sup> General Assembly of the Inter-American Press Association in Chile, in October 2000 Battle put forward his ideas to the directors of the major newspapers from Latin America. He declared that drug trafficking was the principle instigator of violence in the region,

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<sup>481</sup> Translated from: ROU Cámara de Representantes, Comisión Especial Sobre Drogadicción, “4 de mayo de 1988,” 20.

<sup>482</sup> Ibid. 21.

<sup>483</sup> *El Observador*, “Diputado piensa en legalizar la droga,” 2 de octubre de 1998, 6.

<sup>484</sup> *Brecha*, “Jorge Battle en Brecha: La seducción de los opuestos,” 24 de marzo de 2000, 6.

<sup>485</sup> *El Observador*, “Una línea de discusión para legalizar el consumo,” 16 de junio de 2000, 4.

and that in the future drugs will be produced in laboratories and the problem will be solved. Once again, he clarified that his proposition would only work if adopted by the entire region: “If I liberalize drugs consumption, all will come to Uruguay.”<sup>486</sup> A month later, Battle repeated his position at the 10<sup>th</sup> Inter-American Summit in Panamá. Specifically, he stated that governments ought to find ways to make drugs cheaper, because this would undermine the financial incentives for illegal traffickers.<sup>487</sup> Although Battle failed to convince his regional peers, his remarks may have paved the way for other, former and incumbent, presidents to come forward. Furthermore, even though he did not persuade most Uruguayans that drug legalization was a good idea, he may have sensitized the public for an open discussion about drug policy, thus providing a more favorable context for future reforms.

All public opinion surveys estimated that prior to law 19,172, at least 60 percent of all Uruguayans disapproved marijuana legalization, while approximately 34 percent supported it.<sup>488</sup> As highlighted by Queirolo et al., even a year after the reform, these numbers did not change significantly, although the most recent data indicated a growing approval (see above).<sup>489</sup>

While public opinion was clearly not a driver of the reform (incentive D1), it is also evident that it was not a strong constraining element. While there was a lot of mobilization in favor of the reform, there was very little mobilization against it. According to Sebastián Sabini, MCR for FA and one of the editors of the new law, this is because marijuana legalization was not an important issue to most Uruguayans: “Normally countries are afraid to take on the issue

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<sup>486</sup> *El Observador*, “A favor de liberalizar el consumo de drogas,” 17 de octubre de 2000, 4.

<sup>487</sup> *El Observador*, “Batlle insiste con liberalizar las drogas,” 20 de noviembre de 2000, 4.

<sup>488</sup> See: Boidi et al., *Marijuana Legalization in Uruguay and Beyond*, 3 (see intr., n. 15); José Miguel Cruz, Maria Fernanda Boidi, and Rosario Queirolo, “Saying No to Weed: Public Opinion Towards Cannabis Legalization in Uruguay,” *Drugs: Education, Prevention and Policy* 25, no. 1 (2018): 67-76; and Garat, *El camino*, 78 (see ch. IV, n. 200).

<sup>489</sup> Rosario Queirolo et al., “Why Uruguay Legalized Marijuana: The Open Window of Public Insecurity,” *Addiction*, December 11, 2018, 2 (article published online at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/add.14523>).

because of electoral costs. But in Uruguay this was not a problem. (...) The people have more important problems than the use of cannabis. (...) The people have bigger problems in terms of finding employment, health, and education. If this was a law that concerned 200,000 or 300,000 people, the large majority of the population is far detached from this. I think because of this, it was not a problem.”<sup>490</sup> Milton Romani, former secretary general of the JND, raised a similar view, stating that for many sectors the legal status of marijuana was not important. Instead, he argues, that FA would have risked losing part of key voters, had the party decided to abandon the reform (incentive D2).<sup>491</sup>

Public opinion data and the results of the next general elections confirm these views. Despite the overall opposition to the reform, President Mujica finished his term with high approval ratings of 63 percent, or even 65 percent according to some surveys.<sup>492</sup> Furthermore, in the following general election, his successor Tabaré Vázquez, who was also his predecessor, comfortably won the presidency with 56.62 percent, a slightly higher margin than Mujica in 2009 (54.63 percent). The Broad Front also remained the strongest party in both houses, despite losing one seat in the Senate.

Although a majority of Uruguayans was critical of marijuana legalization, there were at two important domestic actors that were crucial for the new law: (1) a social movement campaigning for the legalization of cannabis, and (2) a network of state officials and professionals with close relations to the FA government favoring marijuana legalization and harm reduction policies. As outlined below, although both actors played important roles in advancing

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<sup>490</sup> Sebastián Sabini, in discussion with the author, February 2018.

<sup>491</sup> Romani, in discussion with the author, January 2018.

<sup>492</sup> *LaRed21*, “José Mujica culminó su mandato con un 65% de aprobación a su gestión,” 26 de febrero de 2015, <http://www.lr21.com.uy/politica/1218626-jose-mujica-culmino-el-2014-con-un-65-de-aprobacion-a-su-gestion>; and *Telemundo*, “Encuesta Cifra: Mujica se va con 68% de simpatía y 63% de aprobación,” 2 de marzo de 2015, <https://www.teledoce.com/telemundo/nacionales/encuesta-cifra-mujica-se-va-con-68-de-simpatia-y-63-de-aprobacion/>.



the regulation of the marijuana market, their support alone was not sufficient to explain the government's decision (incentive D2).

Since 2005, a network of activist groups like “PlantaTuPlanta,” “Red de Usuarios de Drogas y Cultivadores de Cannabis,” “Movida Cannábica de Florida,” and “Proderechos” (previously “Prolegal”) were campaigning for marijuana legalization.<sup>493</sup> These groups upheld that even though technically drug consumption was legal, the cultivation marijuana plants, even if for personal consumption, was not. This obliged drug users to become engaged with the illicit economy and criminal actors. Hence, their campaigns focused primarily on the right to self-cultivate cannabis plants for personal consumption. Apart from a big yearly mobilization, “the marijuana march,” which attracted crowds of up to 6,000 people, around 2008 their events were still relatively small, with no more than 500 participants. Gustavo Robaina, a former member of Proderechos, explained that their main goal at the time was to visualize and destigmatize marijuana use by smoking in public at so-called “fumatas” as well as to defend the right to self-cultivate and smoke without persecution.<sup>494</sup> Julio Calzada, former secretary general of the JND upheld that these types of activities helped marijuana to become more entrenched in Uruguayan society, which changed the imagination of the public.<sup>495</sup>

In 2010 and 2011, the Uruguayan police arrested a series of individuals for cultivating marijuana at their homes. The most prominent case was the one of Alicia Castilla, a 66-year old Argentine writer, who was detained on January 30, 2011, for having 29 marijuana plants, and spent 95 days in jail.<sup>496</sup> Following the arrests, the movement for the legalization of cannabis grew

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<sup>493</sup> Garat, *El Camino*, 30.

<sup>494</sup> Gustavo Robaina, in discussion with the author, February 2018.

<sup>495</sup> Julio Calzada, in discussion with the author, January 2018.

<sup>496</sup> *El País* (España), “Uruguay se abre a la marijuana,” 27 de octubre de 2012, [https://elpais.com/internacional/2012/10/26/actualidad/1351276832\\_100775.html](https://elpais.com/internacional/2012/10/26/actualidad/1351276832_100775.html).

in numbers and soon covered the entire country.<sup>497</sup> Politicians from different sectors soon picked up on the developments. In November 2010, Luis Lacalle Pou, MCR for the National Party and son of the former president Luis Alberto Lacalle Herrera (1990-1995), presented a first project to legalize self-cultivation for personal consumption, while suggesting heavier penalties for all other drug-related offenses.<sup>498</sup> Months later, following the arrest of Alicia Castilla, MCR's from FA (Sebastián Sabini and Nicolás Nuñez), the Colorado Party (Fernando Amadeo), and the Independent Party (Daniel Radío) presented a similar project with a less repressive emphasis than Lacalle Pou's proposal.<sup>499</sup> However, while the legislators' effort appeared to respond directly to the movement's request to legalize self-cultivation for personal consumption, the lawmakers failed to convince the country's leadership. In May 2011, almost jokingly, President Mujica stated the following: "And right now we are going to discuss if half a dozen of marijuana plants should be legal, or nine? I have to fight for the railways, work and the man of the street."<sup>500</sup>

The failure of the legislative proposals and Mujica's statement provide strong evidence that the activists' efforts were not sufficient to convince the government. When asked, whether or not his group was surprised about the government's decision to regulate the marijuana market, Robaina responded: "Yes, there was a lot of surprise. There were already two projects, one by FA and one by Lacalle Pou, which stressed the right to cultivate, both of which were rejected, and what the government suggested went a lot further."<sup>501</sup>

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<sup>497</sup> Christian Müller Sienra and Guillermo Draper, *Marihuana oficial: Crónica de un experimento uruguayo* (Montevideo: Penguin Random House Sudamerica, 2017), 23-24.

<sup>498</sup> Ibid. 27.

<sup>499</sup> Ibid.

<sup>500</sup> Ibid. 29.

<sup>501</sup> Robaina, in discussion with author, February 2018.

While the social movement for the legalization of cannabis contributed to provide a more favorable context for the reform, their greatest impact came after the government decided to regulate the marijuana market. Even though the government was keen to regulate the marijuana market, they lacked the expertise and resources to run a well-managed campaign. “Proderechos” and other groups, however, helped to give the project an aura of legitimacy and may have made Uruguayan legislators as well as part of the public more amenable to the reform. Through financial and strategic support of OSF and the DPA, they were able to run a months-long campaign, which, according to the activists changed public opinion by eight points within half a year.<sup>502</sup> Following a series of focus group studies, the members of “Proderechos” gave up on their initial goal to link the marijuana legalization to Uruguay’s long history of accomplishments in the area of civil rights and the right to pleasure for marijuana smokers. Instead, under the slogan Responsible Regulation (“Regulación Responsable”), the campaign ran a strong harm reduction discourse, stressing the health and social benefits of regulation.<sup>503</sup> Building on the activist’s campaign, the JND organized more than 30 events in all of Uruguay’s 19 departments, in which members of the government engaged with citizens and explained the goals of the reform.<sup>504</sup> While these efforts were unable to shift public opinion decisively, they may have helped to alleviate some of the public’s fears and made the reform a feasible political project.

Further evidence of the importance of the social movement for the legalization of cannabis is the fact that President Mujica initially did not want to include self-cultivation and cannabis clubs into the project. However, these elements were the most important demands of the social movement, the only relevant actor outside the government that supported the reform, which was obliged to concede on this aspect. As explained by Sabini: “I think Mujica understood that he

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<sup>502</sup> Müller Sienna and Draper, *Marihuana oficial*, 178.

<sup>503</sup> For a more extensive overview of the campaign, see: Ibid. 165-190.

<sup>504</sup> Garat, *El camino*, 78-95.

could not go against the only people that were in favor. Because the only ones that would defend the law were the ones that were in favor of self-cultivation.”<sup>505</sup> Augustín Lapetina from the Ministry of Public Health also underlined the importance of civil society stating that limiting the purchase of marijuana to 40 grams a month could have been much more restrictive if civil society groups had not pressured for more.<sup>506</sup>

The second important domestic actor, an older generation of government officials and professionals with close relations to the FA government who favored legalization and harm reduction policies, were equally important in advancing the new law. Many of them held important positions within the government, such as Julio Calzada (see above), who is considered one of the architects of the law, and Milton Romani, who was secretary general of the JND from 2005 to 2011 and for a second time from 2015 to 2016. During his first tenure at the JND, Romani represented Uruguay at the CND at the UN. Furthermore, from 2012 to 2014 he was Uruguay’s ambassador at the OEA in Washington DC.

Calzada’s expertise on drug-related matters goes back to the early 1990s when he was active in the NGO “El Abrojo,” which initially started to defend the civil rights of drug users and did pioneering work in implementing harm reduction approaches in Montevideo. From early on, “El Abrojo” had close links to harm reduction academics and practitioners from Europe and North America.<sup>507</sup> Members of the organization, such as the physician Dr. Gabriel D. Rossi Gonnet and the sociologist Augustín Lapetina, both of whom work for the Ministry of Public

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<sup>505</sup> Sabini, in discussion with the author, February 2018.

<sup>506</sup> Augustín Lapetina, in discussion with the author, February 2018.

<sup>507</sup> In Uruguay, the group received assistance from Hans-Joachim Junglüt, a renowned harm reductionist from the University of Applied Sciences of Münster, who did an academic stay at the Catholic University in Montevideo from 1993 to 1994. In 1995, they received training from a project of the European Union with harm reduction experts from Barcelona, Switzerland and France. Another major influence was the Canadian public health expert Mark Haden, who first introduced to them the idea of regulating drug markets (Calzada, in discussion with the author, January 2018).

Health, describe their training and engagement with drugs as a collective experience in which knowledge and training acquired abroad were shared with the rest of their community.<sup>508</sup>

Even though as a trained psychopathologist and social worker Milton Romani was always critical of the prohibition of drugs and persecution of drug users as a mechanism of social control, his primary engagement with drugs was through his position as secretary general of the JND during the first presidency of Tabaré Vázquez.<sup>509</sup> During his tenure, he developed close ties with actors from civil society, both from Uruguay and the global scene. After informal talks with WOLA and TNI in 2007, he decided to use Uruguay's election into the CND to insert the notion of human rights as a point of reference in the IDCR, thereby establishing the country as an important participant in the global debates on drug policy (see chapter IV).<sup>510</sup>

Calzada, Romani, and their associates not only supported the government's decision to legalize marijuana, but, after the decision was taken, they provided technical expertise to the executive and the parliament's Special Commission on Drugs and Addiction (Chamber of Representatives) and the Commission on Public Health (Senate).<sup>511</sup> Through this work they helped to convince legislators from FA to advance the project. According to Romani, there was a strong sense of conviction among most FA legislators that the regulation of the marijuana market was the right thing to do.<sup>512</sup> While their support and expertise was crucial in translating the proposal of legalizing marijuana into an acceptable and implementable political project, it is not

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<sup>508</sup> While Dr. Rossi Gonnet did two master's degrees in Spain, Lapetina did a master's degree in London and gained practical experience in Germany (Augustín Lapetina and Dr. Gabriel D. Rossi Gonnet, in discussion with author, February 2018).

<sup>509</sup> Romani, in discussion with author, January 2018.

<sup>510</sup> Ibid.

<sup>511</sup> Calzada, in discussion with author, January 2018; Lapetina and Rossi, in discussion with author, February 2018; and Romani, in discussion with the author, January 2018.

<sup>512</sup> Romani, in discussion with the author, January 2018.

sufficient to explain why the government decided to advance the reform. At the beginning of Mujica's government, Romani presented to him a list of proposals in the area of drug policy, including the idea of regulating the marijuana market. However, at the time the president did not pay any attention.<sup>513</sup>

This raises the question of what brought the government to consider, and eventually decide, to legalize recreational marijuana. The answer lies in three brutal killings in May 2012, which shocked many Uruguayans, caused a wave of public outcry, and incentivized the government to act in unprecedented ways to deal with the rising challenges related to crime and violence (incentive D3). On May 11, two adolescents entered a branch of the popular restaurant "La Pasiva" in the center of Montevideo. After ordering a Coca Cola, one of them took out a gun and shot a 34-year old waiter and father of five children. Two days later, a beheaded woman appeared in the town of Pando in the outskirts of Montevideo.<sup>514</sup> On May 22, an 18-year old girl was stabbed in the city of Suarez. The televised images of the crimes led to a wave of public outcry, followed by large-scale mobilizations of Uruguayans concerned about what they perceived as a deteriorating public security situation, such as the "Indignants March" from May 15 whose organizers demanded immediate action from the government. Furthermore, the media associated the crimes with rising drug consumption and drug trafficking, despite the fact that none of the cases was related to drug use or gang violence.<sup>515</sup>

Within this context, President Mujica convened an *ad-hoc* Security Cabinet, composed of six ministers, which met at least ten times in the following weeks to discuss how to respond to the perception of public insecurity.<sup>516</sup> On June 19, the government presented the Strategy for Life and

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<sup>513</sup> Romani, in discussion with the author, January 2018.

<sup>514</sup> Müller Sienra and Draper, *Marihuana oficial*, 107-108.

<sup>515</sup> Queirolo et al., "Why Uruguay Legalized Marijuana?" 4 (see n. 489).

<sup>516</sup> Müller Sienra and Draper, *Marihuana oficial*, 108.

Coexistence, which included fifteen different measures to improve public security. While some of them can be considered as firm hand (“mano dura”) policies, such as an increase of the penalties for police corruption and the trafficking of cocaine paste, as well as a lowering of the punishable age, a series of softer measures focused on education, social rehabilitation of criminals and drug users, and the creation of safe public spaces. The document also included a long set of harm reduction policies focused on heavy drug users, most importantly better medical attention and treatment options. The most surprising element of the strategy, however, was the “controlled and responsible legalization of marijuana.”<sup>517</sup> This measure was not only surprising because a vocal part of the public demanded a tougher stance on drugs and crime, but also because previous initiatives to soften the legal framework on marijuana were rejected by the government. Lapetina and Rossi explained that even though they thought that marijuana legalization was long overdue, they were struck by surprise. After having argued in its favor for many years, from a health-based perspective, they did not think that it was politically viable at the time.<sup>518</sup> What, then, explains the change of mind?

Queirolo et al. argue that the “public insecurity mood” provided the growing number of government officials favoring legalization and harm reduction with a “window of opportunity” to plant marijuana regulation as a viable policy option.<sup>519</sup> The inclusion of several harm reduction measures into the Strategy for Life and Coexistence provides strong evidence in favor of this conclusion. A complementary answer can be found in the reconstruction by Müller Sienra and Draper, which claims that the government’s decision emerged from a narrower discussion on the growing importance of drug trafficking organizations in Uruguayan society. In one of first

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<sup>517</sup> Gabinete de Seguridad, *Estrategia por la vida y coexistencia*, 19 de junio de 2012, [https://medios.presidencia.gub.uy/jm\\_portal/2012/noticias/NO\\_E582/Estrategia.pdf](https://medios.presidencia.gub.uy/jm_portal/2012/noticias/NO_E582/Estrategia.pdf).

<sup>518</sup> Lapetina and Rossi, in discussion with the author, February 2018.

<sup>519</sup> Queirolo et al., “Why Uruguay Legalized Marijuana?”

meetings of the Security Cabinet, police officials reported about the increasing role of traffickers, their strategies to exercise control through threats and intimidation, and the use of assassination to resolve disputes with other groups. In the Cabinet's discussion, the minister of defense, Eleuterio Fernández Huidobro, argued that drug trafficking cannot be combated by repressive means, but only through economic ones, by taking away their market. He further elaborated that illegal trafficking will continue with prohibition, as it occurred during alcohol prohibition in the United States. His arguments in favor of marijuana legalization resonated with the small group of ministers, and, most importantly President Mujica.<sup>520</sup> Marijuana was not only Uruguay's most widely-consumed drug, thus constituting a large source of income for the country's criminal groups, but cannabis legalization was already accepted among significant parts of Uruguayan society and state officials.

Although Mujica was originally against marijuana legalization, the extraordinary circumstances from May 2012, which could have been the cause of a more prohibitionist policy, incentivized him to reconsider and open up to pro-legalization and harm reduction arguments. Although the decision was based on the calculation that it would present a significant strike against drug trafficking, it fulfilled a series of inter-related purposes. The minister of social development, Daniel Olesker, hoped that making marijuana legally available would allow the government to separate the marijuana market from the ones of potentially more damaging drugs such as smokable cocaine paste.<sup>521</sup> Moreover, Queirolo et al. argue that through marijuana legalization the FA government could balance some of the firm-hand policies, which were unlikely to resonate with some of the its key electorate.<sup>522</sup> As outlined below, marijuana legalization also enabled the country's leadership to portray Uruguay as a leader and innovator in

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<sup>520</sup> Müller Sienna and Draper, *Marihuana oficial*, 109-115.

<sup>521</sup> Ibid. 111.

<sup>522</sup> Queirolo et al., "Why Uruguay Legalized Marijuana?" 7.



the area of drug policy and a potential model for other countries. Daniel Radío, MCR for the Independent Party from the opposition, also raised the concern that the primary goal of the reform was to make President Mujica an international phenomenon.<sup>523</sup>

It is likely that it was this multiplicity of purposes that made marijuana legalization so attractive to Uruguayan decision makers at the time. In any case, there is an overwhelming consensus that the reform would not have happened had another president been in power. According to Rossi, although rejecting marijuana legalization initially, Mujica's openness to discuss and consider even controversial proposals allowed the project to be considered.<sup>524</sup> While Milton Romani highlights the president's role as a political communicator who is able to translate complex issues and make them comprehensible to diverse audiences, Calzada emphasizes that Mujica put all his political capital behind the reform, both nationally and internationally.<sup>525</sup> Eduardo Blasina, an agro-economist, founder of Montevideo's cannabis museum, and member of one of the businesses that obtained a license to cultivate cannabis, believes that no other president than Mujica would have done the same, given that public opinion was not favorable.<sup>526</sup> Sabini stresses that Mujica, as a political heavyweight, was able to secure the law the necessary votes by protecting FA legislators from criticism: "he carried on his back a large part of the critiques."<sup>527</sup> Furthermore, Sabini underlined the positive role of the president's age: "It is different when

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<sup>523</sup> Daniel Radío, in discussion with the author, January 2018.

<sup>524</sup> Rossi, in discussion with the author, February 2018.

<sup>525</sup> Calzada, in discussion with the author, January 2018; and Romani, in discussion with the author, January 2018.

<sup>526</sup> Eduardo Blasina, in discussion with the author, January 2018.

<sup>527</sup> Sabini, in discussion with the author, February 2018.

someone older than 70 says that Uruguay should legalize marijuana as compared to someone like me, who is 35 or 36 years old.”<sup>528</sup>

Although everybody agrees that Mujica’s support was absolutely crucial, the above analysis shows that he could not have advanced the project without the support from civil society and parts of his government. Furthermore, there are two factors related to Uruguay’s political culture that facilitated and help explain the success of the initiative. The first one is Uruguay’s long tradition of regulating so-called social vices. According to Calzada, “In the 1930s everything gets regulated. When United States prohibited alcohol, our state said we are going to produce it ourselves. Gambling gets regulated. (...) Here everything is legal. Prostitution is regulated, since the 1930s. Most recently, I told Chilean journalists that Montevideo regulated Uber, something that several European countries were not able to do.”<sup>529</sup> Uruguay’s tradition of regulation provided a more favorable political context by allowing the legalization advocates to place the reform in a long-standing tradition, which prioritizes pragmatic choices over moral convictions.

The second facilitating condition is Uruguay’s strong party discipline, especially within FA. As all opposition parties opposed the law, despite the fact that several MCRs expressed support and voted in favor of certain articles, FA needed to advance the law with thin majorities of 50 out of 99 MCRs in the Chamber of Representatives and 16 out of 30 legislators in the Senate. This meant that if only one FA legislator would have voted against the law, it would not have passed. Thus, for Sabini, the biggest challenge to advance the reform was to assure the necessary votes.<sup>530</sup> The most significant setback materialized in the Chamber of Representatives where Dario Pérez expressed his concerns about starting a massive government-sponsored sale of

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<sup>528</sup> Sabini, in discussion with the author, February 2018.

<sup>529</sup> Calzada, in discussion with the author, January 2018.

<sup>530</sup> Sabini, in discussion with the author, February 2018.

marijuana and going against with will of the public.<sup>531</sup> Furthermore, he claimed that the right thing to do was to hold a public referendum on the initiative. Although Pérez eventually voted in favor of the law, in December 2017 he expressed to regret his vote.<sup>532</sup>

The above analysis shows that Uruguay's reform to regulate the recreational marijuana market was driven by a complex set of domestic conditions and circumstances, which not only provided incentives for the government to advance the reform (especially incentive D3) but also made it a feasible political project despite significant opposition. However, law 19,172 cannot be explained in isolation to the international context outlined in chapter IV, which favored the reform process in multiple ways. Most importantly, the incentives I1 and I2, which were crucial to explain previous, more prohibitionist, policies, ceased to be an important constraining force in moving towards harm reduction. Although Uruguay faced some criticism as well as significant financial restrictions as a consequence of the reform, these constraints did not impress Uruguayan decision makers.

The strongest criticism came from the INCB, which protested Uruguay's decision arguing that the country was violating its international commitments.<sup>533</sup> Apart from the intent to publicly shame Uruguay for the reform, Rossi reports of a threatening letter the INCB sent to the Ministry of Public Health.<sup>534</sup> However, the evident failure of the INCB's prohibitionist model and the growing criticism of the IDCR made these accusations less forceful. Sabini dismissed the protest, arguing that this was carried out by people fearing to lose their jobs. He further stated that Uruguay responded by sending a note, asking the UN to include drug-war deaths in the World

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<sup>531</sup> Müller Sienra and Draper, *Marihuana oficial*, 203-207.

<sup>532</sup> *El País*, "Darío Pérez: 'Me arrepentí de votar la legalización de marihuana,'" 23 de diciembre de 2013, <https://www.elpais.com.uy/informacion/me-arrepenti-votar-legalizacion-marihuana.html>.

<sup>533</sup> United Nations Information Service, *Uruguay Is Breaking the International Conventions on Drug Control with the Cannabis Legislation Approved by its Congress*, UNIS/NAR1190, December 11, 2013.

<sup>534</sup> Rossi, in discussion with the author, February 2018.

Drug Report, the UNODC's principal annual publication.<sup>535</sup> According to JND officials from the area of international cooperation, the initial criticism of the INCB eventually turned into an open dialogue in which Uruguay was able to show that law 19,172 was a responsible reform focused on health benefits and the human rights of drug users, rather than promoting the use of marijuana.<sup>536</sup> Apart from the INCB, there was no significant international opposition. Calzada explains that most voices from Argentina and Brazil expressed interest in observing how the implementation developed, rather than challenging the initiative.<sup>537</sup> Romani, who took on his position as Uruguay's ambassador at the OEA to defend the reform internationally, stated that although international reaction were mixed, all countries accepted Uruguay's decision as a policy done by a sovereign country.<sup>538</sup> Daniel Radío, a MCR for the Independent Party, who, despite supporting self-cultivation, opposed the reform because it violated international law, admitted that in practice it is unlikely to change Uruguay's international relations and that his concerns about violating international law were primarily ethical.<sup>539</sup>

A more serious challenge, however, materialized in 2017, briefly after Uruguayan pharmacies had started to sell marijuana to registered users. Despite the ongoing wave of marijuana legalization in the U.S., to the surprise of the Uruguayan government U.S. banks announced that they would stop doing business with any banks that provided financial services to pharmacies selling marijuana.<sup>540</sup> This obliged the pharmacies involved to become cash-only

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<sup>535</sup> Sabini, in discussion with the author, February 2018.

<sup>536</sup> JND officials, in discussion with the author, February 2018.

<sup>537</sup> Calzada, in discussion with the author, February 2018.

<sup>538</sup> Romani, in discussion with the author, February 2018.

<sup>539</sup> Radío, in discussion with the author, January 2018.

<sup>540</sup> Ernesto Lodoño, "Pot Was Flying Off the Shelves in Uruguay. Then U.S. Banks Weighed In," *The New York Times*, August 25, 2017, <https://www.nytimes.com/2017/08/25/world/americas/uruguay-marijuana-us-banks.html>.

businesses, a prospect that brought several ones that initially signed up to resign. However, these financial constraints were unable to halt or reverse the reform. As of February 2019, a total of 17 pharmacies are currently selling marijuana, covering significant parts of the country's territory.<sup>541</sup> Currently, the Uruguayan government is working on alternative points of sale, which would exclusively sell marijuana on a cash-only basis.<sup>542</sup>

While protest and criticism were unable to halt the reform process, Uruguay received overwhelming support from pro-legalization advocates from across the world. While OSF and DPA helped planning and financing Proderecho's campaign (see above), the former presidents Fernando Henrique Cardoso from Brazil, César Gaviria from Colombia, and Vicente Fox from Mexico, as well as the recipient of the Nobel Prize of Literature, Mario Vargas Llosa, most of whom are members of the LACDD and GCDD, expressed their support.<sup>543</sup> In August 2012, Gaviria even travelled to Uruguay to participate in a discussion on the legalization process.<sup>544</sup> A week before the vote in the Chamber of Representatives, the head of the OEA at the time, José Miguel Insulza, stated that not only did he not have any objections, but believed that this was the way to move forward, wishing the Uruguayan experience success.<sup>545</sup> Uruguay's pro legalization efforts also received support from drug policy experts from Transform Drug Policy, TNI, and

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<sup>541</sup> IRCCA, "Farmacias adheridas," actualizado 4 de febrero de 2019, <https://www.ircca.gub.uy/farmaciasadheridas/>.

<sup>542</sup> Hudak, Ramsey, and Walsh, *Uruguay's Cannabis Law*, 9-10 (see n. 476)

<sup>543</sup> BBC, "Marihuana legal: lo que México admira de Uruguay," 14 de agosto de 2013; *El Espectador*, "Mario Vargas Llosa 'aplaude' legalización de marihuana en Uruguay," 29 de diciembre de 2013, <https://www.elespectador.com/noticias/elmundo/mario-vargas-llosa-aplaude-legalizacion-de-marihuana-ur-articulo-466376>; and Regulación Responsable, *Fernando Henrique Cardoso apoya la regulación de la marihuana en Uruguay y adhiere a la plataforma Regulación Responsable*, sin fecha, [http://www.espolea.org/uploads/8/7/2/7/8727772/adhesion\\_de\\_fernando\\_henrique\\_cardoso\\_a\\_regulacion\\_responsable.pdf](http://www.espolea.org/uploads/8/7/2/7/8727772/adhesion_de_fernando_henrique_cardoso_a_regulacion_responsable.pdf).

<sup>544</sup> *El Espectador*, "Uruguay debe definir cómo controlará, si legaliza la marihuana: César Gaviria," 24 de agosto de 2012, <https://www.elespectador.com/noticias/elmundo/uruguay-debe-definir-controlara-si-legaliza-marihuana-c-articulo-370059>.

<sup>545</sup> Garat, *El camino*, 87.

WOLA, who gave testimonies to Uruguay's Chamber of Representatives' Special Commission on Drugs and Addiction, as well as talks and conferences open to the public.<sup>546</sup> Ultimately, media outlets from around the world covered, often positively, Uruguay's reform process, which they associated with Mujica's government's rights-based agenda, legalizing abortion, same-sex marriage, and marijuana. One of the highest expressions of praise came from *The Economist*, which named Uruguay country of the year in 2013.<sup>547</sup> According to Rossi, the positive news coverage about Uruguay was very helpful in moving the reform process ahead.<sup>548</sup>

The changing normative context, both globally in regionally, not only enabled or facilitated the reform, but also incentivized some of Uruguay's decision makers, who saw the project as a means to increase Uruguay's prestige by becoming a policy leader and innovator (incentive I3). As highlighted by Romani: "Uruguay is not an economic power, but it can position itself in the international arena on the basis of intangible goods, in the area of human rights and innovative policies, which may help with other things: investments, that Uruguay will be seen positively in multilateral fora, all of this has a domino effect."<sup>549</sup> In an interview, Romani expressed disappointment that the administration of Tabaré Vázquez did not exploit the reform more forcefully, arguing that under Mujica it would have been handled differently. However, despite what he referred to as a missed opportunity, he upheld that Uruguay gained prestige through the reform.<sup>550</sup> Blasina from the cannabis museum argues that by presenting itself as a modern country that converts a problem into a solution, Uruguay could improve its image as a

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<sup>546</sup> Müller Sienra and Draper, *Marihuana oficial*, 160 and 168.

<sup>547</sup> *The Economist*, "Earth's Got Talent," December 18, 2013, <https://www.economist.com/leaders/2013/12/18/earths-got-talent>.

<sup>548</sup> Rossi, in discussion with the author, February 2018.

<sup>549</sup> Garat, *El camino*, 109.

<sup>550</sup> Romani, in discussion with the author, February 2018.

liberal, democratic, and open country. For him, Uruguay is already seeing the benefits through a strong increase of tourism since the reform took place.

Mujica's multiple addresses and interactions with international audiences suggest that the reform was at least partially driven by hopes to increase Uruguay's prestige and leadership. Uruguay's former president often framed the project as a reaction to the failed policies of the "war on drugs," and as a potential model for the region: "The situation in Mexico has shattered my soul. (...) What frightens me are not the drugs, but the drug trade. If we continue to repress, this is a lost war, and we are losing it in all parts of our region."<sup>551</sup> Regarding Uruguay's role in regional drug policy initiatives, he outlined that "Someone has to start to demystify the use of marijuana in Latin America. There is a lot to demystify. Uruguay, as a small country, is in a condition to do that."<sup>552</sup> Moreover, "I am proud that Uruguay can be a laboratory of policies, which may be applied by other countries."<sup>553</sup>

Although the Vázquez government has kept a much lower international profile, these statements show that under Mujica Uruguay was seeking a leadership role in the regional debates on drug policy, inserting itself as an innovative force and potential model. Hence, the growing criticism of prohibition, and the increasing popularity of harm reduction outlined in chapter IV not only provided a less restrictive international context, but also created significant incentives for the Uruguayan government to advance the reform.

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<sup>551</sup> Translated from: *BBC Mundo*, "Mujica: el cannabis merece 'más respeto y conocerlo mucho más,'" 13 de noviembre de 2012, [http://www.bbc.co.uk/mundo/noticias/2012/11/121107\\_america\\_latina\\_uruguay\\_marihuana\\_legalizacion\\_jg](http://www.bbc.co.uk/mundo/noticias/2012/11/121107_america_latina_uruguay_marihuana_legalizacion_jg).

<sup>552</sup> Translated from: *La Nación*, "Mujica no quiere en Uruguay un turismo de 'faloperos,'" 4 de febrero de 2013, <http://www.lanacion.com.ar/1551705-mujica-hay-que-desmitificar-los-cucos-de-la-marihuana>.

<sup>553</sup> Translated from: *ICNDiario*, "Mujica y la marihuana: 'Me siento orgulloso de ser un laboratorio experimental de políticas que, quizás, pueden aplicar otros,'" 29 de noviembre de 2014, <http://www.icndiario.com/2014/11/29/mujica-y-la-marihuana-me-siento-orgulloso-de-ser-un-laboratorio-experimental-de-politicas-que-quizas-puedan-aplicar-otros/>.

Taking into consideration the interplay between domestic and international factors, this chapter concludes that Uruguay's drug policy reform was incentivized and set in motion through a public (in)security crisis, which demanded the government to act and favored unprecedented behavior (incentive D3). However, the decision to regulate the marijuana market was far from obvious and depended on a complex set of domestic and international conditions, fulfilling a multiplicity of functions, which were necessary for the reform to happen. Based on the above analysis this chapter identifies six conditions that were necessary and three further conditions that facilitated the reform (see table 12). This implies that advancing similar reforms in other countries where public opinion is unfavorable is not an easy task. Most importantly, it requires a strong and popular president willing to put his political capital behind a controversial reform, parliamentary majorities, a well-organized social movement, and several government officials that favor marijuana legalization, conditions that are not easy to achieve. Nevertheless, a possible success of Uruguay's experiment, however one may define it, may be able to shift public opinion elsewhere. Furthermore, the Uruguayan project has shown that public opinion may become more favorable over time, which may lower the perception of risks of decision makers in other countries. The following case studies on Ecuador and Peru indicate that, despite a certain flexibilization in their drug policies, these countries are still very far away from trying something similar.



**Table 12: Causes and Conditions Enabling Uruguay's Marijuana Legalization**

|  | <b>Cause / Condition</b>  | <b>Functions</b>  |
|--|---|---|
| <b>Immediate Cause / Trigger Event</b> | Public (in)security crisis / demand for action                        | <ul style="list-style-type: none"> <li>Started government discussion and effort to improve public security</li> <li>Provided strong impetus for unprecedented action</li> </ul>   |
| <b>Necessary Conditions</b>            | Support from a strong president                                       | <ul style="list-style-type: none"> <li>Put his political capital behind the reform</li> <li>Took away pressure from parliamentarians amid public rejection</li> </ul>   |
|  | Several pro-legalization advocates within the governments             | <ul style="list-style-type: none"> <li>Convinced Pres. Mujica that marijuana legalization would enhance public security</li> <li>Provided expertise and know-how</li> <li>Explained the law to the public</li> <li>Establish links to international actors</li> </ul> |
|  | Strong social movement for the legalization of cannabis               | <ul style="list-style-type: none"> <li>Provided the reform with support and legitimacy</li> <li>Helped ameliorate unfavorable public opinion</li> </ul>   |
|  | Global and regional normative change (prohibition vs. harm reduction) | <ul style="list-style-type: none"> <li>Limited international protest and opposition as well as concerns about international standing</li> <li>Created possibility to improve Uruguay's image and prestige</li> </ul>  |
|  | Parliamentary majority and strong discipline of government party      | <ul style="list-style-type: none"> <li>Parliament voted in favor of the law amid public rejection and opposition of all other parties.</li> </ul>   |
|  | Limited domestic opposition   | <ul style="list-style-type: none"> <li>No high risk of losing votes</li> </ul>  |
| <b>Facilitating Conditions</b>         | Strong liberal tradition and values                                   | <ul style="list-style-type: none"> <li>Favored support from civil society, the president and numerous government officials</li> <li>Limited the opposition (no relevant actors mobilized against the law)</li> </ul>  |
|  | Culture and tradition of regulating "social vices"                    | <ul style="list-style-type: none"> <li>Made decision makers more amenable to the reform</li> <li>Enabled government to relate the reform to previous policies of regulation</li> </ul>  |
|  | Support from transnational advocacy network and global media          | <ul style="list-style-type: none"> <li>Helped finance pro regulation campaign</li> <li>Provided expertise and know-how to Uruguayan government and civil society</li> <li>Created additional legitimacy</li> </ul>  |

## VIII. ECUADOR'S JOURNEY BACK TO THE PAST

The Ecuadorian case was selected because of its recent prohibitionist turn, which reversed a series of policy measures that had brought the country closer to a framework of harm reduction. Between 2008 and 2014 the government of Rafael Correa (2007-2017) decriminalized recreational drug use, pardoned convicted “drug mules,” and distinguished between different levels of responsibility in trafficking networks in a new criminal code. However, since 2015 Correa’s government decided to abandon this approach by launching a “war” against micro-trafficking. Against the nature of the country’s 2008 constitution, his government enacted tougher penalties on the possession of drugs, which, in practice, recriminalized their use. Analyzing these changes helps to understand why a country that has moved closer to a framework of harm reduction may decide to abandon this approach and why prohibition continues to be popular in a region that has experienced and suffered from its worst effects.

On top of these recent developments, Ecuador’s drug policy history is marked by surprising decisions and developments that deserve special attention. In 1990, Ecuador criminalized, for first time in the country’s history, the possession of drugs for personal consumption. This decision contradicted the regional trend, which at the time tended towards decriminalizing drug use. In the 1970s, Ecuador enacted series of decrees, which culminated, for a brief moment, in some of the highest penalties for drug-related crimes in all of South America. Ultimately, the country decreed a major reform of its drug laws in 1970 (Law 366), slightly before the period that this dissertation examines. This is surprising given that most drug laws in the 1970s were designed and implemented after President Nixon declared the “war on drugs,” and the international community created the 1971 Convention and the 1972 Protocol to the 1961 Convention.

According to the framework of this dissertation, this chapters briefly presents the most important novelties of each policy change, followed by an analysis of the incentives that

compelled the respective government to enact these changes. Similar to the Uruguayan case, the U.S. was successful in promoting prohibitionist drug policies in the early 1970s through constant interactions with top government officials, and the provision of training and resources to the country's police and customs officials. At the same time, Ecuador sought to impress the U.S. through its drug control efforts to obtain preferred access to technology. However, the close cooperation cooled down in the second half of the 1970s after the U.S. had denied Ecuador the provision of new helicopters.

Coinciding with the intensification and militarization of the “war on drugs,” closer cooperation in controlling narcotics picked up again in the second half of the 1980s. Once more, Ecuador was not a passive recipient of U.S. policy proposals but was hoping to take advantage of increased U.S. financial and technological support for drug control initiatives. Furthermore, Ecuador's goal to become part of the ATPA and gain preferred market access to the U.S. provides the strongest explanation for Ecuador's controversial drug policy reform from 1990. Yet, around the same time prohibitionist discourses in Ecuador's media and domestic demands to enhance drug control became a more important force in shaping Ecuador's drug policy.

During the government of Rafael Correa (2007-2017) domestic incentives became even more decisive and can account both for the flexibilization of Ecuador's drug laws and the return to prohibition since 2015. Before analyzing these processes in greater detail, the following section provides a brief overview of the country's relationship with IDRC and its drug laws prior to 1971. An important part of the section focuses on the of the “Law of Control and Intervention in the Trafficking of Narcotics,” Law 366 from 1970, which constituted the basis of Ecuador's drug legislation until the early 1990s.

### **8.1 Ecuador's Drug Laws Before 1971**

Different than Uruguay, in the early 20<sup>th</sup> century drugs did not play an important part in Ecuadorian social life. As stated by Bonilla: “The evidence is clear: apparently Ecuador did not

consider drug consumption as one of the problems affecting its population. It is not a historical theme, and the state has not taken any initiatives; on the contrary, it was the international environment that configured its policy.”<sup>554</sup> Hence, up until the 1970s the primary sources of Ecuadorian drug policy were laws that reproduced the content of international treaties.<sup>555</sup> Despite an inconsistent participation at international drug control conferences (see tables 2 and 4), since the early 20<sup>th</sup> century Ecuador ratified almost all major drug conventions, except the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs (see tables 3 and 5). However, the relatively scarce literature on Ecuador’s drug laws features very little information on how the country, if at all, implemented the IDCR’s requirements before the 1990s.<sup>556</sup> This is striking given that art. 47 of the 1970 “Law of Control and Intervention in the Trafficking of Narcotics,” cites a large number of previous legislations including the 1916 Law on the Commerce of Opium and other Drugs (“Ley del Comercio del Opio y demás drogas”); a reform of the same law from 1923; a new version of the Law on the Commerce of Opium and other Drugs from 1924; a regulation on the application of the 1924 law from 1926; the Law on the Traffic of Organic Raw Materials, Drugs and Prepared Narcotics from 1958 (“Ley sobre el Tráfico de Materias Primas, Drogas y Preparados Estupefacientes”); and the 1960 Law on the Traffic of Narcotic Drugs (“Ley sobre Tráfico de Estupefacientes”), which was changed through decrees from 1960, 1963, and 1964.<sup>557</sup>

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<sup>554</sup> Adrián Bonilla, “Ecuador: Actor internacional en la guerra de las drogas,” en *La economía política del narcotráfico: El caso ecuatoriano*, eds. Bruce Bagley, Adrián Bonilla y Alexei Páez (Quito: FLACSO Ecuador), 18.

<sup>555</sup> Ibid. 9.

<sup>556</sup> Ibid. 9-45; Edwards, “A Short History” see intr., n. 8; and Ana Isabel Jácome and Carla Álvarez Velasco, “Ecuador: The Evolution of Drug Policies in the Middle of the World,” in *Drug Policies and the Politics of Drugs* (see intr., n. 11), 71-86.

<sup>557</sup> Ley N° 366, supra n. 270, art. 47.

Even the sub-secretary of public health in the year 1970, Dr. García Jaime, does not appear to be aware of Ecuador's long list of drug laws when explaining the need to reform the country's legislation to the General Commission of the Judicial Commission. This Commission constituted the legislative body of the 5<sup>th</sup> government of José María Velasco Ibarra (1968-1972), who, though democratically elected, in June 1970 had transformed the country into a *de facto* dictatorship. According to his testimony from August 5, 1970, García Jaime explained that Ecuador's legislation on drugs reached back to 1916, one year after the government ratified the 1912 Opium Convention. According to him, the Law on Opium and other drugs ("Ley de Opio y demas drogas" [sic.]), was slightly modified in 1923 and has not been changed until the current law.<sup>558</sup> In his exposition, Garcia stressed that Ecuador's drug control apparatus was in a catastrophic state. Most importantly, the implementation of Ecuador's drug control obligations had been in the hand of regional social assistance boards ("Juntas de Asistencia Social"), which operated in Guayaquil, Quito and Cuenca. However, these boards had merely regulated the licit import of narcotic drugs to be used in the medical sector and completely ignored other aspects of drug control. Furthermore, the law in place was so poorly written, he stated, that a literal interpretation did not allow judges to penalize the cultivation and harvest of illicit crops as well as the elaboration of alkaloids, salts, and their derivatives.<sup>559</sup>

According to García Jaime, because of these insufficiencies Ecuador had not only transformed into a trafficking hub and suffered from increased drug consumption, especially in the coastal region and among students, but had also failed to comply with the IDCR's standards: "The control of narcotics has been maintained completely bad, and I have to say that the report that Ecuador has sent to the international organisms, which I revised, is shameful. There is no

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<sup>558</sup> Comisión Jurídica, "Acta de Comisión General del día miércoles 5 de agosto de 1970," Archivo-Biblioteca de la Función Legislativa (ABFL), 1.

<sup>559</sup> Ibid. 1-2.

information about anything: about drug plantations, about addicts, about treatment, about consumption. There is no control whatsoever, and there have been cases where large amounts of drugs have been lost and in the Board and nobody knows what happened to these drugs.”<sup>560</sup> Garcia Jaime also mentioned that Ecuador risked losing access to international credits since large amounts of drugs had been shipped from Ecuador to the United States.

As outlined above, his remarks sought to promote a new anti-narcotics law, which, according to him, constituted a long-term effort by the minister of public health and himself to update and modernize Ecuador’s national legislation on illicit drugs. The law, initially elaborated by the Ministry, was discussed and modified by the Judicial Commission on August 5, 6, 11, 12, and 13 before it was sent back to the executive for the final signature.<sup>561</sup> The judicial experts did not debate or question the law’s underlying assumptions or the need to reform the country’s drug law, but primarily discussed its linguistic and technical aspects. When debating the penalties, the Judicial Commission increased those for the falsification of medical prescriptions to obtain drugs from a scale of one to three years to one of two to five years of prison.<sup>562</sup> Furthermore, it decided to codify as a crime and penalize, with one to three years of prison, the dispersion of drugs to another person without that person’s consent.<sup>563</sup> After the law was sent back to the executive, it was issued as a Supreme Decree by president Velasco Ibarra on August 31, 1970. As the law constituted the basis of Ecuador’s legislative framework on drugs until 1991, its content deserves some attention.

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<sup>560</sup> Translated from: Comisión Jurídica, “Acta 5 de agosto de 1970,” 2.

<sup>561</sup> See: Comisión Jurídica, “Sesión ordinaria del día miércoles 5 de agosto de 1970,” ABFL; Comisión Jurídica, “Sesión ordinaria del día jueves 6 de agosto de 1970,” ABFL; Comisión Jurídica, “Sesión ordinaria del día martes 11 de agosto de 1970,” ABFL; Comisión Jurídica, “Sesión ordinaria del día miércoles 12 de agosto de 1970,” ABFL; and Comisión Jurídica, “Sesión ordinaria del día jueves 13 de agosto de 1970,” ABFL.

<sup>562</sup> Comisión Jurídica, “11 de agosto de 1970,” 5-6.

<sup>563</sup> Ibid. 6.

The first paragraph cited a series of justifications for the law, which strongly coincide with the ones exposed by Dr. Garcia to the Judicial Committee. First, that the previous legislation had not incorporated several of the dispositions of the 1961 Convention, to which Ecuador adhered in 1964. Second, that the previous legislation had not included any regulation on psychotropic substances (*i.e.* drugs of purely chemical composition), stating that the new law wanted to follow the recommendations of the WHO and the specialized UN organs in this matter. Third, that the previous law was anti-technical and had several contradictions, which posed difficulties to the prevention, control and sanctioning of improper drug use and illicit trafficking. Interestingly, in the entire paragraph, there is no reference to Ecuador's specific drug-related challenges.<sup>564</sup>

Title I of the law prohibited all activities related to the illicit production and commerce of narcotic drugs, while establishing regulatory mechanisms for the import, production, distribution, and sale of drugs for medical and scientific purposes.<sup>565</sup> Title II established a series of rules on how Ecuadorian authorities should deal with drug addicts and provide effective treatment (see below). Title III created the National Department of Control and Inspection of Narcotic Drugs, which was authorized to regulate all activities related to the licit import, production, distribution, sale and use of narcotic drugs. Furthermore, it received a mandate to interact and write reports for the respective international drug control organs; store confiscated drugs; launch studies on the causes of drug addiction; and carry out educational campaigns to prevent drug use.<sup>566</sup>

Title IV established the penalties for all drug-related activities prohibited by this law. Art. 30 penalized with eight to twelve years of prison the sowing, cultivation, and harvesting of all plants that can be used to produce narcotic drugs; all unauthorized activities and processes related

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<sup>564</sup> Ley N° 366, *supra* n. 270.

<sup>565</sup> *Id.* título I.

<sup>566</sup> *Id.* título III.

to the manufacture of narcotic drugs and psychotropic substances; and all activities related to the illicit trafficking and commercialization of narcotics and psychotropic drugs.<sup>567</sup> Owners of properties or means of transportation used for the production and trafficking of illicit drugs, who know but do not report such crimes to the police faced penalties of one to three years. Art. 33 punished the supply and dispersion of drugs to users with four to eight years (gang members were to receive the maximum penalty). If the drug user was a minor or had not given consent, the penalty rose up to eight to twelve years. According to art. 34, owners of establishments where drugs were sold and consumed were penalized with three to six years. While pharmacists who illegitimately sold medicines with narcotic-drug content faced only monetary fines (art. 35), individuals who falsified prescriptions faced two to five years of prison (art. 36). Medical professionals, who wrongfully prescribed medicines with drug content, were penalized with six to nine years of jail. Ultimately, art. 38 stated that owners of pharmacies where medicines with drug content disappeared would be punished as drug traffickers according to art. 30.<sup>568</sup>

In comparative perspective, the law's penalties stand out in two major ways. On the one hand, the lowest penalty for a trafficking offense with four years for the supply of drugs to the end user, was among the highest at the time. Only Venezuela had an equally high minimum penalty. On the other hand, the highest possible penalty for trafficking offenses, of twelve years was relatively low (see table 6).

Although the Judicial Committee followed the recommendation of the Ministry of Public Health, which considered drug addiction as a disease, not to penalize the mere possession of drugs, title II established that all recreational drug users had to undergo mandatory detoxication

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<sup>567</sup> In the discussion of the Judicial Commission, Dr. Bustamante placed the idea of introducing a greater sentencing range for a variety of illicit activities so that actions that imply a lower level of responsibility in the drug-trafficking chain could be punished less severely. However, the Commission decided to leave such cases to the discretion of the judges (Comisión Jurídica, "13 de agosto de 1970," 4-7).

<sup>568</sup> Ley N° 366, supra n. 270, título IV.



and rehabilitation for a period determined by a doctor. It also obliged police agents to detain all individuals that appeared to be under the influence of drugs and take them to the nearest hospital. Furthermore, all cases of drug use and addiction, including the personal details of drug users, were issued to be kept in a national registry. Addicts and drug users that declined to undergo the obligatory treatment were to be penalized with one year of prison.<sup>569</sup>

## **8.2 Stronger Prohibition in the 1970s**

Throughout the 1970s, different Ecuadorian governments changed and adjusted the existing legislation several times, in each instance by a supreme decree. Until the very end of the decade, each decree reinforced prohibition and the repression of activities involving illicit drugs. Under the civil dictatorship of Velasco Ibarra, D.S. 26 from 1971 introduced a series of technical changes about the sale of drugs in pharmacies.<sup>570</sup> Under the military dictatorship of General Guillermo Rodríguez Lara (1972-1976), D.S. 909 from 1974 incorporated the terms and instructions of the 1971 Convention into the existing law, created an inter-ministerial commission on drugs, and expanded the role of the police in drug control measures, including the permission to carry out undercover missions. Furthermore, it included inducing others to commit drug-related crimes as a crime in itself, to be penalized with eight to twelve years of prison. Interestingly, the law also introduced milder penalties for the cultivation, production, and commerce with marijuana, which was Ecuador's most widely-consumed drug (six months to five years of prison, depending on the age of the offender).<sup>571</sup> Under the triumvirate led by Admiral Alfredo Poveda

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<sup>569</sup> *Id.* título II, art. 22, 24, y 25.

<sup>570</sup> D.S. Nº 26, Enero 8, 1971, [139] R.O. 3.

<sup>571</sup> D.S. Nº 909, Septiembre 5, 1974, [638] R.O. 3.

(1976-1979), D.S. 1,139 from 1977 created new rules on how confiscated drugs should be destroyed.<sup>572</sup> However, the most draconian changes came with the 1978 Supreme Decree 2,636.

Different to the previous changes of Ecuador's 1970 drug law, the decree from 1978 not only aimed at changing the legal framework on drugs, but also enacted numerous novelties to Ecuador's criminal code and criminal procedure code ("Código de Procedimiento Penal"), including the introduction of penalties of up to 25 years.<sup>573</sup> The decree's section on Ecuador's drug law, focused almost exclusively on its sanctions, introducing much stronger penalties for the crimes established in D.S. 366. Sanctions for the crimes outlined in art. 30 (see above) were increased from a range of eight to twelve years, to one of 16 to 25 years of prison. Penalties for the provision of properties and means of transportation to carry out drug-related crimes rose from a range of one to three years, to three to five years. Gang members who sold drugs received the highest increase, from eight years in the previous law to a range of 20 to 25 years. Owners of establishments where drugs were sold and consumed, were now punished with twelve to 16 years, as compared to three to six years before.<sup>574</sup>

For a brief moment, this unprecedented increase of sanctions transformed Ecuador's legal framework into one of toughest ones in the region. At the time, no other country had higher minimum penalties for trafficking offenses. Furthermore, at the end of the 1970s, only in Bolivia, Brazil, and Peru was it technically possible to issue penalties of 25 years of prison or more (see table 6). However, the draconian drug law did not last very long. In its first year in office, the democratically-elected government of Jaime Roldos Aguilera abrogated D.S. 2,636 through the Legislative Decree from August 21, 1979 as one of its first measures.<sup>575</sup>

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<sup>572</sup> D.S. Nº 1,139, Febrero 4, 1977, [278] R.O. 1.

<sup>573</sup> D.S. Nº 2,636 art. 2, Junio 26, 1978, [621] R.O. 4.

<sup>574</sup> *Id.* art. 33, 34, 35, 36, 37, y 38.

<sup>575</sup> D.L. de 21 de agosto de 1971, [36] R.O.

The following paragraphs examine the reasons for Ecuador's prohibitionist trend in the 1970s. As international drug trafficking in Ecuador was still in its footsteps and drug consumption limited to marijuana, the role of the U.S. is crucial in explaining the intensification of drug prohibition. Several calls on Ecuadorian authorities as well as close cooperation and coordination with Ecuador's police and the Ministry of the Interior in the area of drug control are well documented. Cables from the U.S. embassy in Quito also suggest that in the first half of the decade Ecuador was seeking a leadership role in drug control efforts to impress the U.S. in order to obtain access to technology and resources. Towards the end of the decade, however, the sharp increase of drug-related penalties appears to reflect the personal preferences of Ecuador's military leaders rather than responding to international or domestic incentives.

An examination of the biggest newspapers from Guayaquil ("El Universo") and Quito ("El Comercio") in the month prior the decrees in 1974 and 1978 indicates that Ecuador's most significant legal changes were not driven by public opinion or pressure from civil society. Although both newspapers reported about drug-related cases in Ecuador, "El Comercio" eight times in August 1974 and five times in June 1978, and "El Universo" six times in 1974 and two times in 1978, there are no traces of public demands to change the legislative framework or non-government actors pressing for such adjustments (incentives D1 and D2).<sup>576</sup> Hence, it is not

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<sup>576</sup> *El Comercio*, "Descubren que traficantes de drogas ocupaban tanque de gasolina de camioneta," 2 de agosto de 1974, 28; *El Comercio*, "Tres norteamericanos son enjuiciados por tráfico de drogas: Guayaquil," 7 de agosto de 1974, 30; *El Comercio*, "Extranjero acusado de traficar drogas fugó de la policía," 8 de agosto de 1974, 22; *El Comercio*, "Pide prisión de 8 a doce años para nueve traficantes de drogas," 8 de agosto de 1974, 22; *El Comercio*, "10 años para traficante de marihuana," 17 de agosto de 1974, 21; *El Comercio*, "Otros traficantes de drogas detenidos por Interpol en Manabí," 25 de agosto de 1974, 16; *El Comercio*, "Descubren banda que introducía drogas por la frontera sur," 30 de agosto de 1974, 21; *El Comercio*, "14 libras de cocaína y más de 150 mil sucres fueron incautados: Loja," 31 de agosto de 1974, 22; *El Comercio*, "Interpol en Guayas capturó a mujer con 13 sobres de cocaína," 1 de junio de 1978, 21; *El Comercio*, "Tres narcotraficantes detenidos por Interpol," 1 de junio de 1978, 28; *El Comercio*, "Aumenta tráfico de drogas en el país," 6 de junio de 1978, 22; *El Comercio*, "Capturados más traficantes de drogas en esta ciudad," 24 de junio de 1978, 22; *El Comercio*, "Descubren 300 millones de soles en cocaína que introducían a Ecuador," 29 de junio de 1978, 48; *El Universo*, "Mujer traficante detenida por segunda ocasión en Huaquillas," 2 de agosto de 1974, 13; *El Universo*, "Tres jóvenes norteamericanos son los capitalistas de banda de traficantes," 3 de agosto de 1974, 10; *El Universo*, "Policía capturó más de 13 kilos de 'base,'" 3 de agosto de 1974, Segunda parte, 7; *El Universo*, "Traficantes de drogas apresados por

surprising, that the military government justified D.S. 909 entirely on the need to implement the terms of the 1971 Convention, without any reference to Ecuador's domestic context.<sup>577</sup> This changed, however, with regard to D.S. 2,636, from 1978 whose justification stated the following:

That the country is going through a severe aggravation of the problem of crime, with serious danger to the security and integrity of the people and to the peace and tranquility of the republic. (...) That the monstrous incidence of illicit drug trafficking and consumption is turning Ecuador into a country of production, processing, transit and consumption of all types of narcotic drugs and psychotropic substances, a situation that threatens the lives of the people and especially the youth. (...) That it corresponds to the Government of the Armed Forces and all entities and organisms of the State to arbitrate the legal measures conducive to avoiding, persecuting, sanctioning and eradicating crime in any of its forms.<sup>578</sup>

According to this statement, the military government was responding to a sharp increase in criminal behavior, drug trafficking, and drug consumption (corresponding to incentive D3). However, the analysis of various sources corroborates that this is a sharp exaggeration. Media reports and U.S. embassy cables illustrate that since the late 1960s Ecuador gained a reputation for being a transit country for the various routes of trafficking cocaine into the United States, and, to a lesser degree, for the processing of cocaine base into cocaine powder.<sup>579</sup> As a consequence,

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Interpol," 11 de agosto de 1974, 8; *El Universo*, "Descubren centro operaciones de banda de traficantes de drogas," 15 de agosto de 1974, 10; *El Universo*, "Interpol capturó a traficante de drogas," 25 de agosto de 1974, 11; *El Universo*, "El juez inició sumarios en 2 casos de tráfico de drogas," 23 de junio de 1978, 12; and *El Universo*, "Interpol arrestó a 3 traficantes de cocaína," 30 de junio de 1978, 4.

<sup>577</sup> D.S. N° 909, supra n. 571.

<sup>578</sup> D.S. N° 2,636, supra n. 573.

<sup>579</sup> The U.S. was also concerned about possible opium cultivations and heroin processing. However, even its own embassy corrected a draft of a Country Problem Assessment Paper, stating that "probably no more than 25 kilos [of heroin, author's note] are processed monthly in this country" (U.S. Embassy in Quito to

since the early 1970s, the United States threatened to withdraw foreign aid, if Ecuador did not enact stronger controls on its illicit narcotics trade.<sup>580</sup> Furthermore, through an exchange of letters between President Richard Nixon and Ecuador's military dictator, General Guillermo Rodríguez Lara, in 1972, as well as U.S. embassy personnel, including DEA agents, the United States undertook a large-scale effort to encourage the Ecuadorian government to take a stronger stance against the drug trade.<sup>581</sup> Throughout the decade, U.S. embassy officials held occasional meetings with top government officials as well as monthly meetings with lower-ranked officials in a Narcotics Action Committee.<sup>582</sup> Furthermore, the United States provided aid, equipment, and training to the National Police, the Customs Police, and border control units.<sup>583</sup>

Despite ongoing concerns that Ecuador played an important role in the supply of drugs to the U.S. market, there is no evidence to suggest that trafficking activities increased heavily prior to the rise of the penalties in 1978, as stated in the law's justification. In fact, arrests for trafficking and drug possession, as well as seizures of cocaine sulfate, were significantly lower in 1978 than in the previous years.<sup>584</sup> Furthermore, while in the mid 1970s there were some traces of concerns in the Ecuadorian government about rising marijuana consumption, there is no evidence

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Department of State/Secretary of State, "Narcotics: Country Problem Assessment Papers," October 15, 1974, PLUSD).

<sup>580</sup> *El Comercio*, "Estados Unidos cesaría ayuda a Ecuador si no controla narcóticos," 11 de julio de 1970, 1.

<sup>581</sup> U.S. Embassy in Quito to Department of State/Ecuador Guayaquil/Secretary of State, "Conversation with Minister of Government Poveda on Narcotics Enforcement," August 15, 1974, PLUSD.

<sup>582</sup> U.S. Embassy in Quito to Argentina Buenos Aires/Department of State/DEA Washington/Ecuador Guayaquil/Secretary of State, "Monthly Narcotics Report – Ecuador January 1974 (December Statistics)," February 7, 1974, PLUSD; and U.S. Embassy in Quito to Department of State/Ecuador Guayaquil/Secretary of State, "Conversation on Narcotics with GOE Minister of Government," February 11, 1974, PLUSD.

<sup>583</sup> U.S. Embassy in Quito to Department of State/Ecuador Guayaquil/Secretary of State, "Semi-Annual Narcotics Report," July 16, 1974, PLUSD.

<sup>584</sup> U.S. Embassy in Quito to Department of State, "Annual Narcotics Status Report for 1978," March 16, 1979, PLUSD.

suggesting that drug consumption increased towards the end of the decade.<sup>585</sup> The 1978 Annual Narcotics Status Report of the U.S. embassy stated that “since there is no apparent drug abuse problem, there seems to be little detectable effort at demand reduction.”<sup>586</sup>

The above paragraphs show that there were no strong domestic incentives to enact increasingly prohibitionist drug laws, except for the government agencies that benefitted from U.S. assistance and likely supported U.S. drug control proposals internally. Combined with continued pressure on top government officials, the manipulation of the domestic context through the provision of technology, training, and financial support provides a strong explanation for Ecuador’s prohibitionist trend. This is particularly compelling regarding the changes enacted in the 1974 decree.

The principal goal of the U.S. throughout the decade was to improve the operational capacity of the Ecuadorian state to investigate and combat trafficking activities. This included establishing a professional narcotics unit within Ecuador’s National Police; professionalizing the “sloppy” customs procedures as well as and border controls; and fighting corruption in the police, judiciary, and penitentiary system.<sup>587</sup> Some of the changes of D.S. 909 promised better enforcement, especially new powers given to Ecuador’s police and the creation of an inter-ministerial commission to coordinate drug policy.<sup>588</sup> Hence, U.S. embassy officials applauded these novelty as an important step in enhancing drug control. As Ambassador Brewster stated on

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<sup>585</sup> U.S. Embassy in Quito to Department of State/Secretary of State, “Semi-Annual Report/Congressional Presentation,” January 30, 1975, PLUSD.

<sup>586</sup> U.S. Embassy in Quito, “Annual Narcotics Status Report for 1978,” 1979.

<sup>587</sup> U.S. Embassy in Quito to Argentina Buenos Aires/Department of State/Ecuador Guayaquil/Peru Lima/Secretary of State, “Meeting on Narcotics with GEO SECGEN for Administration,” March 1, 1974, PLUSD; U.S. Embassy in Quito, “Conversation with GOE Minister of Government,” 1974; U.S. Embassy in Quito to Department of State/Secretary of State, “Narcotics Program for Ecuadorian National Police,” April 16, 1975, PLUSD; and U.S. Embassy in Quito to Department of State, “Drug Control: President Poveda Comments on Narcotic Controls,” April 6, 1979, PLUSD.

<sup>588</sup> D.S. 909, *supra* n. 571, capítulos I y II.

October 4, 1974: “Mission is generally pleased with amendments, which are viewed here as helpful to GOE narcotics enforcement efforts.”<sup>589</sup> This coincided with an overall positive assessment of Ecuador’s drug policy by the ambassador: “In Ecuador, as a result of greater effort on the part of DEA and a series of high level calls on important GOE officials, there has been a drastic change in the enforcement effort in Ecuador.”<sup>590</sup>

However, Ecuador’s determination to strengthen drug control were not only a consequence of direct U.S. pressure and cooperation, but also formed part of a strategy to obtain access to resources and technology. On multiple occasions, Ecuadorian authorities tried to link talks about drugs to the possibility of purchasing helicopters, financed by special discounts and U.S. credits.<sup>591</sup> In line with this view, Ecuador’s quick ratification of the 1971 Convention and the 1972 Protocol, both in 1973, suggest that Ecuador wanted to improve its relationship with the U.S. by being a regional leader and responsible ally in drug enforcement efforts (incentive I3). As Ecuador was the 13<sup>th</sup> country to ratify the 1971 Convention, and also the 13<sup>th</sup> country to ratify the 1972 Protocol, there was no risk of losing international standing or prestige (incentive I2) by delaying ratification a few more years.<sup>592</sup> Furthermore, after the U.S. government declined the request to sell helicopters at a special discount, their assessment of Ecuadorian drug control efforts changed quite dramatically. On March 16, 1979, Ambassador Gonzalez stated that “The

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<sup>589</sup> U.S. Embassy in Quito to Department of State/Secretary of State, “Changes in Ecuadorian Narcotics Law,” October 4, 1974, PLUSD.

<sup>590</sup> U.S. Embassy in Quito to Department of State/Secretary of State, “ARA Narcotics Coordinator’s Conference,” September 20, 1974, PLUSD.

<sup>591</sup> U.S. Embassy in Quito, “Conversation on Narcotics,” 1974 (see n. 582); U.S. Embassy in Quito “Conversation with Minister of Government Poveda,” 1974 (see n. 581); U.S. Embassy in Quito to Department of State/Ecuador Guayaquil/Secretary of State/Venezuela Caracas, “Signing of Police Project Agreement,” May 23, 1975, PLUSD; U.S. Embassy in Quito to Department of State/DEA Washington/Ecuador Guayaquil/Secretary of State/Venezuela Caracas, “Training/Narcotics Intelligence,” August 4, 1975, PLUSD.

<sup>592</sup> See: U.N.T.S., “Chapter VI: Narcotic Drugs and Psychotropic Substance,” No. 16 and 17, [https://treaties.un.org/Pages/Treaties.aspx?id=6&subid=A&clang=\\_en](https://treaties.un.org/Pages/Treaties.aspx?id=6&subid=A&clang=_en).

GOE's 'war on drugs' faded into a skirmish soon after its inception."<sup>593</sup> In May 1979, he assessed: "Certainly the present military government could more easily and arbitrarily punish corrupt military, police, and penal officials than will the upcoming civilian government. That this was not done, we assume resulted from a lack of will and ability, and because of corruption of top levels of the GOE."<sup>594</sup>

Other reports about Ecuador were even more negative. In 1978, the Ecuadorian embassy in Washington D.C. informed the Foreign Ministry about two articles published in the Washington Post, which reported about Ecuador in highly unfavorable terms.<sup>595</sup> The first article relied on a report of the chairman of the congressional Select Committee on Narcotics Abuse and Control, Lester Wolff, who traveled to several Latin American countries to assess their drug control efforts. According to Wolff, only Chile took the matter seriously. His report accused Peru and Bolivia of flouting international laws, and Brazil, Ecuador and Colombia of allowing drug traffickers to flourish. Regarding Ecuador, the article cited the following quote from Wolff's report:

The investigators came back with "the distinct impression that law enforcement... is weak [and] corruption is widespread: Many instances of high-ranking government officials involved in cocaine trafficking have been reported and documented... Judges

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<sup>593</sup> U.S. Embassy in Quito, "Annual Narcotics Status Report for 1978," 1979 (see n. 584).

<sup>594</sup> U.S. Embassy in Quito to Department of State, "Meeting with President Poveda," May 9, 1979, PLUSD.

<sup>595</sup> Embajada del Ecuador Washington D.C. a Ministerio de Relaciones Exteriores, "Asunto: Informe del comité de control de abuso de drogas," No. 4-109/77, 4 de enero de 1978, Archivo Central (AC) del Ministerio de Relaciones Exteriores y Movilidad Humana del Ecuador (MREMHE); and Embajada del Ecuador Washington D.C. a Ministerio de Relaciones Exteriores, "Asunto: Remitese artículo de Jack Anderson sobre tráfico de drogas," No. 4-1-170/78, 8 de marzo de 1978, AC del MREMHE.



have been known to vie for major [drug] cases, knowing that the right verdict can bring a sizable payoff.”<sup>596</sup>

The second article, published two months later, relied on an unpublished DEA report. Once again Ecuador came under attack:

We can now know the name of Ecuadoran kingpins. Federal Drug Enforcement Administration files identify him as Francisco Adum-Adum, a prominent lawyer. The confidential DEA report states that Adum-Adum is known to have “upper-level” government contacts. Investigators found he used his political connections to achieve his dominant position in smuggling operations.<sup>597</sup>

Given Ecuador’s declining reputation, the 1978 decision of drastically increasing all drug-related penalties (see above) can be interpreted as a gesture to signal continued willingness in the fight against drugs to the U.S. However, the military government must have been aware that the country’s declining reputation was not due to its penalties, but a lack of enforcement. Similarly, there was no discussion of penalties in the ASEP meetings from 1978.<sup>598</sup> Hence, increasing penalties in and of itself could do little to improve the country’s standing in the eyes of the U.S. and Ecuador’s regional peers. Not surprisingly, the reaction of the U.S. ambassador was not enthusiastic. The embassy’s annual narcotics report for 1978 merely mentioned the increase.

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<sup>596</sup> Jack Anderson, “Drug Trafficking in Latin America,” *The Washington Post*, January 2, 1978, D11.

<sup>597</sup> Jack Anderson, “Embattled Drug Institute is Probed,” *The Washington Post*, March 2, 1978, DC11.

<sup>598</sup> Embajada del Ecuador en Argentina a Ministerio de Relaciones Exteriores, “Reunión sobre Acuerdo Sudamericano de Estupefacientes y Psicotrópicos,” N° 4-1-168/78, 30 de mayo de 1978, AC del MREMHE; Embajada del Ecuador en Argentina a Ministerio de Relaciones Exteriores, “Reunión sobre Acuerdo Sudamericano de Estupefacientes y Psicotrópicos,” N° 4-1-217/78, 4 de julio de 1978, AC del MREMHE; Embajada del Ecuador en Argentina a Ministerio de Relaciones Exteriores, “Nueva Reunión sobre Acuerdo Sudamericano de Estupefacientes y Psicotrópicos,” N° 4-1-267/78, 7 de agosto de 1978, AC del MREMHE; and Embajada del Ecuador en Argentina a Ministerio de Relaciones Exteriores, “Conferencia de países latinoamericanos sobre Acuerdo de Estupefacientes y Psicotrópicos,” N° 4-1-416/78, 4 de diciembre de 1978, AC del MREMHE.

In the same paragraph it emphasized that “the general consensus is that any major trafficker can influence the prosecution of his case (no juries are used) or, if sentenced, can make necessary arrangements to facilitate his early release.”<sup>599</sup>

Ultimately, it is evident that, different to the early 1970s, Ecuador did not seek a leadership role in drug control efforts (incentive I3). The country took on a low profile during the ASEP meetings in Buenos Aires (see n. 598). Furthermore, Ecuador declined any interest in a seat on the CND when its government was consulted by U.S. officials.<sup>600</sup>

Given that neither domestic and international incentives are able to fully explain the sharp increase of penalties for drug-related offenses, a more convincing explanation is that the military government acted according to its own preferences. Throughout the 1970s, the head of the military government’s Supreme Council, and interim president of Ecuador, the navy admiral Alfredo Poveda, gained a positive reputation among U.S. officials for his strong support in drug control efforts. In 1974, when Poveda was minister of government, U.S. officials had several meetings with him, all of which resulted in a positive assessment. After a conversation from August 15, 1974, Ambassador Brewster concluded: “I sense, in fact, that Poveda may be giving the narcotics issue greater personal attention than heretofore and hopefully this will give the program the impetus that it so clearly needs.”<sup>601</sup> After a meeting in 1979, Ambassador Gonzalez noted “Significant was Poveda’s observation that drug abuse is a serious problem in the country. This is the first high-level expression that Ecuador does have a drug problem. Poveda complained that increasing drug use is affecting traditional filial ties and undermining family life and parental authority.”<sup>602</sup> Although the president’s statements have to be taken with some care, they seem to

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<sup>599</sup> U.S. Embassy in Quito, “Annual Narcotics Status Report for 1978,” 1979.

<sup>600</sup> Ibid.

<sup>601</sup> U.S. Embassy in Quito, “Conversation with Poveda on Narcotics Enforcement,” 1974 (see n. 581).

<sup>602</sup> U.S. Embassy in Quito, “Meeting with President Poveda,” 1979.

indicate that he had strong prohibitionist inclinations and considered drug use as a potential threat.

However, a stronger emphasis enforcement, which the U.S. was hoping for, would not only have been costly in terms of state resources but may have led to a loss of support among friends and allies within Ecuador's military (due to the apparent corruption and involvement in illicit trafficking). Increasing the penalties carried neither monetary costs nor lower risks of being opposed by the rest of the military and state apparatus. Another factor that strengthens the explanation that Poveda's Supreme Council acted according to its preferences is that the military government had no perspective of staying in power. In 1976, a group of older and conservative army officers, led by Admiral Poveda, overthrew the government Rodríguez Lara, who had fallen in disarray with the countries elites as well as poorer parts of society. These officers legitimized their coup promising a prompt return to democracy.<sup>603</sup> Despite multiple delays and banning several candidates, in February 1978 the government's Supreme Council had called for general elections for July 16 of the same year.<sup>604</sup> Hence, by the time, the government increased the penalties for drug-related activities it was already on its way out of power. In summary, although, given the available information, the reason for the strong increase of penalties for drug-related crimes cannot be determined with absolute certainty, in the absence of strong domestic and international incentives, it appears that the country's fading leadership simply followed its own inclinations about drug use.

### **8.3 Prevention and Prohibition in the 1980s**

As outlined above, the democratically-elected government of Jaime Roldos Aguilera, who died in an airplane crash in 1981, abrogated the draconian penalties the military government

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<sup>603</sup> Ronn Pineo, *Ecuador and the United States: Useful Strangers* (Athens: The University of Georgia Press, 2007), 185.

<sup>604</sup> D.S. N° 2,261, Febrero 27, 1978, [534] R.O.

enabled through changes in the criminal code as one of his first measures in office. His successor, the former vice-president Oswaldo Hurtado, who was in office until the end of the term in 1984, did not make drug policy a priority of his administration. A national plan for the period from 1981 to 1985 to prevent improper drug use was the only significant measure Ecuador undertook at the time. According to Edwards, the plan “referred to the dangers of emphasizing enforcement over treatment and pointed to the importance of treating the issue of drug dependence as a result of specific social ills within Ecuadorian society.”<sup>605</sup>

The prioritization of treatment over enforcement changed with the election of León Febres Cordero, who was president from 1984 to 1988. The engineer from the Social Christian Party with strong conservative credentials aligned Ecuador to the acceleration of “war on drugs” led by the U.S. (see chapter V). On the one hand, Febres Cordero (1984-1988) sought to justify his government’s authoritarian tendencies against leftist segments of the opposition and ongoing human rights violations by publicizing “a non-existent and indemonstrable” link between subversive groups and drug trafficking mafias, so-called *narcoguerrillas*.<sup>606</sup> On the other, according to Jácome and Álvarez Velasco his government hoped to “benefit from the financial aid and the international cooperation that other governments were receiving.”<sup>607</sup>

During his presidency Ecuador signed bilateral drug control agreements with the United States and Peru. Furthermore, together with the presidents of Bolivia, Colombia, and Venezuela, he launched a declaration that called for greater international action and called drug trafficking an enemy of humankind.<sup>608</sup> On the domestic side, in 1986 his government sought to undertake a far-reaching reform of Ecuador’s legislation on drugs. The lawmakers, however, rejected the project

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<sup>605</sup> Edwards, “A Short History,” 50 (see intr., n. 8).

<sup>606</sup> Jácome and Álvarez Velasco, “The Evolution of Drug Policies in the Middle of the World,” 75.

<sup>607</sup> Ibid.

<sup>608</sup> Bonilla, “Ecuador: Actor internacional,” 24-26 (see n. 554)

given that they considered the proposed penalties of perpetual prison for multiple trafficking offenses, as well as several procedural requirements, unconstitutional and in contradiction to the country's criminal code.<sup>609</sup> As highlighted by the deputy Segundo Serrano Serrano from the Socialist Party: "It is not that I, in any way, want to assume the role of defending traffickers, but as the lawyer I am, I think that this is a malicious attack on the regime of penalties established in the criminal code of the Republic of Ecuador."<sup>610</sup> Furthermore, Deputy Moreno Ordoñez referred to the law as "a repressive shadow of fascist character," which was not compatible with the constitution.<sup>611</sup> In its stead, Ecuador's Congress decided to unite the eight decrees which constituted Ecuador's drug law at the time into a unified text called Law of Control and Supervision of the Traffic of Narcotic Drugs and Psychotropic Substances.<sup>612</sup> While the respective literature (see intro., n. 8) characterizes the 1987 codification as a new law, in the respective parliamentary session the president of the plenary of parliamentary commissions made clear that "the plenary could not include any modification of the law, even if it was absolutely reasonable."<sup>613</sup>

However, new initiatives to reform Ecuador's drug law emerged in the year 1990. During January and February, the country's Congress received two projects: one elaborated by experts of Ecuador's Catholic University and presented by Deputy René Maugé; and another one presented by the country's executive. During fourteen sessions, the Commission of the Civil and the

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<sup>609</sup> Congreso Nacional del Ecuador, "Acta no. catorce," Sesión: Vespertina del plenario de las comisiones legislativas, 26 de noviembre de 1986, ABFL, 5-29.

<sup>610</sup> Congreso, "Acta no. catorce," 17.

<sup>611</sup> Ibid. 26.

<sup>612</sup> Codificación de la Ley de Control y Fiscalización del Tráfico de Estupefacientes y Sustancias Psicotrópicas, Enero 15, 1987, [612] R.O. 2.

<sup>613</sup> Cámara Nacional de Representantes, "Acta no. dos," Sesión:- Vespertina del plenario de las comisiones legislativas-, Octubre 15 de 1986, ABFL, 10.

Criminal (“Comisión de lo Civil y Penal”) studied both laws and compared them with laws from other countries. On June 19, it presented a slightly modified version of the executive’s proposal to the Congress for discussion.<sup>614</sup> It was then approved, article by article, on July 31 and August 2, 6, and 7.<sup>615</sup> The following section provides a brief summary of the law’s most important changes and novelties in comparison to previous laws.

#### **8.4 Law 108**

The 1990 Law of Narcotics and Psychotropic Substances (law 108) has gained a reputation, and been criticized, for being one of the most prohibitionist and draconian laws in the region and Ecuadorian history. The strongest criticisms are: That the law has increased penalties for drug-related crimes; does not distinguish between different levels of responsibility within the trafficking chain; and does not distinguish between drug traffickers and drug users.<sup>616</sup> However, while the law has strong repressive elements, a closer look shows that these claims are only partially true, or not true at all.

One of the law’s most import novelties was the creation of the National Council for the Control of Narcotic and Psychotropic Substances (CONSEP, “Consejo Nacional de Control de Sustancias Estupefacientes y Psicotrópicas”). Law 108 provided CONSEP with a strong mandate to regulate and supervise the licit drug trade according to IDCR regulations; formulate and enact national plans and strategies to prevent illicit drug use, as well as their production and

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<sup>614</sup> Congreso Nacional del Ecuador, “Acta no. setenta y uno,” Sesión: vespertina de plenario de comisiones, 19 de junio de 1990, ABFL, 8.

<sup>615</sup> See: Congreso Nacional del Ecuador, “Acta no. noventa y dos,” Sesión: vespertina permanente del plenario de las comisiones, 31 de julio de 1990, ABFL; Congreso Nacional del Ecuador, “Acta no. noventa y cuatro,” Sesión: vespertina permanente del plenario de las comisiones legislativas, 2 de agosto de 1990, ABFL; Congreso Nacional del Ecuador, “Acta no. noventa y cinco,” Sesión: vespertina del plenario de las comisiones legislativas, 6 de agosto de 1990, ABFL; and Congreso Nacional del Ecuador, “Acta no. noventa y seis,” Sesión: matutina del plenario de las comisiones legislativas, 7 de agosto de 1990, ABFL.

<sup>616</sup> See: Álvarez Velasco, “Reformas y contradicciones,” 14, n. 2 (see intr., no. 9); and Edwards, “A Short History,” 50-53 (see intr., n. 8).

commercialization, and the repression of the illicit drug trade; issue directives that have to be followed by all entities involved in the regulation of the licit drug trade and the repression of illicit drug markets; gather and analyze data about the illegal drug trade; carry out investigations about the causes of drug addiction; and provide and coordinate training of public officials and entities in the private sector on the prevention of drug use.<sup>617</sup>

Another important novelty was the penalization of the possession of drugs for personal consumption. Art. 65 penalized such possession with a penalty range of one month to two years of prison. Whether or not the possession of drugs was for personal consumption was to be determined by doctors from the State Attorney's Office, considering the type of substance, the quantity the subject possessed, the level of tolerance to the drug, and the clinical history. If the suspect had no criminal history, judges could issue obligatory treatment as an alternative sentence. However, if the doctors concluded that the amount possessed exceeded the amount necessary for personal consumption, drug users faced penalties of twelve to sixteen years of prison for the mere possession of such substances.<sup>618</sup>

Apart from penalizing the possession of drugs, the new law defined a whole new set of drug-related crimes, many of which were punishable with twelve to sixteen years of prison, the highest penalty Ecuador's criminal code allowed and higher than the penalties for homicides (eight to twelve years), terrorism (four to eight years), and kidnapping (three to six years). Crimes penalized with the heaviest sentencing range included: The sowing or cultivation of plants that can be used to produce or manufacture narcotic drugs; the elaboration, production, fabrication, or preparation of narcotic drugs; the transportation and commercialization of drugs; the possession of drugs; the provision of properties for the deposition and consumption of drugs; illicit

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<sup>617</sup> This list is not exhaustive. See: Ley 108, supra n. 303, arts. 13 y 16, Agosto 7, 1990, [523] R.O.

<sup>618</sup> *Id.* art. 40, 64, 65, y 66.

enrichment through trafficking activities; and the organization and financing of illicit activities.<sup>619</sup> Crimes with penalties of eight to twelve years included: The harvesting of plants that can be used to produce or manufacture narcotic drugs; the offering, brokerage, or intermediation of drug sales; the dispersion of drugs without the consent of the person taking them; the production, maintenance, and trafficking of precursor chemicals; the unjustified loss of precursor chemicals for entities allowed to possess them; the repression of straw men; the change or hiding of evidence by public officials; bribery; and actions of bad faith to involve others in crimes.<sup>620</sup> Other punishable activities included: the supply of drugs to athletes; the possession of organic raw materials and other ingredients used for drug consumption (both six to nine years); the conversion or transfer of goods stemming from the drug trade; intimidation or the threat to involve others in drug-related crimes (both four to eight years); intimidation of those knowing about or investing drug-related crimes (four to six years); the supply of drugs to users; the unjustified prescription of medicines with drug content; the falsification, forging, or change of prescriptions; the sale of medicines with drug content without the proper prescription; and the production or commercialization of products advertising or promoting drug use (all three to six years).<sup>621</sup> Art. 90 also prescribed that if a suspect was found guilty of multiple drug-related offenses, penalties would accumulate to a limit of 25 years of prison.<sup>622</sup> The law's repressive elements, however, did not end with the penalties. Art. 116 stated that drug-related suspects were found guilty until proven innocent, a presumption that was declared unconstitutional in 1997 and was since then eliminated from the law.<sup>623</sup>

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<sup>619</sup> *Id.* arts. 59, 60, 62, 63, 64, 69, 76, y 84.

<sup>620</sup> *Id.* arts. 59, 61, 67, 73, 78, 79, 80, y 82.

<sup>621</sup> *Id.* arts. 67, 68, 70, 71, 72, 75, 77, 81, 83, y 87.

<sup>622</sup> *Id.* art. 90.

<sup>623</sup> *Id.* art. 116.



Ultimately, the law included a series of articles, which converted the prescriptions and recommendations of the 1988 Convention into domestic law, including numerous articles regarding the confiscation of goods, assets, and properties stemming from the drug trade; mutual judicial assistance; new restriction on the trade with precursor chemicals; and rules for the destruction of confiscated drugs.<sup>624</sup>

The timing of the law, shortly after the conclusion of the 1988 Convention, and the acceleration and militarization of the “war on drugs” in the Andean region, has led several authors to conclude that the law has been driven by U.S. pressure and material incentives. Hence, the following section starts with an analysis of the international context. It then moves on to analyze Ecuador’s domestic context, drawing on media sources and parliamentary debates.

### **8.5 Analysis of Law 108**

Although the law’s justification did not explicitly mention the 1988 Convention, it is evident that the authors of the law intended to follow its instructions meticulously. However, while the Convention had a strong impact on the law’s content, this does not explain why Ecuador was so fast in signing (1989), ratifying (February 1990), and incorporating its instructions into a comprehensive domestic legislation (August 1990). At the time, there was clearly no loss of losing international standing (incentive I2).

From the available documents, it is unclear to what degree the United States pressured Ecuador to reform its drug laws. However, two factors contradict the view that the law was the result of direct U.S. pressure (corresponding to incentive I1). First, at the time the primary concern of the U.S. was to eradicate drug supplies in the leading producer countries. When the presidents of the United States, Bolivia, Colombia and Peru convened in Cartagena in February 1990 to negotiate a multilateral anti-narcotics strategy, Ecuador was not invited. Furthermore,

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<sup>624</sup> *Id.* arts. 3, 7, 8, 10, 105, 107, 118, 120, 122, y 129.

while the U.S. decertification process, created in 1986 (see chapter V), provided a powerful tool to withdraw foreign aid and access to credits, different to the early 1970s, there were no high-profile public proclamations that Ecuador was under risk of losing U.S. support. Second, as outlined below Ecuador's domestic context was already becoming more favorable regarding a comprehensive reform of the country's drug laws. Although these factors do not preclude the possibility that lower-level U.S. officials campaigned for legal changes and more effective control mechanisms, it is unlikely that such pressures have been the primary cause of the law.

A more convincing explanation is that Ecuador sought to obtain prestige and material resources by taking on a leadership role in the developing IDCR and the U.S.-led "war on drugs" (corresponding to incentive I3). After Chile, Ecuador was the second South American country to ratify the 1988 Convention and only 5 months later approved a fully-fledged drug policy reform, seeking to create new, and reinforce existing, control mechanism. Furthermore, Ecuador issued a public protest after being excluded from the drug policy summit in Cartagena.<sup>625</sup> The Ecuadorian government accompanied these actions with an active promotion of the country as a stabilizing force in the regional drug trade. On the one hand, it advertised the absence of a large coca and cocaine industry as a success of its efforts. On the other hand, the country's center-leftist president, Rodrigo Borja Cevallos (1988-1992), argued that his government was doing everything it could to prevent Ecuador from being penetrated by drug traffickers, while highlighting the need for material support:

We do not refine cocaine. Drugs are not part of our exports and neither of our economy, but naturally this does not exclude us from our responsibility to join forces with other countries to fight together against this modern vice of drug trafficking and consumption, along which exists an enormous economic power. (...) I talked to President Bush

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<sup>625</sup> Jácome and Álvarez Velasco, "The Evolution of Drug Policies in the Middle of the World," 76 (see n. 556).

bilaterally about financing certain actions, right now while we still have the power to do them, so that my country does not transform into a producer of drugs. Until now our fight against drugs has been financed almost exclusively by Ecuadorian capital, but this financing is not enough.<sup>626</sup>

Moreover, following the Cartagena summit, the United States enacted the Andean Trade Preference Act (ATPA), which eliminated tariffs for multiple products for Andean countries. Gaining preferred access to the U.S. market was one of the primary goals of Borja's government. During his trip to Washington D.C. in July 1990, President Bush applauded Borja for his country's efforts in the fight against illicit narcotics and rewarded Ecuador by including it into ATPA.<sup>627</sup>

Ecuador's active promotion of its drug policies indicates that, rather than being the result of direct pressure, the country aimed at taking advantage of a changing international context, in which the United States was providing greater resources and trade benefits to countries willing to join the "war on drugs." According to this explanation, Ecuador's executive, which redacted the law, pushed for the reform to signal and underline its commitments to the international community, before it was asked to do so.

At the same time, however, Ecuador's domestic context strongly favored the government's efforts. As outlined above, drug trafficking became a more important issue in Ecuadorian politics in the second half of the 1980s under the presidency of Febres Cordero (1984-1988). Although his initiative for a new legislation failed, due to the unconstitutional nature of its high penalties and extradition requirements (see above), most of the legislators discussing the law identified with the goal of modernizing the country's drug laws. The deputy

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<sup>626</sup> Translated from: Leopoldo Robayo, "Relaciones Ecuador Estados Unidos: Presidencia de Rodrigo Borja," en *Las relaciones Ecuador-Estados Unidos en 25 años de democracia (1979-2004)*, ed. Javier Ponce Leiva (Quito: Ediciones Abya-Yala y FLACSO, 2005), 104.

<sup>627</sup> Ibid. 105.

Enrique Delgado Coppiana, from the opposition party Democratic Left (“Izquierda Democrática”) even called for the military to be included into the list of national institutions responsible for drug control: “Considering the seriousness that the drug trafficking problem is currently acquiring in the country, the State is obliged to mobilize all of the resources it can possibly give, to combat this plague; therefore, for the commission to study, I request very discreetly to consider the possibility of including into the national organisms for the control and inspection of licit or illicit trafficking, the armed forces.”<sup>628</sup>

Furthermore, the amount of reporting about drug trafficking and consumption in “El Comercio” and “El Universo,” both nationally and internationally, increased significantly in the 1990s. In the months of June and July 1990, “El Comercio” featured a total of 26 articles about drugs (ten in June and 16 in July). In the same period, “El Universo” from Guayaquil featured 37 (24 for June and 13 for July).<sup>629</sup> While several articles expressed concern about trafficking activities, drug consumption, and a deteriorating security situation in Ecuador, others reported about the rising levels of violence and the fights between security forces and the Medellín cartel in neighboring Colombia.<sup>630</sup> Within this context the Ecuadorian government repeated the same discourse it advanced internationally to its domestic constituents: drug trafficking does not

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<sup>628</sup> Congreso Nacional del Ecuador, “Acta no. Trece,” Sesión: De plenario de comisiones, 25 de noviembre de 1986, ABFL, 63.

<sup>629</sup> Newspapers were accessed at the library Aurelio Espinosa Pólit. Photocopies are available upon request.

<sup>630</sup> *El Comercio*, “Guerra entre policía y narcos,” 15 de junio de 1990, A-11; *El Universo*, “Alerta contra labor de narcos,” 1 de junio de 1990, 10; *El Universo*, “Guerra sin ganadores desgasta a Colombia,” 15 de junio de 1990, 13; *El Universo*, “Redada de expendedoras de drogas en la capital,” 15 de junio de 1990, 13; *El Universo*, “Nuevos sembríos de marihuana en Manabí,” 13 de julio de 1990, 9; *El Universo*, “El auge delincencial,” 15 de julio de 1990, 7; *El Universo*, “Niños y Seguridad,” 21 de julio de 1990, 26; *El Universo*, “Inseguridad,” 29 de julio de 1990, 6; and *El Universo*, “Decomisan armas, dinamita, granadas y hasta cocaína,” 3 de agosto de 1990, 12.

constitute a security threat in Ecuador, but in order to prevent this from happening Ecuador needs to strengthen its controls.<sup>631</sup>

Although it is not entirely clear to what extent public opinion supported the reform (incentive D1), there was no opposition or questioning of the law and its numerous repressive elements in the country's two most important newspapers. At the same time, there are several traces of social actors demanding a tougher stance on drugs (incentive D2). On June 26, an op-ed called "Say No to Drugs," called for a stronger role of the state in the prevention of drug use. The same article claimed that drug addicts are egocentric and individualistic, lazy, immature, manipulative, undisciplined, and cannot distinguish between good and bad.<sup>632</sup> On July 4 and 5, both newspapers reported about a survey, carried out by the United Nations, in which Ecuador's children expressed the demand for better protection from drugs.<sup>633</sup> Ultimately, on June 23 "El Universo," reported about a music festival called "No to Drugs," which promoted ending drug use among the country's youth, organized by the "Attorney General's Office" and the "Education Direction of the Province of Guayas."<sup>634</sup>

Given the alarmist and moralistic reporting of the country's media, and the prominent demand to do more to protect the Ecuador's youth from drugs, it is not surprising that prior to the executive's initiative Ecuador's Congress was already discussing a project for a drug policy reform, presented by Deputy René Maugé and elaborated by legal experts of Ecuador's Catholic University (see above). In the reading of the law, there was unanimous support for the idea that Ecuador needed a reform of its drug law, especially regarding the criminalization of several drug-

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<sup>631</sup> *El Universo*, "Ministro Vallejo: Influencia de dinero de drogas no es fundamental para el país," 5 de junio de 1990, 11.

<sup>632</sup> *El Universo*, "Dile no a las drogas," 26 de junio de 1990, actualidad.

<sup>633</sup> *El Comercio*, "Niños exigen protección contra las drogas," 5 de julio de 1990, A3; and *El Universo*, "Protección contra drogas y abuso sexual piden los niños," 4 de julio de 1990, 7.

<sup>634</sup> *El Universo*, "Festival 'no a las drogas,'" 23 de junio de 1990, actualidad última.

related activities not captured in previous laws.<sup>635</sup> Hence, it is entirely possible that Ecuador would have undertaken a reform of its drug laws without the executive's impulse and its goal to gain preferred access to the U.S. market.

While the domestic context proved favorable for the reform, a crisis (incentive D3), like a sudden rise in drug consumption or drug trafficking, was clearly not a cause. Although some voices claimed that drug trafficking and consumption in Ecuador was on the rise, there are no traces of a specific incident or a culmination of demands that compelled the government to act. In fact, the government was able to maintain a discourse that drug trafficking was not (yet) a major problem in Ecuador.

Thus, as outlined above, Ecuador's 1990 drug policy reform was the result of the government's goal to brand itself as a responsible country and leader in regional drug control efforts to obtain resources and preferred market access to the U.S, facilitated by a domestic context, which was highly favorable to a reform.

While the reasons for reforming the law can be well explained, the criminalization of drug use remains puzzling and merits further attention. It is puzzling because at the time all South American countries, except Argentina and Brazil, had abolished the criminalization of drug use. Furthermore, as outlined above, never in the country's history had Ecuador decided to do so. The parliamentary debates provide only limited insights about why the criminalization of drug users proceeded. In the protocol of the first debate when the legislators discussed the respective articles are missing in the documents provided by the Archive-Library of Ecuador's Legislative Function. The second debate reveals that Ecuador's legislators changed the way drug consumption was penalized. The original article stated that the possession of less than 20 grams of marijuana or five grams of hash or three grams of cocaine or 25 grams of any other illicit drug would lead to a

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<sup>635</sup> Congreso Nacional del Ecuador, "Acta no. veinte y cinco," Sesión: Plenario de las comisiones legislativas permanentes," 2 de enero de 1990, ABFL; and Congreso Nacional del Ecuador, "Acta no. veinte y seis," Sesión: Vespertina del plenario de las comisiones legislativas," 3 de enero de 1990, ABFL.

lowering of the penalty by a third to half of the penalty (of twelve to sixteen years). Furthermore, if the authorities determined an addiction the penalty could be lowered even further to a range of one month to two years of prison. The article also foresaw the possibility of issuing compulsory treatment as an alternative form of punishment.<sup>636</sup> This formulation of the article led to a wave of protest by several deputies. On the one hand, they complained about the lowering of the penalty for the possession of small quantities of drugs, which could be exploited by small-scale traffickers. On the other hand, they did not agree that drug addicts should be punished less severely than a casual consumer.<sup>637</sup> Hence, the legislators decided to abolish a lowering of the penalties according to quantities but decided to lower the penalty (to a range of one month to two years) if the possession was considered for personal consumption by a judge. Moreover, in case doctors determined a dependency, they could suspend the penalty and issue compulsory treatment. The new version of the article was approved with 13 votes in favor out of the 16 deputies that were present at the time of the vote.<sup>638</sup> In no part of the discussion, however, did a legislator question the criminalization of drug users as such.

Given a lack of access to the documents of the executive's commission that redacted the law, the most likely answer is that the authors simply followed the instructions of the 1988 Convention. As outlined in chapter III, said convention criminalized for the first time the possession of drugs for personal consumption, while allowing governments to issue alternative penalties to imprisonment. It appears that Ecuadorian authorities adopted these instructions one by one.

In addition to the above-outlined legal changes, in 1998, a police reform created a new anti-narcotics division, which was composed of no less than 13 new police units responsible for

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<sup>636</sup> Congreso, "Acta no. noventa y cinco," 41-42 (see n. 615).

<sup>637</sup> Ibid. 42-43.

<sup>638</sup> Ibid. 60-64.

enforcing “Law 108.”<sup>639</sup> Furthermore, in 2003 an anti-narcotics agreement with the United States was leaked to the press. According to the treaty, the Ecuadorian police would receive additional funding, equipment, and new police stations if it met certain targets: a ten percent rise of confiscated drugs; a 15 percent increase of impounded arms and chemical precursors; and a twelve percent increase of persons detained, as well as court hearings held for drug offenses.<sup>640</sup>

These far-reaching legal, institutional, and operational changes had multiple effects on the country’s criminal justice system. While Ecuador’s prison infrastructure was built for approximately 7,000 inmates, between 1989 and 2007, its prison population rose from 6,978 to 18,000, reaching the highest percentage of prison overcrowding in Latin America (157 percent). Of all detainees, 34 percent were charged for drug offenses. In urban areas this number rose to 45 percent. This trend is even more pronounced for the female prison population, whose percentage of detainees for drug-related offenses oscillated between 65 and 79 percent from 1989 to 2004.<sup>641</sup>

When the self-proclaimed leftist Rafael Correa assumed power in 2007 it appeared that his government was dedicated to a more nuanced approach, favoring public health and harm reduction over repression and prohibition. However, as outlined below, during his second term prohibition made a full-blown comeback. The following section outlines the first series of changes in greater detail, followed by a concise analysis of why the Ecuadorian government decided to move away from prohibition.

### **8.6 Correa’s Tolerant Wave (2007-2014)**

After the government of Rafael Correa entered office in 2007, it undertook a series of measures, which moved the country away from its prohibitionist past. First, in January 2008

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<sup>639</sup> Policía Nacional del Ecuador, “Breve reseña histórica de la Dirección Nacional Antinarcóticos,” sin fecha, <http://www.policiaecuador.gob.ec/historia-3/>.

<sup>640</sup> Edwards, “A Short History,” 51 (see intr., n. 8).

<sup>641</sup> Ibid. 54–55



Correa issued a presidential decree to pardon drug traffickers, who had declared guilty, were first-time offenders, had been found in possession of no more than two kilograms of drugs, and had completed at least ten percent or one year of their sentence.<sup>642</sup> Second, article 364 of the country's new constitution, which was approved by a referendum on September 28, 2008, decriminalized drug consumption and established that addictions were to be treated as an issue of public health.<sup>643</sup> Third, in 2013 CONSEP released a non-binding table, which allowed judges to determine how much possession of a drug could be considered to count as personal consumption. The table stated that up to ten grams of marijuana, two grams of cocaine paste, one gram of powder cocaine, and 0.1 gram of heroin could be judged as personal consumption.<sup>644</sup> Fourth, Ecuadorian lawmakers passed a new criminal code (Código Orgánico Integral Penal, COIP), which was approved in 2014 and deepened the influence of harm reduction in the country's legal framework. Article 220 of the new code distinguished between (1) large-, high-, medium-, and small-scale traffickers; (2) traffickers and growers; and (3) users and small-scale traffickers. According to the new law, drug offenders were to be charged according to how much of a particular drug they possessed, with maximum penalties of ten to thirteen years for large-scale trafficking, five to seven years for high-scale trafficking, one to three years for mid-level trafficking, and two to six months for small-scale trafficking.<sup>645</sup> In July 2014, CONSEP presented a new scale, which outlined how much possession of a particular drug would fall into the different categories. Table 13 outlines the quantities that define each category for different drugs:

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<sup>642</sup> Álvarez Velasco, "Reformas y contradicciones," 6 (see intro., n. 9).

<sup>643</sup> Constitución de la República del Ecuador art. 364.

<sup>644</sup> *El Telégrafo*, "La nueva tabla para consumo es una guía para jueces," 18 de junio de 2013, <https://www.eltelegrafo.com.ec/noticias/judicial/12/la-nueva-tabla-para-consumo-de-drogas-es-una-guia-para-jueces>.

<sup>645</sup> COIP, *supra* n. 328, art. 220.

**Table 13: CONSEP's 2014 Scale to Define Trafficking Categories for Different Drugs**

| Scale<br>(grams) | Heroin |     | Cocaine paste |       | Powder<br>Cocaine |       | Marijuana |        | All psychotropic<br>drugs |      |
|------------------|--------|-----|---------------|-------|-------------------|-------|-----------|--------|---------------------------|------|
|                  | Min    | Max | Min           | Max   | Min               | Max   | Min       | Max    | Min                       | Max  |
| Small            | >0     | 1   | >0            | 50    | >0                | 50    | >0        | 300    | >0                        | 2.5  |
| Medium           | >1     | 5   | >50           | 500   | >50               | 2,000 | >300      | 2,000  | >2.5                      | 5    |
| High             | >5     | 20  | >500          | 2,000 | >2,000            | 5,000 | >2,000    | 10,000 | >5                        | 12.5 |
| Large            | >20    |     | >2,000        |       | >5,000            |       | >10,000   |        | >12.5                     |      |

Source: No. 002 CONSEP-CD-2014, Julio 9, 2014, [288, Segundo Suplemento] R.O. [1].

The highest penalty for drug-related offenses, 16 to 19 years, could be issued to those financing and organizing drug production and commercialization.<sup>646</sup> Further penalties were: one to three years of prison for illicit harvesting and cultivation, the dispersion of drugs without the consent of the person taking them, and the unjustified prescription of medicines with drug content; and five to seven years for the involvement of others in drug-related crimes without their consent.<sup>647</sup> Apart from these legal and technical changes, Ecuador enacted two further measures, which, some considered, increased Ecuador's independence in drug-related issues. Since 2007, Correa had announced that the lease agreement with the U.S. for a military base in Manta, which played a crucial role in interdicting illicit drug shipments, would not be renewed after it ended in 2009.<sup>648</sup> Similarly, he announced to unilaterally withdraw Ecuador from the Andean Trade Promotion and Drug Eradication Act (ATPDEA) so that the United States could not condition the country's policies.<sup>649</sup>

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<sup>646</sup> *Id.* art. 221.

<sup>647</sup> *Id.* art. 222, 223, 224, y 225.

<sup>648</sup> *El Tiempo*, "Ecuador le pidió a Estados Unidos desalojar la base militar en Manta," 29 de julio de 2008, <https://www.eltiempo.com/archivo/documento/CMS-4417675>.

<sup>649</sup> *Europa Press*, "Ecuador.- Rafael Correa dice que el ATPDEA no es una 'limosna' y que no aceptará que EEUU condicione su política," 23 de marzo de 2007, <https://www.europapress.es/internacional/noticia-ecuador-rafael-correa-dice-atpdea-no-limosna-no-aceptara-eeuu-condicione-politica-20070323195514.html>.

The paragraphs below show that the above-outlined steps towards a less prohibitionist drug policy is best explained as the result the successful placement of demands by social movement, which were partially designed and implemented by a CONSEP leadership that was sympathetic to harm reduction. Furthermore, some of the measures allowed President Correa to promote and integrate drug policy into a discourse of social justice.

From the available data, it appears that the above measures were neither driven by public opinion, nor a crisis or demand of the government to act in unprecedented ways because of a specific problem (incentives D1 and D3). Although it is not clear what type of drug policy Ecuadorians preferred at the time, neither drug trafficking nor drug consumption ranked high in opinion polls about the country's most important problem. According to data from Latinobarómetro (see table 14), in most years from 2007 to 2013 (there is no data for 2014), only an estimated 0.1 or 0.2 percent saw drug consumption or drug trafficking as the country's most important problem (see table 14 below). Only in the years 2011 and 2013, drug trafficking rose slightly in importance, to 0.5 and 1.5 percent respectively. Similarly, drug consumption gained some in importance in the year 2013, when the percentage of subjects who saw it as the country's most important problem rose to 1.2 percent.

**Table 14: Perception of Drug-Related Problems in Ecuador**

| In percent                              | 2007 | 2008 | 2009 | 2010 | 2011 | 2013 |
|---|------|------|------|------|------|------|
| Drug Trafficking most important problem | 0.1  | 0.1  | 0.2  | -    | 0.5  | 1.5  |
| Drug Consumption most important problem | 0.2  | 0.1  | 0.2  | 0.2  | 0.2  | 1.2  |

Source: Latinobarómetro Internat Database

However, the domestic context was favorable in other ways. During his 2006 election campaign, Rafael Correa built a discourse based on the demands of various social movements and civil society groups, which overwhelmingly supported his candidacy (incentive D2).<sup>650</sup> In

<sup>650</sup> Andrés Ortiz Lemos, "Taking Control of the Public Sphere by Manipulating Civil Society," *European Review of Latin American and Caribbean Studies* 98 (April 2015): 32.

opposition to what Correa referred to as a “partyarchy” (“partidocracia”), *i.e.* the hegemony of the elite-based traditional Ecuadorian parties, his own political movement “Alianza País” did not present any candidates to the National Congress, an institution he had promised to abolish. Instead, his government established a Constituent Assembly with the aim to write a new constitution.<sup>651</sup> Although the discussions and formulations of its articles were dominated by the executive, the social movements, which had helped to secure Correa’s victory were able to present multiple demands. According to Gabriel Buitron, a long-time activist, defender of anarchism, and founder the NGO “Ecuador Cannábico,” many social movements and organizations from civil society campaigning for individual and collective rights had waited for 30 or 40 years for a leftist government they could identify with. Hence, for many of them the election of Correa signified an unprecedented possibility to advance their rights-based agenda.<sup>652</sup> According to a member of Quito’s city council from “Alianza País,” almost every policy issue at the time was viewed through the lens of rights.<sup>653</sup>

Even though many of the 2,300 proposals were left aside, several ones made it into the final document. These included the creation of a plurinational state, collective rights, communitarian economic models, and the decriminalization of drug use.<sup>654</sup> Ortiz Lemos characterizes the inclusion of these demands as “‘cultural packages,’ delivered through slogans”

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<sup>651</sup> Andrés Ortiz Lemos, “Taking Control of the Public Sphere,” 31-32.

<sup>652</sup> Buitron, in discussion with the author, May 2018.

<sup>653</sup> Member of Quito’s City Council, in discussion with the author, May 2018.

<sup>654</sup> At the time, decriminalization was propagated by the collective Diabluma, headed by Felipe Ogaz, which apart from its advocacy for radical socialist models of governance, campaigned for the rights of women, urban tribes, animals, and drug users (Andrés Ortiz Lemos, *La sociedad civil y el labirinto de la revolución ciudadana* [Quito: FLACSO Ecuador 2013], 339-346).

without any real substance.<sup>655</sup> However, as shown above, at least initially the decriminalization of drug use had a more substantial impact.

Although the decriminalization of drug users can be interpreted as a successful placement of a demand by civil society, at a political moment, which favored the inclusion of such demands, the above changes also allowed Correa to feed his discourse of social justice. When Correa, whose own father was convicted as a drug courier and served a prison sentence in the United States, issued the pardon of convicted drug mules in 2008, he argued that trafficking organizations were taking advantage of people in precarious economic situations and that the heavy penalties given to people already carrying the burden of misery were in no relation to the offense.<sup>656</sup> He added, “It is outrageous that the Ecuadorian law is the same for the *capo* Rodríguez Orejuela, from the Cali cartel, as for the poor woman, single mother, unemployed, who dared to carry 300 grams of drugs.”<sup>657</sup> Buitron even recognized changes in Correa’s personal thinking about drugs over time: “He was the one talking about personal liberties and the right to carry a dose for personal consumption, he ended the contract of the U.S. military base in Manta, he withdrew from the preferences of the ATPDEA, and he himself was the one who gave an impulse to perceive marijuana in a different way.”<sup>658</sup> The fact that the secretary general of CONSEP during Correa’s tenure, Rodrigo Vélez, was known for his preference for prevention, public health, and alternative development in areas affected by drug trafficking, may have further facilitated the turn to a less prohibitionist drug policy model. Prior to a CND conference in

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<sup>655</sup> Ortiz Lemos, “Taking Control of the Public Sphere,” 33-34.

<sup>656</sup> *El Diario*, “Correa pide perdón e indulto para las ‘mulas,’” 15 de enero de 2008, <http://www.eldiario.ec/noticias-manabi-ecuador/66704-correa-pide-perdon-e-indulto-para-las-mulas/>.

<sup>657</sup> *El Tiempo*, “Perdón y olvido para mulas,” 17 de enero de 2008, <http://www.eltiempo.com/archivo/documento/MAM-2795727>.

<sup>658</sup> Buitron, in discussion with the author, May 2018.

Vienna in 2014, Vélez was campaigning for a renegotiation of the international drug control conventions, stating the following:

We have decided to follow the same path, the same formula, which does not work. (...)

This policy has the effect that human rights have been systematically violated through disproportional penalties. (...) Latin America still has the dead victims while democracy is at risk in many countries and this cannot continue.<sup>659</sup>

Veléz remarks indicate that Ecuador may have been seeking some leadership and recognition for its efforts to move away from prohibition (incentive I3). While a deepening of the reform initiatives may have put Ecuador in a good position to exercise a degree of leadership within the group of countries seeking to reform drug policy, since 2015 Correa's government initiated a series of measures that put Ecuador back on a prohibitionist path. The following paragraphs provide a brief summary of these changes, followed by an explanation of why they took place.

### **8.7 The Return of Prohibition under Correa (2015-)**

Ecuador's shift towards harm reduction came to a sudden end in September 2015. When addressing the country's citizens in his regular TV and radio program "Enlace Ciudadano" on September 4, Correa stated the following: "We want to end drug use among our youth and will put micro traffickers into jail. The rest is pure deception."<sup>660</sup> In the same program, he clarified: "You can call me authoritarian, arrogant, dictator, whatever you want, but I will not allow our

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<sup>659</sup> *El Universo*, "Ecuador aboga por refundar los tratados internacionales sobre drogas," 14 de marzo de 2014, <https://www.eluniverso.com/noticias/2014/03/14/nota/2362001/ecuador-aboga-refundar-tratados-internacionales-sobre-drogas>.

<sup>660</sup> *El Ciudadano*, "Jefe de estado pide acelerar proceso para que CONSEP pase al Ejecutivo," 5 de septiembre de 2015, <http://www.elciudadano.gob.ec/jefe-de-estado-pide-acelerar-proceso-para-que-consep-pase-al-ejecutivo/>.

youth to drug itself. I have demanded there to be stronger sanctions for drug traffickers.”<sup>661</sup> Following his statements, the president ordered CONSEP to present a new table (see table 15 below) to make the quantities that define each category more restrictive. The government agency followed suit and presented a new table on September 10. The revised scale reduced the maximum possession for low-level trafficking to 0.1 grams for heroin, one gram for cocaine, and 20 grams for marijuana.<sup>662</sup> Critics of the new scale argued that it became so restrictive that it is effectively punishing drug consumption, thereby violating the normative framework of the 2008 constitution, and the 2014 COIP, both of which propose the opposite.<sup>663</sup>

**Table 15: CONSEP’s Revised 2015 Scale**

| Scale (grams) | Heroin |     | Cocaine paste |       | Powder Cocaine |       | Marijuana |        | All psychotropic drugs |      |
|---------------|--------|-----|---------------|-------|----------------|-------|-----------|--------|------------------------|------|
|               | Min    | Max | Min           | Max   | Min            | Max   | Min       | Max    | Min                    | Max  |
| Small         | >0     | 0.1 | >0            | 2     | >0             | 1     | >0        | 20     | >0                     | 0.09 |
| Medium        | >0.1   | 0.2 | >2            | 50    | >1             | 50    | >20       | 300    | >0.09                  | 2.5  |
| High          | >0.2   | 20  | >50           | 2,000 | >50            | 5,000 | >300      | 10,000 | >2.5                   | 12.5 |
| Large         | >20    |     | >2,000        |       | >5,000         |       | >10,000   |        | >12.5                  |      |

Source: No. 001-CONSEP-CD, Septiembre 10, 2015, [586] R.O.

Simultaneous to the redefinition of the categories, President Correa asked the legislators of his party to change the criminal code by increasing the penalties for low-level trafficking from a range of two to six months to one to three years, and medium-level trafficking from one to three years to five to seven years. Through the elevation of penalties, the law empowered judges to issue preventive prison for drug-related suspects.<sup>664</sup> Even though 15 members of the governing

<sup>661</sup> Translated from: *El Mercurio*, “Correa pide penas severas por drogas,” 6 de septiembre de 2015, <https://www.elmercurio.com.ec/494207-correa-pide-penas-severas-por-drogas/>.

<sup>662</sup> Redón, “CONSEP presentó nuevas escalas sobre tráfico de drogas,” (see ch. V, n. 330).

<sup>663</sup> Daugherty, “Ecuador Toughens Drug Laws, Muddles Policy,” (see ch. V, n. 331).

<sup>664</sup> Jorge V. Paladines, “De la represión a la prevención: Reforma y contrarreforma de la política de drogas en Ecuador,” en *Seguridad regional en América Latina y el Caribe: Anuario 2015*, editado por Catalina Niño Guarnizo (Bogotá: Friedrich-Ebert-Stiftung en Colombia, 2015), 164.

party “Alianza País” abstained the vote out of protest, on October 1, 2015 the proposed changes were incorporated into a new law.<sup>665</sup> Moreover, the law created a new Technical Secretary of Drugs, which corresponded directly to the executive, while it abolished CONSEP, which used to be controlled by the legislative.<sup>666</sup> The first head of the new agency was a former police commander, General Rodrigo Suarez, while Rodrigo Vélez was dismissed of his functions.<sup>667</sup> On top of the changes in the legal and institutional framework, the minister of the interior José Serrano proclaimed the combat of micro-trafficking as the police’s most important goal, and ordered 85 percent of the country’s anti-narcotics forces to target micro-trafficking, while only 15 percent of the personnel were to investigate large-scale, international trafficking organizations.<sup>668</sup>

The reasons for this shift were a series of interrelated domestic developments, which incentivized the government to take on more hardline positions in the area of public security and drug policy. Since 2010, Ecuador experienced a deterioration in the perception of public security. This is evident in the Latinobarómetro survey’s question about the most important problem in Ecuador. While in 2007, 7.4 percent of the subjects responded that crime and public security was the biggest problem, in 2010 this number rose to 23.8 percent. In 2011, this number climbed even higher to 32.8 percent (see table 16).

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<sup>665</sup> Ley Orgánica de Prevención Integral del Fenómeno Socio Económico de las Drogas y de la Regulación y Control del Uso de Sustancias Catalogadas Sujetas a Fiscalización, supra n. 329.

<sup>666</sup> Javier Ortega, “Ley de drogas castiga al microtráfico con penas superiores a un año,” *El Comercio*, 1 de octubre de 2015, <http://www.elcomercio.com/actualidad/asamblea-aprobo-leyddrogas-ecuador.html>.

<sup>667</sup> Diego Bravo, “Excomandante de la Policía Nacional fue designado Secretario Técnico de Drogas,” *El Comercio*, 30 de noviembre de 2015, <http://www.elcomercio.com/actualidad/excomandante-policianacional-secretario-drogas.html>.

<sup>668</sup> Fernando Melina, “Más policías para frenar al microtráfico,” *El Comercio*, 22 de septiembre de 2015, <http://www.elcomercio.com/actualidad/policias-microtrafico-droga-ecuador.html>.



**Table 16: Perception of Crime/Public Security and Drug Consumption as Ecuador's Most Important Problem**

| In percent                                   | 2007 | 2008 | 2009 | 2010 | 2011 | 2013 | 2015 | 2016 |
|--|------|------|------|------|------|------|------|------|
| Crime/public security most important problem | 7.4  | 10.2 | 13   | 23.8 | 32.8 | 31.2 | 12.4 | 7.2  |
| Drug consumption most important problem      | 0.2  | 0.1  | 0.2  | 0.2  | 0.2  | 1.2  | 5.5  | 4.8  |

Source: Latinobarómetro Internat Database

Given the available data it is not entirely clear what caused this sudden rise. Although between 1980 and 2010 Ecuador's homicide rate increased about three times, between 2007 and 2010 it rose only mildly, from 16 to 17.6 per 100,000 habitants. In 2011, this number even dropped to 15.4.<sup>669</sup> The occurrence of kidnapping also dropped slightly from 0.3 to 0.2 cases per 100,000 population between 2006 and 2010.<sup>670</sup> The number of assaults dropped even more significantly from 47.1 in 2006 to 30.2 in 2010.<sup>671</sup> However, from 2010 to 2011 the number of robberies per 100,000 population increased from 362.3 to 476.2 (31.44 percent), indicating that the worsening perception of the security situation was not entirely unfounded.<sup>672</sup>

Analysts also highlight the specific role of targeted assassinations by criminal groups in certain areas and the proliferation of these groups across the country, as well as the media, which placed the issue of public security on the political agenda.<sup>673</sup> Moreover, in February 2012 Ecuador's armed forces presented a report of social responsibility, warning that if the government

<sup>669</sup> Grupo de Trabajo en Seguridad Internacional (ILDIS-FES), "El modelo ecuatoriano en seguridad integral," en *Seguridad regional en América Latina y el Caribe: Anuario 2012*, editado por Hans Mathieu y Catalina Niño Guarnizo (Bogotá: Friedrich Ebert Stiftung en Colombia, 2012), 140; and Knoema, "Ecuador – Homicide Rate," no date, <https://knoema.com/atlas/Ecuador/Homicide-rate>.

<sup>670</sup> Knoema, "Ecuador – Kidnapping Rate," no date, <https://knoema.com/atlas/Ecuador/Kidnapping-rate>.

<sup>671</sup> Knoema, "Ecuador – Assault Rate," no date, <https://knoema.com/atlas/Ecuador/Assault-rate>.

<sup>672</sup> Knoema, "Ecuador – Robbery Rate," no date, <https://knoema.com/atlas/Ecuador/Assault-rate>.

<sup>673</sup> Grupo de Trabajo, "El modelo ecuatoriano en seguridad integral," 140.

did not take immediate action, the problem of drug trafficking would get out of control.<sup>674</sup> In the following, Correa's government, which faced a presidential election in February 2013, took on public security and the combat of organized crime as one of its priorities and granted the armed forces a greater role in fulfilling these domestic tasks.<sup>675</sup>

Simultaneously, several of the social movements and political parties that supported Correa initially left the coalition and were replaced by more conservative forces. According to Lemos Ortiz, the distancing between Correa and his former allies is the result of the government's attempt to coopt and control civil society groups.<sup>676</sup> Buitron explains the distancing as the result of programmatic differences about the organization of the economy. While several groups wanted to implement more radically socialist and communal models of economic governance, Correa and his ministers wanted to merely perfect or humanize capitalism. Hence, in the process many organizations distanced themselves from Correa, which resulted in a loss of "progressive thinking" in a government that he referred to as center-left or center-right.<sup>677</sup>

Within this context, Ecuador experienced the emergence of a new drug called "H," a highly lethal adulteration of heroin, which became popular among the poorer parts of society in Guayaquil, Ecuador's largest city, and other areas along the coast, causing panic and shockwaves in the country's media.<sup>678</sup> Moreover, CONSEP released a study showing that high-school students between 12 and 17 years of age had relatively easy access to marijuana within and around their schools. Soon after, the police began carrying out preventive campaigns about the risks of drug

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<sup>674</sup> Grupo de Trabajo, "El modelo ecuatoriano en seguridad integral," 140.

<sup>675</sup> Ibid. 144-145.

<sup>676</sup> Ortiz Lemos, "Taking Control of the Public Sphere," (see n. 650).

<sup>677</sup> Buitron, in discussion with the author, May 2018.

<sup>678</sup> Javier Ortega, "LSD y cocaína aparecen en los barrios," *El Comercio*, 17 de marzo de 2014, <http://www.elcomercio.com/actualidad/seguridad/lsd-y-cocaina-pura-aparecen.html>; and Paladines, "De la represión a la prevención," 161-163.

use in Ecuador's high schools as well as a series of controversial surprise raids in the country's educational establishments and clandestine parties for adolescents.<sup>679</sup> At the end of the year 2014, the police issued a report stating that even though overall crime and homicide rates have gone down, the "threat of the drug trade has increased."<sup>680</sup> In May of the following year, "El Comercio" and other media outlets reported that a criminal group in Quito was taking advantage of the new scales in the COIP to avoid arrests by keeping the amounts of drugs they were carrying below the limit allowed for personal consumption or low-scale trafficking. The minister of the interior, José Serrano, reacted immediately by recommending CONSEP to reform the table for sanctioning drug possession.<sup>681</sup> According to a member of Quito's City Council, aligned with the Correa government, the opposition used the emergence of "H" and the apparent rise of drug consumption to attack the government and their drug policy, which led to a revision of the approach.<sup>682</sup> In the following weeks, a powerful discourse that Ecuador's lax drug laws were primarily responsible for the rise in micro-trafficking and consumption emerged, even though this perceived trend started long before the new criminal code came into place. The most prominent proponent of this discourse was President Correa himself, who joined the chorus of voices demanding a tighter scale for low-level trafficking offenses (see above).

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<sup>679</sup> Javier Ortega, "La policía impulsa plan 'Muchachos Libre de Drogas' en colegios de Quito," *El Comercio*, 28 de abril de 2015, <http://www.elcomercio.com/actualidad/policia-plan-muchachos-libres-drogas.html>; and Washington Paspuel, "Las acciones policiales en colegios fiscales generan polémica," *El Comercio*, 18 de julio de 2014, <http://www.elcomercio.com/actualidad/drogas-colegios-guayas-antinarcoticos.html>.

<sup>680</sup> Javier Ortega, "La seguridad mejoró este año, pero la amenaza 'narco' aumenta," *El Comercio*, 29 de diciembre de 2014, <http://www.elcomercio.com/actualidad/seguridad-mejoro-2014-amenaza-narco.html>.

<sup>681</sup> Sara Ortiz, "Una mafia de drogas se ceñía a la tabla de dosis permitidas por la CONSEP para operar en Quito," 8 de mayo de 2015, <http://www.elcomercio.com/actualidad/mafia-drogas-operativo-policia-microtrafico.html>.

<sup>682</sup> Member of Quito's City Council, in discussion with the author, May 2018.

The described developments also had an impact in the country's public opinion. From 2014 to 2015, the percentage of subjects responding that drug consumption was the country's most important problem rose from 1.2 to 5.5 (see table 16 above). Although unemployment (23.6), economic and financial problems (16.8), the situation and problems of politics (13.4), and crime and public security (12.4) still fared much higher, as shown in table 17, Ecuador's perception of drug use as the country's biggest problem was higher than in any other South American country.

**Table 17: Perception of Drug Consumption as Country's Most Important Problem Across South America**

| In percent       | Tot. | Arg. | Bol. | Bras. | Chile | Col. | Ec. | Par. | Peru | Uru. | Ven. |
|------------------|------|------|------|-------|-------|------|-----|------|------|------|------|
| Drug Consumption | 1.8  | 1.4  | 1.0  | 1.4   | 3.5   | 0.8  | 5.5 | 0.3  | 0.9  | 3.8  | -    |

Source: Latinobarómetro Internet Database

The above paragraphs indicate that a conjuncture of perceived crisis in the area of public security, the emergence of a new harmful psychoactive substance (both responding to incentive D3), influential actors within the state pressing for a tougher stance on drugs (D2), and changes in public opinion (D1) are primarily responsible and provided strong incentives for the striking return to prohibition. In particular, powerful gatekeepers of Ecuador's security policy, including the military, the police, the judiciary, and the ministry of the interior, managed to frame the problem of drug use as an issue of public security and blamed the legal changes for the perceived increase of micro-trafficking. The country's president, for many years a leading proponent of harm reduction, changed his position and reverted some of the measures his own government instituted.

## 8.8 Future Outlook

The dominance of prohibition and punishment continued after the country's 2017 presidential election and has been defining Ecuador's drug policy until now. The newly elected

president, Lenín Moreno (2017-), highlighted the eradication of micro-trafficking as one of the principal themes of his presidency, and asked the Technical Secretary of Drugs (an agency that he later abolished to cut government spending) to, once again, revise the sentencing scale for drug possessions.<sup>683</sup> In line with the president, the country's Sectorial Security Council, headed by the minister of defense, identified micro-trafficking as the country's biggest security threat, requiring a large-scale effort of the state, including the use of military force.<sup>684</sup> Simultaneously, several cities and cantons, including Guayaquil and Manta, decided to penalize drug consumption in public spaces.<sup>685</sup> The kidnapping and killing of three journalists by a group of drug traffickers led by the former FARC member alias "Guacho," who was trying to free imprisoned group members, further intensified the country's shift towards hardline positions in the area of security and drug control.

This outlook makes government-led advances in the area of harm reduction highly unlikely in the near future. As explained by a member of Quito's city council, who is sympathetic to the approach: "Although it is possible to advance in punctual issues, it is currently not possible to expose my principles or even state them in a campaign. This would clearly put my candidacy at risk. (...) Drugs are currently a taboo issue."<sup>686</sup> Furthermore, he explained that there is not much knowledge and conscience about drugs within Ecuador's political class and that moralistic perceptions of the problem predominate. Similarly, he recognized that there is a strong barrier to

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<sup>683</sup> *El Universo*, "Consejo Sectorial de Seguridad revisará la tabla de drogas," 28 de junio de 2017, <https://www.eluniverso.com/noticias/2017/06/28/nota/6252505/hace-rato-que-debia-eliminarse-esa-tabla>.

<sup>684</sup> *El Comercio*, "Ecuador prepara estrategia de lucha contra el microtráfico interno de drogas," 21 de julio de 2017, <http://www.elcomercio.com/actualidad/ecuador-estrategia-microtrafico-drogas-ministeriodelinterior.html>.

<sup>685</sup> *Redacción Médica*, "12 cantones aprueban ordenanza para regular consumo en espacios públicos," 14 de junio de 2017, <https://www.redaccionmedica.ec/secciones/salud-publica/12-cantones-aprueban-ordenanza-para-regular-consumo-de-drogas-en-espacios-p-blicos-90420>.

<sup>686</sup> Member of Quito's City Council, in discussion with the author, May 2018.

talk about drugs with the older population and recommended engaging primarily with younger citizens to advance progressive policies.<sup>687</sup> Statements by a representative of the Ministry of Public Health, working in the area of mental health and drugs, who has been involved in the design and implementation of the 2015 law since 2012 point in a similar direction: “The goal of the law was to guarantee rights, but currently it does not achieve it. (...) Although the law talks about harm reduction it does not implement it.”<sup>688</sup> He further stated that given public opinion and the current political climate it would even be impossible to implement a program that distributes clean syringes to prevent the spread of diseases. Nevertheless, he believes that currently fewer drug users get arrested than prior to 2008, which he considered an important advance.<sup>689</sup>

Contrary to the societal and political constraints, there are two important forces that may facilitate a less prohibitionist drug policy in the medium or long-term future. First, Ecuador’s public university Institute of Higher National Studies (“Instituto Nacional en Altos Estudios Nacionales”) offers a master’s degree in public policy on drug prevention, which studies drug-related challenges from a holistic perspective. In the future, alumni from the program may generate enough critical mass in the public sphere and government institutions to advance policies based on evidence rather than moral views. Second, Ecuador has a highly active and professional movement campaigning for the legalization of cannabis and a drug policy based on harm reduction, with strong links to transnational NGOs and networks. This movement not only campaigns for the legalization of recreational cannabis, but also for medicinal cannabis and the use of the hemp for industrial purposes. Through their presence in social media, but also through demonstrations, the occupation of houses, and cultural events they have become an important part

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<sup>687</sup> Member of Quito’s City Council, in discussion with the author, May 2018.

<sup>688</sup> Representative of the Ministry of Public Health, in discussion with the author, May 2018.

<sup>689</sup> Ibid.

of Ecuadorian civil society. Furthermore, they are connected to diverse groups campaigning for a variety of purposes including better conditions for bicycles or women's rights.<sup>690</sup>

Their presence in the media, as well as their interactions with policy makers, not only allowed them to place marijuana legalization on the political agenda but, to some extent, change the language and discourse about drugs. For Buitron, one of their leading voices, changing the language on drugs is a prerequisite for changing policy. According to him, most politicians are not familiar with distinctions like problematic and unproblematic drug use, which makes it harder to envision alternatives to prohibition. Hence, changing the language about drugs is one of the priorities in their interaction with parliamentarians, government officials and the media.<sup>691</sup> Carlos Andrade from the group "Defensores Pro Cannabis," also highlighted the possibility of presenting laws that come from civil society to the National Assembly. According to the constitution, civil society is allowed to present its own laws. As long as they obtain sufficient signatures, the lawmakers have to deal with their proposal. Thus, for him, generating conscience among the public is just as important as interacting with policy makers.<sup>692</sup> While the legalization of cannabis for recreational purposes is still a distant goal, Ecuador's legislators are currently debating a new health code, which allows for the use of cannabis-based medicines. If the proposal succeeds, Ecuador would become the sixth South American country to allow such remedies, thereby reinforcing the trend of normalizing a plant whose use for different purposes has been a taboo for many decades.

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<sup>690</sup> Buitron, in discussion with the author, May 2018.

<sup>691</sup> Ibid.

<sup>692</sup> Carlos Andrade, in discussion with the author, May 2018.

## IX. COCA POLICY AND DRUG PROHIBITION IN PERU

Peru's case is different from the previous ones in two important ways. First, as one of the three principal producers of the coca leaf, and, to a lesser degree, illicit cocaine, the country occupies a more important role in the geopolitics of the transnational drug trade than Uruguay and Ecuador. Curbing illicit coca production has been one of the central goals of the IDCR and the United States (see chapters III and V). Hence, the country has faced more international pressure to implement prohibitionist drug policies in general, and coca eradication in particular. Yet, in many instances Peru has resisted these pressures and its journey of becoming one of the most prohibitionist countries in the region has been far from straight forward. As outlined below, the most important driving force of this process has been the advocacy of different police units, the Ministry of the Interior, and the Army, all of which benefitted from enhanced drug control cooperation with the U.S. Over time, prohibition and coca eradication have become so deeply engrained in the country's institutions that it is difficult to imagine the country leaving the prohibitionist path any time soon.

Second, Uruguay and, to a lesser extent, Ecuador have primarily carried out drug policy reforms that can be pinned down to specific laws and dates. Peru's drug policy, though, has evolved in a much more incremental and piecemeal fashion. Since 1978, the country's governments have enacted at least 24 laws covering drug-related aspects. Furthermore, the country's drug policy has also been defined much more by operational elements such as the use of the armed forces to combat drug traffickers and the degree of coca eradication. Hence, most parts of the chapter use the theoretical framework of norm-induced incentives to explain tendencies and trends in policy rather than specific legal changes.

Apart from these differences, there are three main reasons why this dissertation chose to analyze Peru's drug-policy trends. First, despite U.S. and IDCR pressure, Peru is a real latecomer in modernizing its drug laws and adapting them to international standards. While most countries



in the region reformed their drug laws in the early 1970s, Peru did so in 1978. Hence, much of the chapter focuses on the country's 1978 Decree Law 22,095, which has set Peru on a prohibitionist path. Second, in the 1990s the country established the most severe penalization of certain drug-related crimes in the entire region, with lifelong prison sentences for some offenses. Third, while several countries from South America have relaxed some aspect of their drug policies in the last 15 years, especially on the operational side Peru has moved in the opposite direction, eradicating more illicit coca and arresting more drug users, despite the fact that the possession of drugs for personal consumption is not a crime. However, to the surprise of many, in 2017 the country legalized the use of cannabis-based medicines. This last episode of Peru's relation with narcotic substances provides some insights about the factors that prevent normative changes at the regional level from affecting state policy, but also about the dynamics that set changes in motion. As in the previous chapters, this case study starts with a brief examination of Peru's relationship with the IDCR and its drug policies before 1971.

### **9.1 Peru's Drug Laws Prior to 1971**

From early on, Peru's relationship with the IDCR has been marked by its role as a large-scale cultivator of the coca crop and center for the processing of cocaine. For at least five millennia, coca has been growing in various parts of the Andes and widely consumed in many indigenous cultures because of its nutritional and symbolic properties. As emphasized by Gootenberg: "Coca is a work-related stimulant, provides crucial vitamins, and is a digestive aid and salve for high-altitude cold, hunger, and stress."<sup>693</sup> Furthermore, coca use is a ritual and spiritual act, which affirms community trust and ethnic solidarity.<sup>694</sup> Cocaine, which concentrates the coca leaves' alkaloids and usually comes in the form of a white powder, is a powerful

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<sup>693</sup> Gootenberg, *Andean Cocaine*, 16 (see intr. n. 4).

<sup>694</sup> Ibid.

stimulant to the central nervous system, creating a sense of euphoria and energy. At the same time, it has strong numbing properties, and before it became popular as a recreational drug it revolutionized the possibilities of carrying out surgeries in delicate areas of the body. Hence, for a short period cocaine was widely used as a local anesthetic (see chapter III).<sup>695</sup>

For Peru's scientific community and parts of the country's elite, cocaine carried the potential of a national commodity that represented progress and combined ancient traditions with modern science.<sup>696</sup> During the 1890s, coca paste, a crude extract of the coca leaf, became Peru's fastest growing quantum export, rising from 1,700 kilos in 1890 to somewhere between 4,000 and 5,000 kilos around 1900. In 1901, cocaine exports reached their peak with approximately 10,700 kilos before flattening to 6,000 kilos at the end of the decade.<sup>697</sup> Although cocaine never exceeded four percent of Peru's licit export revenues, it was a crucial commodity to specific regions, such as the Upper Huallaga Valley (UHV) and Huánuco.<sup>698</sup>

However, the popularity of coca from Southeast Asia, which contained more alkaloids, the emergence of drug prohibition in the U.S., the discovery of alternative analgesics, and the slow but steady emergence of global rules and standards through the nascent IDCR, slowed down Peru's cocaine output and exports.<sup>699</sup> At the same time, coca production for Peru's internal market rose from 4.8 million tons in the mid-1920s to eight to eleven million tons in the 1950s.<sup>700</sup> The rising use of coca reinforced existing anti-coca sentiments and stereotypes within Peru, whose elite tended to view its consumption as primitive and backward. Furthermore, "All kinds

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<sup>695</sup> Gootenberg, *Andean Cocaine*, 17-24.

<sup>696</sup> Ibid. 32 and 100.

<sup>697</sup> Ibid. 63.

<sup>698</sup> Ibid. 64, 77, and 83-90.

<sup>699</sup> Ibid. 102, 124, 125, and 143.

<sup>700</sup> Ibid. 135.

of ills, from malnutrition to low intelligence and borderline insanity, were ‘scientifically’ attributed to coca through bogus measurements.”<sup>701</sup> This perception began to change to some extent in the 1940s and 1950s when studies of the San Marcos University in Lima credited coca with positive physiological and medical attributes.<sup>702</sup> With hardly any cocaine users, the narcotic largely escaped the negative connotations. Though ultimately unsuccessful, the 1930s even witnessed the emergence of a prominent pro-cocaine movement, which aspired to nationalize the entire coca and cocaine industry through a state monopoly.<sup>703</sup> In this context, the country’s officials ignored pressure from the United States and the League of Nations to restrict coca and cocaine.<sup>704</sup>

As shown in tables 2 and 4 of chapter V, Peru did not participate actively in any of the drug control conferences until 1961. In 1912, it cited economic difficulties for not sending a delegate, although it had diplomats stationed across the European continent.<sup>705</sup> Furthermore, Peru was the only Latin American country, which, initially, did not notify the U.S. of its willingness to sign and ratify the 1912 Convention.<sup>706</sup> In 1920, Peru finally ratified the document through the Versailles Peace Treaty (see chapter III).<sup>707</sup> It also ratified the 1931 Convention (in 1932), but denied to ratify the agreements from 1925 and 1936 (see table 3). While the 1912 Convention carried only weak restrictions on coca and cocaine, Peru and other Latin American gained a reputation for simply ignoring the rules of the 1931 Convention or taking advantage of its

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<sup>701</sup> Gootenberg, *Andean Cocaine*, 145.

<sup>702</sup> Ibid.

<sup>703</sup> Ibid. 137.

<sup>704</sup> Ibid. 136.

<sup>705</sup> Ibid. 210.

<sup>706</sup> Ibid. 209.

<sup>707</sup> Ibid. 210.

multiple loopholes.<sup>708</sup> According to Gootenberg, the country merely delivered a list of eight licensed factories and notes on opium dens to the League's authorities.<sup>709</sup> Yet, the signing of these international treaties left its mark on Peru's domestic legislation.

In 1921, the country's Congress passed Law 4,428, which regulated the import and export of opium, morphine, cocaine, and heroin, as well as their respective salts and derivatives.<sup>710</sup> The law created a monopoly for the import and export of the above substances at the port of Callao. Moreover, it established a registry for their trade, production, and sales, which were limited to pharmacies, at the Bureau of Health ("Dirección de Salubridad").<sup>711</sup> Until December 1939, Peru had issued about ten licenses for the legal production of cocaine and suspended the issuance of any further licenses to guarantee a better supervision of the existing factories.<sup>712</sup> All unlawful possession of the above-mentioned substances was considered illicit commerce, and penalized with up to five years of prison for the principal authors of drug-related crimes.<sup>713</sup>

None of the law's 15 articles, however, contained any restrictions on the cultivation of coca. This changed with the country's second legislation on drugs; the Decree Law 11,005 from 1949, enacted by a conservative military government. Prior to D.L. 11,005 Peru had issued two decrees, in 1941 and 1943, which strengthened the role of the police in anti-narcotics investigations and tightened the controls on pharmacies.<sup>714</sup> Art. 2 (c) criminalized, for the first

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<sup>708</sup> McAllister, *Drug Diplomacy*, 124 (see intro., n. 3).

<sup>709</sup> Gootenberg, *Andean Cocaine*, 175.

<sup>710</sup> Ley N° 4,428, *supra* n. 264.

<sup>711</sup> *Id.* arts. 2, 3, 4, y 5.

<sup>712</sup> Gootenberg, *Andean Cocaine*, 180.

<sup>713</sup> Ley N° 4,428, *supra* n. 264, art 10.

<sup>714</sup> Gootenberg, *Andean Cocaine*, 180.

time in Peruvian law, the cultivation of coca for the production of narcotic drugs. Art. 6 established that drug-related crimes were punishable with two to fifteen years of prison, without, however, clarifying, which type of actions and activities justified higher penalties. Furthermore, art. 12 considered drug users as authors or co-authors of drug-related crimes, who only escaped a penalty if they denounced the authors of the fabrication, import, and sale of narcotic drugs. The law also created a National Executive Council Against the Traffic of Narcotic Drugs (“Consejo Nacional Ejecutivo Contra el Tráfico de Estupefacientes”), which had the power to preside and judge drug-related cases.<sup>715</sup> Next to an “alarming” increase of trafficking, which threatened the health of the people, D.L. 11,005 cited “international discredit” as the law’s justification.<sup>716</sup> Interestingly, by the time the military government enacted the decree, illicit trafficking of cocaine was still in its footsteps, and took off after coca cultivation for trafficking purposes was criminalized (see below).<sup>717</sup>

Simultaneous to the creation of a new law, the military government canceled all existing licenses for licit cocaine manufacturers. By July 1950, the government had canceled all remaining coca contracts and directed all funds stemming from the cocaine trade into anti-narcotics operations and new programs of treating addiction. Hence, in the early 1950, a time when Peru began perfecting the manufacture of cocaine hydrochloride, the drug became fully criminalized, both legally and in practice.<sup>718</sup> For Gootenberg, the criminalization of cocaine was part of the right-wing military government’s goal to align with the U.S. in fighting both drugs and (potential) communist targets to obtain training and resources. The country’s president, General Manuel Odría (1950-1956), not only ran a hardline anti-narcotics campaign, but also oppressed his

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<sup>715</sup> D.L. 11,005, *supra* n. 265, arts. 2, 6, 12, and 13.

<sup>716</sup> *Id.*

<sup>717</sup> Gootenberg, *Andean Cocaine*, 141.

<sup>718</sup> *Ibid.* 232 and 240.

opponents, in particular sympathizers of the leftist party American Popular Revolutionary Alliance (“Alianza Popular Revolucionaria Americana,” APRA), which Odría claimed was backed by drug money.<sup>719</sup>

The push against cocaine also marked the beginning of a dispersion of new illicit trafficking networks. In areas that previously produced commodity cocaine, illicit, small-scale manufacturers began to take root. Although in the 1950s illicit cocaine production was more common in neighboring Bolivia, Peruvian producers interacted with Argentine, Brazilian, Chilean, and Cuban mafias, which were trafficking cocaine across the hemisphere.<sup>720</sup> The emergence of a new criminal network intensified the cooperation between U.S. anti-narcotics forces of the FBN and Peruvian anti-narcotics units, which started in the late 1940s. For Gootenberg, “such policing relationships proved more decisive to prohibitions than diplomatic maneuvers.”<sup>721</sup>

In the mid 1950s, Interpol buttressed U.S. operations against the cocaine trade by expanding its intelligence network and carrying out several drug raids in the Andes.<sup>722</sup> At the end of the decade, the developing police and intelligence network against the illicit cocaine trade began taking on the coca crop, which they conceived as a way of drying out cocaine. Soon the eradication of coca transformed into an urgent political goal.<sup>723</sup> The emerging fight against coca was backed by a UN study from 1949 and 1950, which not only warned about the intimate ties between the coca leaf and illicit cocaine, but also drew a connection between poverty and coca

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<sup>719</sup> His campaign against APRA members led to more than 4,000 arrests (Gootenberg, *Andean Cocaine*, 233).

<sup>720</sup> Ibid. 247.

<sup>721</sup> Ibid. 235.

<sup>722</sup> Ibid. 235-36.

<sup>723</sup> Ibid. 236.

chewing and recommended a gradual repression of the coca leaf for a period of ten to fifteen years.<sup>724</sup> According to Gootenberg, the study paved the way for the Single Convention's goal to uproot coca globally under a 25-year timetable.<sup>725</sup> Although much of the Peruvian elite shared the discourse about the vicious cycle of poverty and coca chewing, the country's delegates to the CND initially objected the IDCR's eradication plans, while highlighting Peruvian compliance in curbing cocaine production.<sup>726</sup> As long as cocaine production remained modest, Peruvian authorities were able to denounce coca and cocaine without committing to any efforts of eradicating coca. The country's ambivalence towards coca and cocaine remained intact until the mid 1970s when the balance of power within the government between the ones opposing any actions against coca and the ones seeking to reduce coca crops, changed in favor of the latter. The clearest expression of this change was Peru's first major drug policy reform since 1949, the 1978 Decree Law 22,095, which was redacted by a small group of top officials from the "revolutionary" military government and approved by its Council of Ministers on February 21, 1978. The following section summarizes the law's most important elements, followed by an analysis of the factors that helped turning the government against coca, despite the evident obstacles.

## **9.2 Peru Joins the "War on Drugs:" The Decree Law 22,095**

The law's repressive orientation marked its justification, which outlined five reasons for the reform. First, it defined the production, consumption, internal and external commercialization, as well as the chewing of the coca leaf as grave social problems, which needed to be overcome by an efficient and holistic plan of action. Second, it stated that the previous legal framework was

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<sup>724</sup> Gootenberg, *Andean Cocaine*, 238.

<sup>725</sup> Ibid.

<sup>726</sup> Ibid. 239.

insufficient to tackle these problems. Third, it highlighted that drug addiction constituted a grave problem of public health, a danger for the family, and one of the primary causes of physical and mental destruction of the human being. Fourth, it pointed out that the repression of the illicit drug trade and their improper use is part of the moralizing role of the state, which has to norm, control, and sanction all activities helping to develop this trafficking. Fifth, it affirmed that all actions should be oriented in complying with international conventions, especially in regard to the progressive eradication of coca cultivations, with the exception of industrial, medical, and scientific uses.<sup>727</sup>

Chapter I defined the law's general objectives, created a new inter-ministerial control organ, and assigned new responsibilities to the Ministry of Health and the Ministry of Education in the prevention of drug use as well as the development of scientific studies on drug addiction. In particular, art. 1 defined four objectives of the law: the repression of the illicit drug trade, the prevention of their improper use, the "biosocial" rehabilitation of the drug addict, and the reduction of the cultivation of the coca crop. Art. 3 established the Multisectoral Ministerial Committee for the Control of Drugs ("Comité Multisectorial de Control de Drogas"), presided by the minister of the interior, and composed of the ministers of agriculture and alimentation; industry, commerce, tourism, and integration; education; and health; and a member of the Supreme Court.<sup>728</sup>

Chapter II established new rules regarding the regulation of the licit drug market. Specifically, the Ministry of Health received a mandate to establish estimates of need and submit them to the respective IDCR organs, and issue authorizations to legitimate producers, vendors, importers, and exporters of narcotic and psychotropic substance. Art. 13 and 14. established a

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<sup>727</sup> D.L. 22,095, Ley de Represión del Tráfico Ilícito de Drogas, Febrero 21, 1978, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/22095.pdf>.

<sup>728</sup> *Id.* capítulo I.



government monopoly for their import and export, which were limited to the port of Callao and the international airport of Lima-Callao.<sup>729</sup>

Chapter III included several provisions for the treatment and recovery of drug addicts, including the creation of specialized health centers. If a judge discovered an addiction, he or she could issue a set of requirements for overcoming the dependency. Treatments could be realized from home, as long as addicts fulfill the requirements of the judge, who determined if the addiction was overcome or not. Recurring drug addicts, however, would be sent to a stationary treatment facility until they were cured. Art. 27 also reserved the right of the judge to issue embargos on the possessions of the addict to pay for the costs of treatment.<sup>730</sup>

While chapter IV is missing from the available document, an evaluation of the U.S. embassy on the new decree makes some references to the chapter: “The most innovation part [*sic*] of chapter IV on production, commercialization and control (reftel para 4) are the timetables set for substitution/eradication on registered holdings. The economic and social impact of these provisions is blunted, however, by the fact that the great majority of legal holdings are under 5 hectares, and the timetable for eradication/substitution on such plots is to be set by the Ministry of Agriculture.”<sup>731</sup>

Chapter V criminalized several drug-related activities and defined their penalties. Art. 55 sanctioned with internment (“internamiento”) of undetermined duration those who promote, organize, finance or direct groups dedicated to the illicit trafficking of drugs between Peru and other countries.<sup>732</sup> According to the U.S. embassy in Lima this penalty meant that convicted

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<sup>729</sup> *Id.* capítulo II.

<sup>730</sup> *Id.* capítulo III.

<sup>731</sup> U.S. Embassy in Lima to Bolivia La Paz/Colombia Bogotá/Ecuador Quito/Secretary of State, “Analysis of New Peruvian Drug Law” March 6, 1978, PLUSD.

<sup>732</sup> D.L. 22,095, *supra* 727, art. 55.

traffickers were likely to face a minimum penalty of 25 years, which “are generally served in isolated, devil’s island-style prison [*sic*] colonies, such as el SEPA in the amazon.”<sup>733</sup> Furthermore, art. 56 decreed no less than 15 years of prison for other members of such groups; no less than ten years for those, who administer and sell drugs to individuals less than 18 years of age, who use violence or fraud when administering drugs, who use minors to commit drug-related crimes, who commercialize drugs in centers of education and social rehabilitation, and who produce and sell drugs of the lists I and II “A” of the law; between two and 15 years for those, who cultivate marijuana and coca without permission, who explain how to use drugs to potential users, who have access to drugs through their profession and decide to sell them illegally, who distribute small quantities of drugs to individuals, and who possess drugs without authorization, except for their personal consumption; and between four and 15 years to medical professionals, who prescribe drugs without a justifiable cause. Moreover, the law penalized representatives of businesses that were growing coca without being registered or exceeded the registered amount, individuals who promoted the coca leaf as a form of payment or sold coca in unauthorized areas, and the owners of localities that tolerated drug use with two to five years of prison.<sup>734</sup> Art. 64 reinforced the law’s repressive character by prohibiting provisional liberty, conditional liberation, commutation of sentence, conditional imprisonment, and pardon for convicted drug offenders.<sup>735</sup>

While chapter VI established a series of rules and procedures for the confiscation and seizure of drugs as well as money and goods stemming from the drug trade, chapter VII provided Peru’s investigative Police (PIP) with the rights to issue preventive prison of 15 days for drug-related suspects; enter places suspected of being deposits, fabrics, or clandestine distribution centers of illicit drugs; inspect laboratories where licit drugs were produced and stored; and

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<sup>733</sup> U.S. Embassy in Lima, “Analysis of New Peruvian Drug Law” March 6, 1978.

<sup>734</sup> D.L. 22,095, *supra* 727, arts. 56, 57, 58, 59, y 60.

<sup>735</sup> *Id.* art. 64.

restrict the freedom of movement and the possibility of leaving the country of drug-related suspects.<sup>736</sup> Chapter VIII established that violators of the rules that regulate the licit drug trade would have to pay a fine of between two and 20 minimum salaries. Repeated offenders, however, would be treated, and receive the same sanction, as drug traffickers.<sup>737</sup>

The last chapter, IX, created the Executive Office of Drug Control and outlined its responsibilities. Furthermore, it established the responsibilities of the Multisectoral Ministerial Committee for the Control of Drugs. Among its most important function were dictating complementary (legal) norms to implement the present law; controlling the actions of the Executive Office; and proposing measures concerning the achievement of the law's objectives. The most important role of the Executive Office were: planning and coordinating all national activities that were important to reach the law's objectives; communicating decisions of the Multisectoral Committee to the respective government agencies; supervising the execution of the programmed activities; administering the funds and goods received to implement the present law; and promoting international cooperation and maintaining relations with IDCR organs.<sup>738</sup>

The above summary of the law indicates that although Peru was a real latecomer in modernizing its drug laws, and the last country from South America that changed its drug laws after the 1961 Convention, when it did so, it joined the emerging "war on drugs" with a strong legal commitment. Not only did the law define higher penalties than most of its regional peers, but, despite some loopholes, the law also obligated Peru to reduce its coca cultivations, which according to U.S. assessments, constituted at least half of the world's supply.<sup>739</sup> The following

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<sup>736</sup> *Id.* capítulos VI y VII.

<sup>737</sup> *Id.* capítulo VIII.

<sup>738</sup> *Id.* capítulo IX.

<sup>739</sup> U.S. Embassy in Lima to Secretary of State/UN (Geneva), "International Narcotics Control Semi-Annual Report," October 19, 1978, PLUSD.

section traces the developments that have led to these changes, highlighting, in particular, the role of Peru's Investigative Police (PIP) and top government officials with close links to U.S. drug control agencies.

### **9.3 Coca Policy in the 1970s: From Ambivalence to Repression**

At the beginning of the decade, Peru's future drug and coca policy was far from set in stone. Although the country had signed the 1961 Convention, and ratified the agreement in 1964, it undertook no effort to translate its provisions into a new drug law. Furthermore, the country did not ratify the 1971 Amendment until 1980 and the 1972 Convention until 1977 (see table 5). Furthermore, Peru did not sanction the regional agreement ASEP until 1978 and was the last South American country to do so. The main reason for Peru's reluctance was the country's role as the world's principal producer of the coca leaf, whose sales to illicit traffickers constituted an important source of income for the country's poor peasant population. Until the mid-1960s, Peruvian illicit cocaine production was relatively limited as compared to its neighbor Bolivia. However, tightening controls in Bolivia and Chile, an increasing demand from the U.S., and the professionalization of Colombian traffickers fostered a boom in illicit cocaine trafficking in the 1970s.<sup>740</sup> This renewed the attention and pressure from the U.S. and the international community (see below). Yet, for most of the decade Peruvian leaders remained relatively ambivalent about the rising traffic in cocaine.

At the 1972 and 1973 meetings in Buenos Aires, which led to the establishment of ASEP (see chapter V), Peru's ambivalence on the matter of coca was striking. On the one hand, Peruvian delegates talked in highly dismissive terms about the leaf. The most offensive remark came from the delegate Espinoza Barron: "There are 7 million indigenous people in Peru, who are chewing coca ("coquean"), which degrades them and does not allow them to produce even the

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<sup>740</sup> Gootenberg, *Andean Cocaine*, 292 (see intro., n. 4).

most necessary to feed and dress themselves.”<sup>741</sup> Dr. Esquivel Trigoso, another Peruvian delegate, stated that his government was seeking to reduce the use of “this stimulant” and had dictated dispositions to control its production. He also confirmed that social workers and teachers were trying to convince children and adolescents not to use coca.”<sup>742</sup> On the other hand, when it came to approving ASEP in 1973, the Peruvian delegate Fernández Puyo explained that he could not give his approval to art. 10, which asked the parties to intensify existing measures to eradicate plantations of cannabis and coca, given that he had received instructions to hold reservations about anything that had to do with eradication, limitation, or destruction of plantations.<sup>743</sup> The vice-chairman of the meeting acknowledged that he understood Peru’s position, given the country’s specific problems.<sup>744</sup>

Apart from the practical difficulties in controlling coca and cocaine trafficking, U.S. Ambassador Dean also identified a lack of interest on part of the Peruvians. While he stressed the excellent working relationship between the DEA and PIP, he stated that “Part of the problem is that unofficially the Peruvian government still regards the illicit trafficking in drugs as an American problem [*sic*]. Peruvian citizens are not [*sic*] using cocaine themselves to any substantial degree. This fact coupled with a smuggling and contraband legacy going back to Buccaneer days is impeding more substantive action programs.”<sup>745</sup> Dean’s Semi-Annual Narcotics Report for the Period Ending December 31, 1974, outlined the issue in greater detail:

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<sup>741</sup> Translated from: ReGESEP D.T.15 Rev. 1, “Comisión 2, Tráfico ilícito y control: Acta resumida de la tercera reunión,” 4 de diciembre de 1972, MREROU, AHD, URUBA, Carp. E1-14, 1973, Reunión Internacional sobre Problemas Estupefacientes y Toxicomanías 1972.

<sup>742</sup> ReGESEP D.T.12, “Comisión 2” (see n. 272)

<sup>743</sup> CONATON, “Informe final,” 28 (see n. 274).

<sup>744</sup> Ibid.

<sup>745</sup> U.S. Embassy in Lima to Department of State/Secretary of State, “Narcotics Control Report for Period Ending July 15, 1974,” July 17, 1974, PLUSD.

The attitude of the Peruvian government as a whole deserves some commentary when discussing the extent and effectiveness of any U.S. commitment to [sic] eradicate the heavy cocaine traffic emanating from Peru. The GOP does not view coca growing as a problem affecting the Peruvian people. Peruvian youth do not sniff cocaine in any substantial quantity. The local campesino custom of chewing coca leaves extends back to an epoch before recorded Peruvian history. While a GOP sponsored agricultural conference has recently issued a vague call [sic] for the eradication of this age-old custom as being “anti-revolutionary”, there has been little evidence of a commitment on part of GOP to actively seek a reduction in coca cultivation. Moreover, cocaine traffickers have traditionally gotten off with only limited fines and jail terms in Peruvian courts, and a few police officers and GOP personnel have been caught in protection of or outright involvement in trafficking activities. While this is not to say that the GOP in any way condones the trafficking of its citizens in cocaine, it does mean that a substantial part of the problem has been to overcome [sic] all of the private and public vested interests that have the most to gain in the perpetuation of the coca growing and cocaine elaboration within Peru.<sup>746</sup>

However, towards the end of the year 1974, the ambassador began noticing some changes in the government’s position. In September 1974, the country’s Minister of the Interior, Pedro Richter Prada, for the first time, mentioned a national plan “to greatly reduce planting of coca in Peru.”<sup>747</sup> At a ceremonial presentation of confiscated drugs, Richter expressed the idea of replacing coca crops with peanuts. Although at a lunch with Ambassador Dean he took distance from his plan, given that peanut production was expensive and required heavy subsidies, the ambassador nevertheless concluded that “GOP initiatives to tackle problem may be in wind and

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<sup>746</sup> U.S. Embassy in Lima to Department of State/Secretary of State, “Semi-Annual Narcotics Report for Period Ending December 31,” January 30, 1975, PLUSD.

<sup>747</sup> U.S. Embassy in Lima to Department of State/Secretary of State, “Recent Indications of GOP Interest in Eradicating Coca Growing and Chewing,” September 27, 1974, PLUSD.

GOP as a whole might be more willing to cooperate with USG in effort to stem flow of illicit cocaine to U.S.”<sup>748</sup> Dean’s positive assessment continued on October 24 when he reported that Minister Richter had referred to the “international drug situation” as a problem that also affected Peru: “a welcome change from attitude usually expressed by GOP officials [*sic*].”<sup>749</sup> Dean went on to explain:

He also noted his support for substituting food crops for coca. In this area, provided the GOP improves its internal coordination on coca policy and makes a firm commitment to fight drug trafficking, we may be able to assist in area of study grants to look into crop substitution possibilities. The mission action plan called for a crop substitution study this fiscal year. This was tabled, however, precisely due to the absence of a suitable commitment and internal coordination on part of GOP. Some progress may eventually be possible on both fronts, based on Minister Richter’s recent comments.<sup>750</sup>

In the following year, the ambassador noted that Minister Richter “made strong press statements about drug abuse (Lima A-145 of July 18, 1975) and has come out forcefully for a crop replacement program.”<sup>751</sup> Furthermore, in August of 1975, the minister elevated the Narcotics Investigation Division within PIP to directorate level. This enabled PIP to create specialized drug enforcement units outside of the capital Lima.<sup>752</sup> Though Richter left his office shortly after, the good working relationship between U.S. officials and the office of the minister

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<sup>748</sup> U.S. Embassy in Lima, “Recent Indications of GOP Interest in Eradicating Coca Growing and Chewing,” 1974.

<sup>749</sup> U.S. Embassy in Lima to Department of State/Secretary of State, “Status of Mission Narcotics Control Activities,” October 24, 1974, PLUSD.

<sup>750</sup> Ibid.

<sup>751</sup> U.S. Embassy in Lima to Department of State/Secretary of State, “Narcotic Control Program, Annex 8,” August 6, 1975, PLUSD.

<sup>752</sup> U.S. Embassy in Lima to DEA Washington/Secretary of State/Venezuela Caracas, “Funding Operation Funnel,” August 8, 1975, PLUSD.

of the interior continued. General Campos Quesada, who followed Richter for a brief period from September 1975 to February 1976, quickly cleared a major international drug interdiction program by Peru, the U.S., and Venezuela, called Operation Funnel.<sup>753</sup> His successor, General Cisneros Vizquerra, who maintained the post until May 1978, also received positive evaluations by Ambassador Dean: “Our initial impression of Cisneros is favorable, and we are glad that he appears to be fully briefed on ongoing cooperative programs.”<sup>754</sup> Minister Cisneros was also the first Peruvian official, who informed the embassy that Peru’s military dictator, General Francisco Morales Bermúdez (1975-1980), was planning a reduction in coca production.<sup>755</sup>

About two months later, Ambassador Dean informed that the president of the Supreme Court, the president of the National Council of Justice, and the attorney general of Peru were working on a revision of the country’s drug laws.<sup>756</sup> On September 21, 1976, the attorney general, Nelson Díaz Pomar, explained to the embassy’s narcotics coordinator that he was hoping for the approval of the president to form a committee to review existing studies on the “coca problem.” Once the committee finished its review, within a period of 60 to 90 days, he was hoping President Bermúdez would establish a high-level commission to “prepare, direct and coordinate a coca reduction plan.”<sup>757</sup> On October 12, Díaz Pomar informed the embassy’s narcotics coordinator

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<sup>753</sup> U.S. Embassy in Lima to DEA Washington/Secretary of State/Venezuela Caracas, “Operation Funnel,” September 3, 1975, PLUSD.

<sup>754</sup> U.S. Embassy in Lima to Department of State/Secretary of State/Venezuela Caracas, “Narcotics: Ambassador’s Call on New Interior Minister,” March 1, 1976, PLUSD.

<sup>755</sup> Ibid.

<sup>756</sup> U.S. Embassy in Lima to Department of State/DEA Washington/Secretary of State/Venezuela Caracas, “Executive Briefing Program,” April 29, 1976, PLUSD.

<sup>757</sup> U.S. Embassy in Lima to Bolivia La Paz/Department of State/Secretary of State, “Possible Major GOP Coca Reduction Program,” September 21, 1976, PLUSD.



about the creation of the above-stated committee per decree, set to take on work on October 14.<sup>758</sup>

In its first meeting, the committee created five sub-committees in the following areas: “laws relating to the repression of illegal narcotics, solution of the coca problem, control of coca and narcotics use, prevention of drug abuse and rehabilitation of users, and international cooperation.”<sup>759</sup>

During January 1977, Ambassador Dean mentioned for the first time in an official communication the existence of a draft for a new Peruvian drug law. He also explained that he made an offer to PIP chief General Rivera Santander to have the draft revised by U.S. experts.<sup>760</sup> In April, the vice-minister of the interior informed U.S. officials, that a draft of the law was approved by a group of four ministers, which meant that it could be forwarded to the entire cabinet, the Council of Ministers, for ultimate approval. In the following, several Peruvian officials confirmed that the new law was closed to being enacted.<sup>761</sup> However, it took Peru’s cabinet until February 1978 to approve the new law.

While it is evident from the above-cited documentation that Peru’s drug policy reform would not have happened without a long-term U.S. investment in convincing the Peruvian government to take decisive action against the illicit traffic of cocaine and cultivations of the coca crop, it is also clear that the law was not a mere imposition or response to U.S. pressure (incentive II). On some occasions, Peruvian officials rejected U.S. proposals, which indicates that the U.S.

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<sup>758</sup> U.S. Embassy in Lima to Bolivia La Paz/Department of State/Secretary of State, “Peruvian Coca Control Initiative,” October 13, 1976, PLUSD.

<sup>759</sup> U.S. Embassy in Lima to Bolivia La Paz/Department of State/Secretary of State/U.S. Mission to the UN/UN Geneva, “Peruvian Coca Control Initiative,” October 15, 1976, PLUSD.

<sup>760</sup> U.S. Embassy in Lima to SECSTATE La Paz, “Peruvian Draft General Law on the Control of Dependency-Producing Drugs,” January 26, 1977, PLUSD.

<sup>761</sup> U.S. Embassy in Lima to Secretary of State, “Visit of Senior Narcotics Advisor,” May 25, 1977, PLUSD; U.S. Embassy in Lima to Chile Santiago, “Wolff Airport Text – August 15,” August 15, 1977, PLUSD; and U.S. Embassy in Lima to Secretary of State, “Narcotics: Call on the Minister of the Interior,” November 25, 1977, PLUSD.

had limited leverage about the self-proclaimed revolutionary, military government. A case in point was the U.S. intent to create a regional DEA office in Lima. When consulted about the possibility, Ambassador Dean replied: "Even more difficult will be getting GOP approval, particularly in light of past difficulties in getting DEA agents accredited here."<sup>762</sup> When the embassy consulted with Minister Richter in 1974 about the possibility of increasing DEA staff, he replied that "this would not be possible because of the political sensitivity in this country which has been exacerbated by the current publicity about alleged CIA involvement in internal affairs of other Latin countries."<sup>763</sup> Even strong assurances that the agents would follow the previously agreed-upon rules could not convince Richter otherwise.<sup>764</sup>

Ambassador Dean also discussed the limitations of U.S. engagement when commenting and raising his opinion on a future international narcotics strategy of the U.S.: "we should not be overly critical of efforts of lesser-developed countries to control drug abuse and traffic. We must continue to stimulate, guide and support these efforts with equipment, techniques, information and international meetings but within the very real limitations and idiosyncrasies posed by the law enforcement, educational and political environments within these countries. To do otherwise would be self-defeating."<sup>765</sup> In another point he recommended taking into consideration the host governments' concerns and interests: "I also strongly support embassy Quito's emphasis on taking into account the special concerns and approaches of our host governments in their anti-

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<sup>762</sup> U.S. Embassy in Lima to Department of State/Secretary of State, "Relocation of DEA Regional Office," May 10, 1974, PLUSD.

<sup>763</sup> U.S. Embassy in Lima to Department of State/Secretary of State, "Meeting Between Ambassador Sheldon Vance and Interior Minister Richter," October 24, 1974, PLUSD.

<sup>764</sup> Ibid.

<sup>765</sup> U.S. Embassy in Lima to Department of State/Ecuador Quito/Secretary of State, "Comments on White Paper on Narcotics," December 17, 1975, PLUSD.

drug programs. By supporting and reflecting these concerns in our actions we have a better chance of engaging these countries in programs of highest priority to ourselves.”<sup>766</sup>

Moreover, in many instances the U.S. expressed concern and skepticism that the decree law would actually come forward, further underlining that the U.S. was facing very real limitations. For example, when discussing the original proposals of Peru’s general attorney, Ambassador Dean stated: “The questions were (and remain) whether the GOP really has taken a firm decision to confront the coca problem or, failing that, whether Díaz Pomar has the necessary backing to obtain such a decision and implement it.”<sup>767</sup> Even in April 1977, when the proceedings were far advanced the U.S. remained skeptical: “We know there is active and passive resistance in a number of Peruvian circles to adoption of a comprehensive anti-coca/cocaine law, and even to the enforcement of existing laws against excess and illegal coca production.”<sup>768</sup>

Ultimately, after the new law was passed, despite an overall positive evaluation, the U.S. ambassador was surprised and, in some cases critical, about three elements. First, “Even for these registered producers the law is largely repressive in nature and will encounter stiff opposition if a serious effort is made to enforce it without some form of crop/income substitution.”<sup>769</sup> Second, “In what appears to be a last-minute addition to the law, time limit are set (Reftel para 8) for illegal growers to comply with eradication/substitution [*sic*].”<sup>770</sup> Third, “The prison sentences established for international traffickers are stiffer than expected.”<sup>771</sup> Interestingly, the ambassador

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<sup>766</sup> U.S. Embassy in Lima, “Comments on White Paper on Narcotics,” December 17, 1975.

<sup>767</sup> U.S. Embassy in Lima to Department of State/Secretary of State, “Peruvian Coca Control Initiative,” October 8, 1976, PLUSD.

<sup>768</sup> U.S. Embassy in Lima to SECSTATE La Paz, “Status of Peruvian Draft General Law on Control of,” April 21, 1977, PLUSD.

<sup>769</sup> U.S. Embassy in Lima, “Analysis of New Peruvian Drug Law,” 1978 (see n. 733).

<sup>770</sup> Ibid.

<sup>771</sup> Ibid.

was concerned that U.S. citizens caught trafficking drugs would suffer disproportionately under the new provisions.<sup>772</sup>

The above paragraphs substantiate that even though the U.S. played a paramount role in orienting Peru's drug policy, the Peruvian government had a significant degree of agency in deciding what it wanted. However, all three domestic incentives favored a change in the legislation. First, while several embassy cables stated that Peru did not have high levels of drug consumption, this perception began to change at the end of the year 1976 when the local press reported about the establishment of an anti-drug youth brigade to protect high-school students at a school in Lima from drug consumption. The same press report stated that the consumption of coca paste had increased greatly among Peruvian middle-class youth.<sup>773</sup>

On February 22, 1978, shortly before the new law was published, "El Comercio," one of Peru's most influential newspapers published an op-ed denouncing the "universalization" of drug addiction and the impunity of the sales of narcotics to the country's "innocent" youth, while demanding a tougher stance of the state against drug trafficking.<sup>774</sup> Even though it is entirely possible that these reports have been fabricated or exaggerated by the state-controlled media to justify its new policy, reports about rising levels of drug consumption continued throughout 1978 after the government had passed the law.<sup>775</sup> In December 1978, the U.S. embassy stated: "The Peruvian government and the urban populace recognize increasingly that illicit drug trafficking

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<sup>772</sup> U.S. Embassy in Lima, "Analysis of New Peruvian Drug Law," 1978.

<sup>773</sup> U.S. Embassy in Lima to Department of State/Secretary of State, "Growing Official Peruvian Concern over Cocaine Consumption," October 27, 1976, PLUSD.

<sup>774</sup> *El Comercio*, "Tráfico ilícito de estupefacientes," 22 de febrero de 1978, 2.

<sup>775</sup> See: U.S. Embassy in Lima to Secretary of State/UN (Geneva), "International Narcotics Control Semi-Annual Report," October 19, 1978, PLUSD; and U.S. Embassy in Lima to Secretary of State/UN (Geneva), "FY 1980 INC Congressional Submission," December 13, 1978, PLUSD.

and drug abuse are real domestic problems for the country.”<sup>776</sup> In the same cable, the embassy reported that Peruvian neurologists and psychiatrists were conducting a first study on coca paste users in Peru.<sup>777</sup>

While the apparently rising levels of drug consumption (corresponding to incentive D3) help explain why the state saw itself compelled to tighten its legal framework, the advocacy of powerful domestic actors, with strong ties to the U.S. anti-narcotics apparatus, provides an even stronger explanation for the country’s drug policy reform (incentive D2). Apart from Peru’s attorney general, who appears to have initiated the preparations for a new drug law, the closest allies of the U.S. were actors from the Ministry of the Interior, including Peru’s Investigative Police (PIP), which functioned under the ministry’s direction. As stated by Ambassador Dean: “The Ministry has been cooperative with the embassy in the human rights field and has supported vigorous narcotics enforcement programs by the police agencies under its direction. It has been instrumental in the drafting of a new narcotics code now being considered by the GOP.”<sup>778</sup>

Within the Ministry of the Interior, the role of PIP deserves special attention. Throughout the ambassador’s reports, PIP received outstanding evaluations, especially regarding their close cooperation with the DEA. On March 7, 1975, Dean reported: “The police are anxious to do more, but are hampered by lack of operational funds.”<sup>779</sup> The head of PIP, Alfonso Rivera Santander, who previously headed PIP’s narcotics section, also complained to U.S. officials that Peru was not committed to the goal of the 1961 Convention to eradicate coca, stating that rather

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<sup>776</sup> U.S. Embassy in Lima, “FY 1980 INC Congressional Submission,” December 13, 1978.

<sup>777</sup> Ibid.

<sup>778</sup> U.S. Embassy in Lima to Venezuela Caracas, “International Training,” June 1, 1977, PLUSD.

<sup>779</sup> U.S. Embassy in Lima to Department of State/Secretary of State, “CCINC Funds for the Peruvian narcotics Police,” March 7, 1975, PLUSD.

more than less land was used for coca cultivations.<sup>780</sup> In the same conversation, he recommended that his unit should assist the National Enterprise of Coca (“Empresa Nacional de la Coca,” ENACO) to supervise coca plantations, given that ENACO was incapable of guaranteeing that registered coca growers followed official guidelines.<sup>781</sup> He also suggested to U.S. officials a new enforcement effort in Cajamarca, located in the country’s North.<sup>782</sup> Despite ongoing economic crises and high inflation in the 1970s, under the leadership of Rivera Santander PIP’s Anti-narcotics Division grew from 28 to 130 officers. Though it is not clear how much of this increase was due to U.S. support, PIP was a major beneficiary of U.S. anti-narcotics aid. Apart from regular participations in DEA training courses in Washington DC, under a 1974 narcotics agreement, PIP received communications and audio-visual equipment, as well as direct financial support for special investigations outside of Lima.<sup>783</sup> When U.S. officials asked PIP’s leadership in June 1974 what they needed to enhance their enforcement capacities, it stated interest in improving their records management, as well as help in updating their criminal laboratory.<sup>784</sup> When asked in 1977 on what the U.S. could do to help Peru in its anti-narcotics effort, PIP responded by requesting “additional U.S. scholarships, instructional material for training, the construction of a separate facility for PIP drug control operations, and a variety of electronic equipment (including phone monitoring gear), investigative material, radios, office equipment,

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<sup>780</sup> U.S. Embassy in Lima to Bolivia La Paz/Department of State/Secretary of State, “Visit of Ambassador Vance to Lima,” January 9, 1976, PLUSD.

<sup>781</sup> Ibid.

<sup>782</sup> U.S. Embassy in Lima, “Peruvian Draft General Law on the Control of Dependency-Producing Drugs,” 1977 (see n. 760).

<sup>783</sup> U.S. Embassy, “Narcotics Control Report for Period Ending July 15, 1974,” 1974 (see n. 745).

<sup>784</sup> U.S. Embassy in Lima to Department of State/DEA Washington/Secretary of State, “Narcotics Cooperation with GOP,” June 20, 1974, PLUSD.

(...) transport vehicles including one light aircraft and one helicopter, 24 cars and trucks, and motorcycles.”<sup>785</sup>

Apart from PIP, Peru’s Civil Guard (“Guardia Civil,” GC), a military style police force was also favorable towards the new law. Although the GC was not primarily responsible for drug control, it sometimes assisted in anti-narcotics mission, and in 1975 and 1976 sought to expand its role in Peru’s fight against drugs. This led to some disenchantment and competition with PIP, which nevertheless upheld the primary role in drug control efforts.<sup>786</sup> D.L. 22,095 finally resolved the dispute by drawing a clear distinction between PIP and the GC. While the former received a mandate to combat drug trafficking, the latter was ordered to carry out eradication campaigns, controlling crop substitution, and supporting ENACO in the supervision of cultivations.<sup>787</sup> Similar to PIP, the Civil Guard has both received and requested training, technology and operational support, though on a lesser scale.<sup>788</sup>

To accommodate these demands, the U.S. embassy offered Peruvian officials a step-by-step approach. Such an approach would “test the depth of any GOP commitment and also move matters toward and [*sic*] overall GOP plan that we could support financially and technically.”<sup>789</sup> This explains why PIP and the Ministry of the Interior were so keen on passing a tough legislation. Following the passing of the decree law, the U.S. entered into project agreements with PIP, the Guardia Civil, the Peruvian government (to curb coca growing and aid in agriculture),

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<sup>785</sup> U.S. Embassy in Lima to Secretary of State, “Codel Wolff Visit Prompts Request for Additional Narcotics Control Equipment,” August 24, 1977, PLUSD.

<sup>786</sup> U.S. Embassy in Lima, “Narcotics: Ambassador’s Call on New Interior Minister,” 1976 (see n. 754).

<sup>787</sup> U.S. Embassy in Lima, “Analysis of New Peruvian Drug Law,” 1978 (see n. 733).

<sup>788</sup> U.S. Embassy in Lima to Secretary of State, “Request for Commodities for Narcotics Training by Guardia Civil,” September 23, 1977, PLUSD.

<sup>789</sup> U.S. Embassy in Lima, “Peruvian Coca Control Initiative,” 1976 (see n. 767)

and the Ministry of Education.<sup>790</sup> The project agreement with PIP included diverse measures and provisions: enhanced training of personnel; radio transceivers; 29 support vehicles; an expansion of the provincial level's narcotics unit's personnel from 17 to 46; the establishment of a narcotics intelligence unit of 45 personnel; DEA assistance in improving organizational, administrative, and operational capacities; improving reporting and records systems; the establishment of monthly statistical reports; increased travel funds; new narcotics laboratory facilities; the creation of a special narcotics mobile response team; and an increase of overall personnel to at least 200.<sup>791</sup> The project agreement with the Civil Guard was equally comprehensive but centered on the capability to supervise coca cultivations.<sup>792</sup>

Overall by September 31, 1981, the U.S. had spent \$3,672,000 in assisting Peru's narcotics control program. PIP (\$1,001,000) and the Civil Guard (\$741,000) were the biggest recipients. About \$300,000 went into agricultural development.<sup>793</sup> While the support provided by the U.S. appears small in comparison to the anti-narcotics aid provided in future decades, it constituted more than Peru's total anti-narcotics budget in the same period (\$3,100,000).<sup>794</sup> Hence, through U.S. assistance, several domestic actors that supported its goals increased their staff and expanded their operational capabilities.

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<sup>790</sup> U.S. Embassy in Lima to Secretary of State, "Narcotics: GOP Agreement to Curb Coca Growing in Aid Agricultural Project," June 23, 1978, PLUSD; and U.S. Embassy in Lima to Secretary of State, "Narcotics Project Agreement with Ministry of Education," December 14, 1978, PLUSD.

<sup>791</sup> U.S. Embassy in Lima to Secretary of State, "FY-1980 International Narcotics Control Congressional Submission PIP Project Data," December 13, 1978, PLUSD.

<sup>792</sup> U.S. Embassy in Lima to Secretary of State, "FY 1980 International Narcotics Control Congressional Submission Guardia Civil Project - Project Data. Ref/ State 298445," December 14, 1978, PLUSD.

<sup>793</sup> U.S. Agency for International Development (USAID), Department of State Bureau of Inter-American Affairs, and Department of State Bureau of International Narcotics Matters, "Country Narcotics Profile Paper: Peru," September 30, 1981, Digital National Security Archive (DNSA), 3.

<sup>794</sup> Ibid. 2.



Apart from these domestic incentives, which were altered significantly through U.S. engagement, Peru also faced the risk of losing international prestige by refraining from stronger commitments until the late 1970s (incentive I2). This particularly evident in Peru's relationship with its regional peers. As more and more countries ratified ASEP, Peruvian diplomats felt increasing pressure to follow suit. As early as 1973, the Peruvian embassy in Buenos Aires sent its Foreign Ministry ("Ministerio de Relaciones Exteriores del Perú," MREP) in Lima several documents about ASEP, urging it to consider becoming a member.<sup>795</sup> Similar notes were sent in 1974 and 1975.<sup>796</sup> In 1978, the embassy in Buenos Aires took great lengths to explain ASEP to the MREP, highlighting that on several occasions Argentina has expressed interest in Peru becoming a member.<sup>797</sup> While it is unlikely that this diplomatic pressure was the primary cause of Peru's drug-control commitments, it created additional incentives, thus favoring the changes outlined above. Therefore, within a domestic-international incentive structure, which heavily favored a prohibitionist drug-policy reform, the most important cause was the support of important actors within the government bureaucracy, which, through the support of the U.S., benefitted from the changes they helped pushing forward.

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<sup>795</sup> Embajada del Perú en Buenos Aires a Ministerio de Relaciones Exteriores Secretaría General, "Reunión sobre estupefacientes y narcóticos," N° 5-1-/77, 17 de enero de 1973, AC del Ministerio de Relaciones Exteriores del Perú (MREP).

<sup>796</sup> Embajada del Perú en Buenos Aires a Ministerio de Relaciones Exteriores, "Ref. comunicado de cancillería argentina Rep. Brasil depositó instrumento de ratificación de Acuerdo Sudamericano sobre Estupefacientes y Psicotrópicos," N° 5-1-/89, 27 de febrero de 1974, AC del MREP; and Embajada del Perú en Buenos Aires a Ministerio de Relaciones Exteriores, "Gobierno de Venezuela ratifica Acuerdo Sudamericano sobre Estupefacientes y Psicotrópicos," N° 5-1-/660, 1975, AC del MREP.

<sup>797</sup> Embajada del Perú en Buenos Aires a Ministerio de Relaciones Exteriores, "Gobierno de Venezuela ratifica Acuerdo Sudamericano sobre Estupefacientes y Psicotrópicos," N° 5-1-/660, 1975, AC del MREP.

#### **9.4 The Implementation of Peru's Anti-Drug Policy in the 1980s: From Optimism to Disenchantment**

Although the military government set up Peru's drug policy for the coming decade through D.L. 22,095, the implementation of the new approach fell into the hands of the democratically-elected government of Fernando Belaúnde Terry (1980-1985) from the centrist party "Acción Popular." From early on, the emergence of violence by leftist guerilla forces of the Shining Path ("Sendero Luminoso," SL) and Túpac Amaru Revolutionary Movement ("Movimiento Revolucionario Túpac Amaru," MRTA), as well as difficulties to repay foreign credits, economic recession, and high inflation, overshadowed Belaúnde's government. As outlined below, these factors impacted the implementation of drug-control programs in several ways. However, despite numerous challenges and setbacks the country's commitment to a prohibitionist drug policy continued throughout the decade of the 1980s.

In an attempt to break with the country's dictatorial past and give democratic legitimacy to Peru's legal system, the country's Congress revised all decrees enacted during the military dictatorships led by Velasco Alvarado (1968-1975) and Morales Bermúdez Cerruti (1975-1980), including D.L. 22,095. However, the legislative decree (D.Leg.) 122 from June 1981 merely defined drug-related crimes with more precision to facilitate persecutions in criminal trials. The previously-established penalties, plans to eradicate coca, and the responsibilities of the different governmental bodies stayed the same.<sup>798</sup> Interestingly, while D.L. 22,095 and D.Leg. 122 sought to combat drug traffickers, most arrests carried out by the Civil Guard were against drug users. In 1980, the GC arrested 726 trafficker and 1,037 users. In 1981, this gap grew even further, to 605 traffickers and 1,098 users.<sup>799</sup>

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<sup>798</sup> D.Leg. N° 122, *supra* n. 284.

<sup>799</sup> U.S. Embassy in Lima to Department of State, "Annual Narcotics Status Report for Peru: 1981," April 29, 1982, DNSA.

While Ponce described the implementation of Peru's new drug policy as "timid, ineffective, and unnoticeable by the public," U.S. embassy cables and government documents provide a more nuanced picture.<sup>800</sup> With U.S. support, in 1980 Peru began its first campaign to eradicate coca crops, called Operation Green Sea.<sup>801</sup> An embassy cable from 1981 optimistically reported: "We plan to have the illicit coca cultivation in the Upper Huallaga Valley largely under control by the end of CY 1983 and their eradication effort completed by the end of CY 1985."<sup>802</sup> Since 1982, these campaigns started focusing on the area around Tinga Maria in the Upper Huallaga Valley (UHV), where most of Peru's illicit coca came from. Parallel to the eradication efforts, in 1981, the U.S. signed an \$18 million aid project for the agricultural development of said area.<sup>803</sup> In 1983, in collaboration with the DEA, Peru's GC began to destroy laboratories producing different types of cocaine, processing areas, and air strips used for clandestine trafficking in the UHV and North-Eastern Peru.<sup>804</sup>

While the repressive policies against drug traffickers enjoyed great popularity, many Peruvians judged the eradication efforts more critically. As stated by the U.S. embassy in 1981: "Peruvian public opinion toward narcotics traffic and the trafficker is uniformly unfavorable from all bands of the political spectrum. The same is not true of the coca cultivator. (...) Pro-coca politicians and coca growers tend to ignore the fact that excess production of coca is the basis of narcotics trafficking and defend the coca producer as an honest farmer engaged in an age-old

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<sup>800</sup> Ponce, "From Freedom to Repression," 130 (see intr., n. 10).

<sup>801</sup> USAID, Department of State Bureau of Inter-American Affairs, and Department of State Bureau of International Narcotics Matters, "Country Narcotics Profile Paper: Peru," 4.

<sup>802</sup> U.S. Embassy in Lima to Secretary of State, "Peru's Policy Toward Narcotics," October 1981, DNSA.

<sup>803</sup> Ibid.

<sup>804</sup> U.S. Embassy in Lima to Secretary of State/U.S. Embassy in Bogotá, "Background and Nature of U.S. Involvement in the UHV," December 1987, DNSA.

practice.”<sup>805</sup> Given the low popularity of coca eradication, the U.S. feared that the election of a new government in 1985 could change the campaign against coca cultivations: “A García or Barrantes victory in the April elections could have far-reaching implications for drug control. Both candidates have indicated that they would reshape Peru’s drug control policy and concentrate more on crop substitution and education and less on eradication.”<sup>806</sup>

Although Alan García’s clear victory did not halt the eradication campaign in the beginning, throughout his mandate (1985-1990) opposition to Peru’s eradication policies kept growing due to three intertwined developments. First, coca farmers and peasant workers began expressing their discontent through demonstrations, strikes, civil unrest, and, in some cases, the destruction of infrastructure.<sup>807</sup> As drug-control forces established a stronger presence in the UHV, coca farmers and cocaine traffickers increasingly worked together in deterring government forces. An embassy cable from 1988 narrated: “During the seizure of this target [a cocaine-processing laboratory, authors note] a mob of 250 villagers gathered near the seizure sight, held back by GC police sentries. A large red flag with the hammer and sickle symbol was being waved in front for encouragement. Eventually elements of the crowd grew bolder and began throwing rocks at the GC troop.”<sup>808</sup>

The waving of a red flag symbolized the support of the SL guerrilla forces, which exercised control in several areas of the UHV, protected drug traffickers and coca growers while

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<sup>805</sup> U.S. Embassy in Lima, “Annual Narcotics Status Report for Peru: 1981,” 1982.

<sup>806</sup> Directorate of Intelligence, “Narcotics Review,” April 1985, DNSA.

<sup>807</sup> U.S. Embassy in Lima to Secretary of State/DEA Washington/Bolivia La Paz/Ecuador Quito, “Violence and Strife in the Upper Huallaga,” April 1986, DNSA; and U.S. Embassy in Lima to Secretary of State/DEA Washington, “Update on Eradication Impasse in Central Huallaga,” May 1986, DNSA.

<sup>808</sup> U.S. Embassy in Lima to RUEBAND/DEA Washington/Secretary of State, “Situation Update of Operation Condor,” October 1988, DNSA.

charging protection money, landing fees for planes, and fees for the use of land.<sup>809</sup> In their political pamphlets, SL insurgents labeled the eradication campaign as an imperialist imposition to repress Peru's working class.<sup>810</sup>

Second, drug traffickers increasingly used heavy violence to halt eradication efforts. The first of these attacks occurred in November 1984 and killed 19 civilian workers. Despite a condolence letter from Ronald Reagan, urging Peru's president not to give in to traffickers, this attack caused a halt of the operation for a two-months period.<sup>811</sup> On top of the violent responses by trafficking groups, SL guerilla forces began launching attacks on the eradication and anti-drug campaign.<sup>812</sup> While in April 1986, a U.S. embassy report highlighted the good morale of eradication workers, in the middle of the year the Civil Guard established a small base in Santa Lucia in the UHV to support and protect civilian eradication workers.<sup>813</sup> In April 1987, the United States stepped up its assistance, by sending more DEA agents to support the CG in the destruction of primary processing sites and cratering of airstrips. Furthermore, nine U.S.-contracted helicopters, piloted by U.S. contract personnel and a Peruvian co-pilot, began flying in the Central and Upper Huallaga Valley.<sup>814</sup> Despite U.S. support, in September 1987 Peru's Minister of the Interior, José Barsallo Burga (1987-1988), reported tactical and logistic difficulties in

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<sup>809</sup> U.S. Embassy in Lima to Secretary of State, "Attorney General Visit: Threat Assessment," March 89, DNSA.

<sup>810</sup> Department of Justice and DEA, "After Action Report [Events in the Upper Huallaga Valley]," January 31, 1989, DNSA.

<sup>811</sup> Secretary of State to U.S. Embassy in Lima, "Presidential Letter Regarding Narcotics Eradication Program in the Upper Huallaga," December 1984, DNSA; and Directorate of Intelligence, "Narcotics Review," 1985;

<sup>812</sup> U.S. Embassy in Lima to Secretary of State/DEA Washington, "Situation Report in the Upper Huallaga," August 1987, DNSA.

<sup>813</sup> U.S. Embassy in Lima to Secretary of State/U.S. Embassy in Bogotá, "Background and Nature of U.S. Involvement in the UHV," December 1987, DNSA.

<sup>814</sup> Ibid.; and U.S. Embassy in Lima to Secretary of State, "Narcotics Security: Temporary Shutdown of U.S. Support of Interdiction/Eradication," February 1989, DNSA.

implementing the country's anti-drug campaign, expressing the need to send more police forces to the UHV.<sup>815</sup> However, instead of sending more police, in November 1987, Peru's government declared a 60-day state emergency in several parts of the valley and transferred responsibility for said areas from the Ministry of the Interior to the Armed Forces. This meant that the CG forces overseeing the eradication campaign withdrew from certain parts of the UHV and increasingly restricted their missions to areas close to their base in Santa Lucía.<sup>816</sup> In February of 1989, the security environment became so unstable that the U.S. ambassador Watson ordered a shutdown of the use of the U.S. air fleet in support of interdiction and eradication missions.<sup>817</sup> As highlighted by the ambassador: "Manual eradication is increasingly dangerous. We protect against attacks during insertion of personnel by picking fields to be eradicated at random and keeping that information secret until departure from the fields. But SL and trafficker-mobilized elements in the UHV are now so ubiquitous that attacks on eradication personnel and helicopters are mounted in the 5-6 hours between insertion and extraction."<sup>818</sup> Although the U.S. resumed its drug control efforts in August after several security upgrades at the GC base in Santa Lucía, as outline below, their temporary withdrawal made it harder to influence the Peruvian government.<sup>819</sup>

Third, while the U.S. was hoping that the deteriorating security situation would compel the Peruvian government to use its military for drug control operations, the country's military

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<sup>815</sup> Defense Intelligence Agency (DIA) Washington to DIACURINTEL, "Peru: Antidrug Complications," September 1987, DNSA.

<sup>816</sup> U.S. Embassy in Lima to Secretary of State, "Armed Forces Assume Control in Upper Huallaga Valley: Guardia Civil Plans to Shift Anti-Narcotics Operations," November 1987, DNSA.

<sup>817</sup> U.S. Embassy in Lima, "Narcotics Security: Temporary Shutdown of U.S. Support of Interdiction/Eradication," February 1989.

<sup>818</sup> U.S. Embassy in Lima to Secretary of State, "Need for Immediate Narcotics Policy Review," February 1989, DNSA.

<sup>819</sup> Department of State, Bureau of International Narcotic Matters, "Cable Authorizing Resumption of Upper Huallaga Counter-narcotics Operations," August 11, 1989, DNSA; and DIA, "Peru: Anti-Drug Campaign," September 29, 1989, DNSA.

leadership prioritized the fight against the SL guerilla forces.<sup>820</sup> For the U.S., combating SL forces and drug traffickers, as well as the eradication of illicit coca, was part of the same struggle. The Peruvian military, however, believed that in order to defeat the SL it depended on the support of local peasants many of which relied on coca for a steady income. Hence, in May 1989, reports surfaced that “the GOP, influenced by the new military commander in the UHV, is close to a decision to de-emphasize, even abandon, involuntary coca eradication in the Upper Huallaga Valley (UHV).”<sup>821</sup> Although the García government never officially backed the stop of coca eradication, the U.S. reported that anti-narcotics operations were shut down by the military in Uchiza, where trafficker flights were now permitted. Some reports even stated that military commanders ordered their troops to fire on police forces if they conducted anti-narcotics operations.<sup>822</sup> The ambassador concluded: “We are disturbed by the possibility that trafficker flights into Uchiza are taking place and believe that this matter warrants close scrutiny.”<sup>823</sup> While President García continued to defend coca eradication in the public, during the last months of his mandate government officials, including García, raised public critiques claiming that U.S. narcotics assistance was completely insufficient and that Peru needed at least \$600 million to suppress coca production and develop the UHV.<sup>824</sup>

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<sup>820</sup> Secretary of State to RUEHPE/Peru Lima, “NCS Review of UHV Counternarcotics Operations,” February 1989, DNSA.

<sup>821</sup> U.S. Embassy in Lima to Secretary of State/Department of Justice/DEA Washington/Secretary of Defense/DIA Washington/USCINCSO/USAID Washington/U.S. Mission in Vienna/The White House/Colombia Bogotá/Bolivia La Paz/ Venezuela Caracas, “GOP Military to De-emphasize Eradication,” May 1989, DNSA.

<sup>822</sup> DIA, “Peru: Anti-Drug Campaign,” September 29, 1989.

<sup>823</sup> U.S. Embassy in Lima, “GOP Military to De-emphasize Eradication,” May 1989.

<sup>824</sup> U.S. Embassy in Lima to Secretary of State, “Peru Narcotics Control: Spending Program,” September 1989, DNSA.

The optimism and hope to eradicate illicit coca in the early 1980s had steadily given way to disenchantment at the end of the decade. While in 1981, the U.S. embassy estimated that 50,000 hectares of coca were under cultivation in Peru, in 1987 the CIA assessed that this numbers rose to 106,000 hectares.<sup>825</sup> While this sharp increase might have been fueled by better intelligence, it nevertheless underlined that the approach implemented by the Peruvian government was not working. At the same time, Peru suffered from an increasingly unstable security situation, which not only affected remote areas, but also the capital Lima where SL and MRTA carried out attacks against civilians and the city's electronic infrastructure, causing numerous power shortages.<sup>826</sup> While the United States wanted to continue doing more of the same, Peru's main priority was to defeat the insurgents. Military and civilian leaders increasingly saw coca eradication as an obstacle and wanted to shift emphasis towards economic and agricultural development. This dissent continued throughout the 1990s under the presidency of Alberto Fujimori (1990-2000), who not only inherited a deteriorating security environment, but also an unstable economic situation, including an inflation of 3,398.3 percent and an external debt exceeding 70 percent of the nominal GDP.<sup>827</sup>

### **9.5 Drug Policy Under Fujimori (1990-2000)**

The election of Alberto Fujimori, who is often characterized as a right-wing populist, coincided with a change of government in U.S. a year earlier. While Reagan and Bush both emphasized the importance supply-side controls and the use of force against drug traffickers,

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<sup>825</sup> USAID, Department of State Bureau of Inter-American Affairs, and Department of State Bureau of International Narcotics Matters, "Country Narcotics Profile Paper: Peru," 1; and CIA, "International Narcotics Situation Report," July 1987, DNSA, 3.

<sup>826</sup> U.S. Embassy in Lima to RUEHC/Secretary of State, "Political Wrap-up: July 1-31, 1989," August 1989, DNSA.

<sup>827</sup> Knoema, "Peru – Average Consumer Prices Inflation Rate," no date, <https://knoema.com/atlas/Peru/Inflation-rate>; and CEIC, "Peru External Debt: % of GDP," no date, <https://www.ceicdata.com/en/indicator/peru/external-debt--of-nominal-gdp>.



Bush's approach, at least publicly, gave more recognition to the importance of economic development as a means of providing alternatives to farmers. Following the Cartagena Summit in February 1990 (see chapter V), Bush's government elaborated an ambitious Andean Counterdrug Implementation Plan, which sought to provide "the Andean Countries with the resources to assist in building significantly improved legal, enforcement, and military capabilities to apprehend the leadership, dismantle the operations, and seize the assets of the cocaine traffickers."<sup>828</sup> While this plan "sets the stage for expanded economic assistance," it also stated that "All U.S. assistance is conditioned on counterdrug performance and sound economic policy."<sup>829</sup> Furthermore, "the evaluation must also take into account levels of corruption, human rights performance, and any other activity that could undermine effective U.S. assistance."<sup>830</sup>

Regarding Peru's specific case, the accessible parts of the plan promised \$35,945,000 of military assistance, \$18,150,000 for law enforcement, \$4,000,000 for aid and an unspecified amount of additional funds for the intelligence sector.<sup>831</sup> As outlined in chapters V and VIII, based on drug control performance the U.S. also provided preferred market access to Andean products through the ATPA. Furthermore, the United States promised \$100 million of food aid for the year 1990, and \$100 million of investments through a group of developed countries supporting Peru.<sup>832</sup> Given the country's vulnerable economic situation, the U.S. State Department estimated that "After the election, intensified bilateral discussions with the new government,

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<sup>828</sup> Department of State, "Andean Counterdrug Implementation Plan," March 1990, DNSA, 1.

<sup>829</sup> Ibid.

<sup>830</sup> Ibid.

<sup>831</sup> Ibid.

<sup>832</sup> *La República*, "EE.UU. ampliará su colaboración con Perú para erradicar al narcotráfico," 18 de octubre de 1990, 5.

linked to U.S. resource commitments, will give the U.S. an opportunity to weigh in early in the formation of Peruvian policy on anti-narcotics activities.”<sup>833</sup>

However, throughout his presidency Fujimori disregarded some key U.S. objectives. In an attempt to win over the peasant population of the UHV in the army’s battle against the increasingly violent and capable insurgents, Fujimori made a pledge to limit eradication to coca seedbeds, instead of young or fully-grown coca plants..<sup>834</sup> While Fujimori did not reject the possibility of forced eradication entirely, in front of 200 foreign diplomats he argued that such an approach had to be accompanied by a firm policy of economic and agricultural development. In the absence of such a policy, coca eradication would have devastating consequences and could lead to a civil war. He further explained that he did not want farmers to fall in the hands of subversive groups or drug traffickers.<sup>835</sup> Politicians from all major parties applauded Fujimori’s position, although some sectors argued that he should have defended the right to grow and consume coca more openly.<sup>836</sup>

Instead of campaigning openly for forced eradication, the U.S. government decided to publicly back Fujimori’s plan without, however, clarifying to what degree it would support development initiatives of the UHV.<sup>837</sup> Nevertheless, the dissent on coca eradication continued to affect the relationship with the U.S. In Washington D.C. members of the U.S. Congress pressured Peruvian diplomats by threatening to withdraw foreign aid, if Peru did not change its policy on

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<sup>833</sup> Department of State, “Andean Counterdrug Implementation Plan,” March 1990, -3-.

<sup>834</sup> For an overview of U.S. strategy regarding coca overcoming Peruvian objection see: Secretary of State to Colombia Bogotá/Peru Lima/Ecuador Quito/Bolivia La Paz/Joint Chiefs of Staff/USSOUTHCOM/CIA Washington/Secretary of Defense, “Coca Containment Sub-Plan,” February 1991, DNSA.

<sup>835</sup> *La República*, “Si no hay cultivos alternos a la coca puede hallar guerra civil,” 27 de octubre de 1990, 2.

<sup>836</sup> *La República*, “Políticos respaldan posición de Fujimori frente al narcotráfico,” 28 de octubre de 1990, 4.

<sup>837</sup> *La República*, “EE.UU. respalda el plan integral de Fujimori en lucha contra droga,” 30 de octubre de 1990, 3.

coca and the stop human rights abuses of its armed forces. In 1991, a Peruvian diplomat raised the possibility of coordinating with the Washington-based NGO WOLA (see chapter IV) to lobby for Peru's position on coca eradication and alternative development.<sup>838</sup> In 1995, next to Colombia, Bolivia, and Paraguay, Peru only received a qualified U.S. presidential certification, thus facing the risk of losing access to credits and U.S. aid (see chapter V on the certification procedure). However, pressure to eradicate mature coca not only came from the U.S. but also IDCR officials. On January 10, 1995, Heinrich Pichler, director of the UNDCP in Lima, sent a letter to Peru's Foreign Ministry's Department of Drug Control asking Peru to confirm, on behalf of INCB director Herbert Schaepe, that Peru was not pursuing a coca liberation policy.<sup>839</sup>

In 1996, after the insurgents had been largely defeated by Peru's military, Fujimori began allowing for the eradication of any mature coca away from populated areas and in national parks. The U.S. celebrated this change of direction as a major success.<sup>840</sup>

However, coca eradication was not the only concern of U.S. officials. Within a month after taking office, Fujimori carried out a "rapid and unexpected purge inside the Peruvian National Police."<sup>841</sup> While officially the purge aimed at firing corrupt police officials, the U.S. ambassador believed that it was at least partially driven by the goal of placing anti-narcotics programs fully under the control of the military in order to "tap into the largesse and budget generosity of the United States."<sup>842</sup> Furthermore, the U.S. suspected that the move was part of an

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<sup>838</sup> Embajada del Perú en Washington D.C. a Ministerio de Relaciones Exteriores del Perú, "Rem. informe elaborado por Wola sobre rol militar en la política EEUU sobre drogas," 19 de febrero de 1991, AC del MREP.

<sup>839</sup> UNODC Lima a Dirección de Control de Drogas del Ministerio de Relaciones Exteriores del Perú, "UNDCP-030/95," 10 de enero de 1995, AC del MREP.

<sup>840</sup> U.S. Embassy in Lima to Secretary of State, "Counternarcotics Scen setter for ONCP Director McCaffery's Visit to Peru," March 1998, DNSA.

<sup>841</sup> U.S. Embassy in Lima to Secretary of State, "Fujimori Reorganizes the Police," August 1990, DNSA.

<sup>842</sup> Ibid.

internal power battle between the army, whose influence had suffered during García's APRA government, and the National Police.<sup>843</sup> Given the necessity to defeat the leftist insurgents, Fujimori sided with the army whose officials took over several key posts in the Ministry of the Interior. While the U.S. was sympathetic towards a greater involvement of the army, they lamented that "the president has purged a number of honest and capable police officers."<sup>844</sup> On top of that, Ambassador Quainton highlighted that "these changes have interrupted close working relationships between mission elements and Peruvian police counterparts" and that it was inevitable that "our narcotics program will be slowed down at least temporarily as new relationships are formed."<sup>845</sup> Yet, the ambassador remained cautiously optimistic: "We do not doubt Fujimori's commitment to program objectives which appear to generally match our own. (...) With the carrot of U.S. military assistance in the offing, we could well end up with an integrated approach, which makes major inroads into narcoterrorism in a way which we can fully support."<sup>846</sup> Subsequent developments show that the ambassador's optimism was justified.

On March 26, 1991, Peru's Air Force decided to intervene in the UHV to protect Peru's airspace from the "free and illegal use" of drug traffickers, flying coca leaves and cocaine paste to neighboring Colombia. In doing so, Peru was fulfilling a central operational goal of the U.S. counter-narcotics strategy.<sup>847</sup> In May 1991, the United States and Peru concluded a so-called umbrella agreement about their future anti-narcotics cooperation. While the agreement committed

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<sup>843</sup> According to the ambassador, the army believed that the APRA government sought to create a "second military" within the state to protect their government from a potential coup. The military on the other hand, distrusted APRA because of their revolutionary roots (Ibid.).

<sup>844</sup> U.S. Embassy in Lima, "Fujimori Reorganizes the Police," August 1990.

<sup>845</sup> Ibid.

<sup>846</sup> Ibid.

<sup>847</sup> U.S. Embassy in Lima, "Peruvian Air Force Again Plans Return to the UHV: This Time They Want Results," March 1991, DNSA.

Peru to a security-heavy fight against the drug trade, it did not oblige the country to carry out forced eradication of coca.<sup>848</sup> Yet, coca growers from the UHV heavily protested the agreement, arguing that substitution and eradication were the same while defending their ancient right to grow coca.<sup>849</sup>

Parallel to the security-heavy operational orientation, in the early and mid-1990s Peru's government enacted a series of legal changes, which, in line with the 1988 Convention, criminalized a new set of drug-related activities, and elevated the country's penalties to new heights. In the first year of his presidency, the country's Congress granted the Executive permission to reform Peru's criminal code (CC) within a period of 90 days, a timeframe that was extended for another 60 days in February 1991. The new CC, which was enacted by the Legislative Decree 635 on April 3, 1991, included seven articles on drug-related crimes. These articles penalized the promotion and favoring of illicit drug trafficking with eight to 15 years of prison, while aggravated forms of trafficking (such as the abuse of public office, the promotion of drugs in educational establishments and by medical professionals, the use of minors, etc.) were penalized with no less than 15 years.<sup>850</sup> In 1993, Law 26,223 increased the sentencing range for aggravated forms to no less than 25 years, and introduced perpetual prison for heads of criminal organizations or when financing terrorist activities.<sup>851</sup>

The 1991 CC also included an article on micro-commercialization and micro-production, which was set to be penalized with two to eight years of prison, or one to four years if the

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<sup>848</sup> Peru and the United States, "An Agreement Between the United States of America and Peru on Drug Control and Alternative Development Policy," May 14, 1991, DNSA.

<sup>849</sup> U.S. Embassy in Lima to Secretary of State, "Peruvian Left's Reaction to Counter-Narcotics Agreement: Polemic vs. Reality," May 1991, DNSA.

<sup>850</sup> D.Leg. N° 635, Código Penal art. 296, Abril 3, 1991, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/DecretosLegislativos/00635.pdf>.

<sup>851</sup> Ley N° 26,223, *supra* n. 302, art. 3.

distribution of small amounts of drugs was to the final consumer.<sup>852</sup> Law 26,320 from 1994 clarified what constituted a small amount: 100 grams of cocaine paste, 25 grams of powder cocaine, 200 grams of marijuana or 20 grams of its derivatives.<sup>853</sup>

The Legislative Decree 736 from 1991 added two further crimes to the CC: the laundering of assets stemming from the drug trade or terrorism (penalized with six to twelve years) and the investment, sale, pledge, transfer or possession of gains, things or goods stemming from the drug trade (penalized with five to ten years).<sup>854</sup> Decree Law 25,428 of 1992 increased penalties for both crimes to a range of ten to 25 years for money laundering and eight to 18 years for the latter.<sup>855</sup> A year later, Law 26,223 elevated the penalties for drug-related money laundering to perpetual prison. The same law added the compulsive cultivation of coca plants and opium poppies as a new crime, also penalized with perpetual prison.<sup>856</sup> In 1994, Law 26,332 criminalized the commercialization and cultivation of opium poppies (without compulsion) with penalties of eight to 15 years, or two to eight years if the amount of plants did not exceed 100.<sup>857</sup>

While the criminalization of new drug-related activities corresponds with Peru's international commitments, following the instructions of the 1988 Convention, the comparatively high penalties (see chapter V) stand well in line with Fujimori's security-heavy policy against international drug trafficking and were praised by U.S. officials as an important tool in deterring

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<sup>852</sup> D.Leg. N° 635, supra n. 850, art. 298.

<sup>853</sup> Ley N° 26,320 art. 1, Mayo 17, 1994, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/26320.pdf>.

<sup>854</sup> D.Leg. 736, supra n. 301, art. 1.

<sup>855</sup> D.L. 25,428, supra n. 301, art 1.

<sup>856</sup> Ley N° 26,223, supra n. 302, arts. 1 y 2.

<sup>857</sup> Ley N° 26,332 art. 1, Junio 23, 1994, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/26332.pdf>.

traffickers.<sup>858</sup> However, Peruvian officials also used the high penalties to deflect from weaker elements of their laws. When Fujimori's top advisor on security issues and head of Peru's intelligence agency, Vladimiro Montesino's, was criticized by U.S. officials for the obstruction of money laundering investigations, as well as the suspension of a reporting requirement on cash transactions, he argued "somewhat illogically" that Peru's money laundering laws were the most stringent in South America and did not need any change.<sup>859</sup>

At the same time, the symbolically high penalties also allowed the president to profile himself as a hardliner against crime and terrorism, which resonated with Peru's public. Apart from increasing the sanctions for drug-related crimes, during his first and second terms Fujimori also introduced the death sentence for terrorism and treason against the nation, as well as lifelong prison for kidnapping, and increased penalties for stealing and robberies up to a range of three to 25 years of prison.<sup>860</sup>

Peru's commitment to the "war on drugs" was not only expressed in legal and operational changes but also in several performance criteria that were important to the U.S. In 1991, the U.S. State Department highlighted the dismantling of 151 cocaine base laboratories as well as the destruction of coca seedbeds, representing 15,000 hectares of mature coca.<sup>861</sup> Furthermore, the U.S. embassy reported a 70 percent increase in total cocaine seizures (base and HCL) for the

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<sup>858</sup> *El Comercio*, "Destacan aumento de las penas para sancionar al narcotráfico," 14 de agosto de 1993, A4.

<sup>859</sup> U.S. Embassy in Lima to Secretary of State/DEA Washington, "Counternarcotics Roundtable Meeting," March 1999, DNSA.

<sup>860</sup> *El Comercio*, "Congreso aprobó pena de muerte para terroristas," 4 de agosto de 1994, 1; *El Comercio*, "Razones morales, políticas, religiosas y filosóficas se esgrimieron a favor y en contra de la muerte," 4 de agosto de 1994, A4; and *El Comercio*, "Aumentan penas para autores de los delitos de hurto y robo," 19 de mayo 1994, A4.

<sup>861</sup> Department of State to Secretary of State, "Determination on Peru as Required by Section 4(a) of the International Narcotics Control Act of 1990," July 1991, DNSA.

period from August 1990 to July 1991, in comparison to August 1989 to July 1990.<sup>862</sup> Yet, relations between Peru and the U.S. remained shaky. While U.S. officials in Peru were impressed by Fujimori's commitment and accomplishments, the State Department lamented "an unclear sense of Peruvian narcotics policy," mainly due to suspected corruption within Peru's police and army.<sup>863</sup> Furthermore, the accusation of human rights abuses of the armed forces raised questions within Congress of whether or not Peru qualified for U.S. aid. This led to an intervention of U.S. deputy secretary of state, Lawrence Eagleburger, lobbying to approve further aid to Peru. Apart from praising Peru's efforts to improve the human rights situation, he highlighted the need to support Peru's anti-narcotics efforts: "There should be no misunderstanding: more cocaine will enter the U.S. if aid to Peru does not go forward."<sup>864</sup>

While the pro-aid forces within the U.S. government eventually succeeded, Fujimori's 1992 "self-coup" in which he closed Congress, suspended the constitution, and fired parts of the judiciary, put a temporary end to several U.S. aid programs, including military cooperation.<sup>865</sup> At the same time, Ambassador Quainton kept praising Fujimori's commitment to the "war on drugs" and other areas of U.S. interest: "President Fujimori met our traditional concerns on several fronts. Without any support or assistance from us he moved the Air Force into the Huallaga Valley to take control of airfields. He instituted tough penalties for human rights violators and moved with especial vigor against the two terrorist movements plaguing the country."<sup>866</sup>

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<sup>862</sup> U.S. Embassy in Lima to DEA Washington, "An Overview of Narcotics Interdiction Efforts in Peru from July 28, 1990 to July 1991," July 30, 1991, DNSA.

<sup>863</sup> Department of State, "Determination on Peru as Required by Section 4(a) of the International Narcotics Control Act of 1990," July 1991.

<sup>864</sup> U.S. Deputy Secretary of State to Chairman of the Senate Foreign Relations Committee, "International Narcotics Control Act Determination on Peru," August 28, 1991, DNSA.

<sup>865</sup> U.S. Embassy in Lima to Secretary of State, "Fujimori's First Two Years: The Glass Half Empty?" July 1992, DNSA.

<sup>866</sup> Ibid.



In the second half of the 1990s, especially after Peru permitted the eradication, U.S. evaluations became even more euphoric. In 1998, Ambassador Jett stressed:

The GOP has registered unprecedented CN success in the last 18 months (...).

- Through sustained successful counterdrug interdiction, most importantly as a result of the Peruvian Air Force (FAP) and Peruvian National Police (PNP) Airbridge Denial Program, Peru has kept the price of coca below a break-even point, effectively eliminating coca as a competitive cash crop for the majority of Peru's farmers;
- As a result, alternative development, for the first time in this region, became a viable means of convincing farmers to abandon coca and cultivate licit crops;
- The GOP's integrated counternarcotics strategy, which targets coca reduction through a combination of interdiction, eradication and alternative development has produced an amazing reduction of 40 percent over the last two year in Peru's total coca cultivation, (...).<sup>867</sup>

U.S. officials also lauded the creation of a new government agency responsible for demand reduction called Commission to Fight Against Drug Consumption ("Comisión de Lucha Contra el Consumo de Drogas").<sup>868</sup> In 1998, the head of the new agency, Health Minister Costa Bauer, even committed Peru to fully eliminate coca cultivation within ten years.<sup>869</sup> In line with Costa Bauer's announcement, in 1998 and 1999, Peru stepped up its eradication efforts. While in

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<sup>867</sup> U.S. Embassy in Lima, "Counternarcotics Scen setter," 1998 (see n. 840).

<sup>868</sup> Ibid.

<sup>869</sup> Executive Office of the President and Office of National Drug Control Policy, "Connecting Information, Director's Visit to Peru, April 21, 1998 (KUDOS)," April 21, 1998, DNSA.

1996 Peru merely eradicated 1,259 hectares, in 1998 this number rose to 7,834. In 1999, the country eradicated a total 14,733, leading to a 66 percent reduction in illicit coca cultivations.<sup>870</sup>

While it is evident that Peru depended on U.S. support to move beyond its difficult economic situation, the above paragraphs also show that Peru's commitment to the "war on drugs" was strongly driven by domestic incentives. Since the late 1970s, cheap loans, a new highway, promises of infrastructure development, and available land attracted many landless peasants from Peru's sierra to move to the UHV. After an initial boom in agricultural production, prices for the UHV's traditional crops dropped sharply. On top of that, the destruction of infrastructure by insurgent groups made it harder for farmers to sell their products outside the valley. As a result, many of them shifted to coca, which promised a more stable income. The growing repression of the drug trade in Colombia reinforced this tendency, incentivizing traffickers to purchase coca leaves or cocaine paste from the UHV and fly them back to Colombia, thereby transforming the UHV into a center of cocaine trafficking operations.<sup>871</sup> In the early 1990s, even media outlets that were cognizant of the coca growers' difficult economic situation, like the center-left newspaper "La República, reported about catastrophic conditions in the UHV where drug traffickers were imposing an order based on violence and terror.<sup>872</sup> Even without U.S. pressure, a growing concern about the expansion of the drug trade in Peru, and specifically the increasingly unstable situation in the UHV provided a strong imperative for action (incentives D1 and D3). At the same time, important domestic actors such as the armed forces and the police incorporated the fight against drug trafficking into their core missions and

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<sup>870</sup> UNODC, *World Drug Report 2011* (Vienna: 2011), 100; and U.S. Embassy in Lima to USCINCSO Miami/Secretary of State/Secretary of Defense/DEA Washington/CNC Linear/DIRONDCP Washington/CIA Washington, "Gen. Wilhelm Reviews CN Directions With GOP," January 2000, DNSA.

<sup>871</sup> U.S. Embassy in Lima to Secretary of State, "Peru's Upper Huallaga Valley: Where Coca Is King," April 1991, DNSA.

<sup>872</sup> *La República*, "Narcos se apoderan del Huallaga," 29 de octubre de 1990, 1; and *La República*, "'Narcos' crean otra Huallaga a sangre y fuego," 29 de octubre de 1990, 9.

defended the need to fight drug traffickers both publicly and internally (incentive D2). After the defeat of the leftist insurgents, combating drug traffickers became even more important. Furthermore, officials from all branches of the government benefitted from the repressive system, which allowed them to collect bribes and payoffs. The most famous case is the one of Vladimiro Montesinos (see above), who accepted bribes of up to \$550,000 from drug traffickers and whose numerous corruption scandals facilitated Fujimori's resignation from Japan.<sup>873</sup>

An episode from the year 1994, illustrates why Peru's domestic context was at least as important as U.S. pressure. In May, the United States unilaterally, and without prior notice, withdrew their radar and intelligence support for the supervision of air traffic between the UHV and Colombia. According to media reports, legal experts from the State Department had raised concerns that U.S. support was violating international law, given that Peru's Air Force had a mandate to shoot down planes using the airspace illegally in order to deter drug traffickers.<sup>874</sup> The U.S. withdrawal, which was reversed several weeks later, caused a wave of public outcry not only among the Air Force, but voices from multiple side of Peru's political spectrum.<sup>875</sup> Hence, rather than suspending an operation that was a key component of U.S. drug control strategy in the early 1990s, multiple Peruvian actors complained that they were left alone by the U.S.<sup>876</sup> In April 2011, the program was suspended second time, for over 18 months, after a Peruvian A-37B Dragonfly

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<sup>873</sup> *El País* (España), "Montesinos protegió al narcotráfico en Colombia and Perú," 12 de noviembre de 2000, [https://elpais.com/diario/2000/11/12/internacional/973983615\\_850215.html](https://elpais.com/diario/2000/11/12/internacional/973983615_850215.html).

<sup>874</sup> *El Comercio*, "Derribar aviones sospechosos de transportar droga viola las leyes internacionales," 20 de mayo de 1994, B3.

<sup>875</sup> *El Comercio*, "Narcotráfico intensifica sus acciones," 31 de mayo de 1994, 1; *El Comercio*, "Unas 30 avionetas de 'narcos' han sido interceptadas en los últimos dos años," 31 de mayo de 1994, A5; *El Comercio*, "Traspié en la lucha antinarcóticos," 1 de junio de 1994, A2; and *El Comercio*, "EE.UU. debe continuar apoyando combate contra el narcotráfico," 14 de junio 1994, A5.

<sup>876</sup> *El Comercio*, "Severas críticas genera la actitud estadounidense de recortar ayuda antidrogas," 31 de mayo, A5.

airplane shot down a Cessna 185, carrying U.S. missionaries.<sup>877</sup> Despite this tragic incident, which led to sharp accusations on both sides, the tight anti-narcotics cooperation between the two countries continued during the government of Alejandro Toledo (2001-2006) and the second government Alan García (2006-2011).

### **9.6 Tied to Commerce: Drug Policy under Toledo (2001) and García (2006)**

In 2001, the CIA predicted a potentially difficult relationship with either of the two front runners of the 2001 election: Alejandro Toledo and Alan García.<sup>878</sup> However, in the area of drug policy the administrations of Toledo (2001-2006) and García (2006-2011) acted mostly in line with U.S. interests. Both governments carried out moderate reforms to Peru's legal framework on drugs. These reforms criminalized a new set of activities related to the laundering of illegal assets and trade with precursor chemicals. While the new laws slightly lowered the penalties for high-profile drug-related crimes, they tightened penalties for micro-trafficking. On the operational side, both governments intensified the campaigns of eradicating illicit coca crops.

The first legal change materialized in 2002 when the country's Congress approved a new law on money laundering, which was a high priority to the U.S.<sup>879</sup> While law 27,765 lowered penalties for drug-related money laundering from perpetual prison to 25 years, it criminalized a series of money-laundering activities, which sought to facilitate their persecution.<sup>880</sup> Most importantly, it enacted a reporting requirement on cash transactions, which had been suspended

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<sup>877</sup> Carpenter, *Bad Neighbor Policy*, 1-2 (see intr., n. 5).

<sup>878</sup> CIA, "Presidential Candidates a Mixed Bag for U.S. Interests," April 3, 2001, DNSA.

<sup>879</sup> U.S. Embassy in Lima to Secretary of State, "Ambassador Meeting with President Paniagua," March 2001, DNSA.

<sup>880</sup> Ley N° 27,765, Junio 26, 2002, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/27765.pdf>.

under Fujimori.<sup>881</sup> In the same year, the government reformed the CC's article on micro-commercialization and micro-production of drugs (Art. 298). While it maintained the same sentencing scale of (of two to eight years, and one to four years if drug sales were to the final consumer), it added that aggravated forms were to be punished with six to twelve years of prison, thereby allowing judges to penalize certain types of micro-trafficking more severely. It also reduced the quantities of how much constituted a small amount: 50 grams of cocaine paste, 25 grams of powder cocaine, five grams of opiates, and 80 grams of marijuana or 20 grams of its derivatives.<sup>882</sup>

A year later, Peru's Congress enacted a more comprehensive drug-law reform. Law 28,002 re-codified the CC's section on illegal drugs and lowered some of the penalties for drug-related crimes. Art. 296 on the promotion and favoring of illicit drug trafficking (which continued to be penalized with eight to 15 years) now included two further crimes with lower sentencing scales: the possession of drugs for the purpose of trafficking (penalized with six to twelve years) and illicit commerce with the organic raw materials of drugs (penalized with five to ten years). A new article (296 [a]) penalized the commercialization and cultivation of opium poppies and marijuana with eight to 15 years. However, the new law reduced penalties to a range of six to ten years if the commerce was with seeds, and two to six years if the criminal agent was growing less than 100 plants. At the same time, the law foresaw a penalty range of 25 to 30 years if the criminals obligated others to cultivate drugs by violence or threat. While the penalization of aggravated forms of trafficking remained very high (15 to 25 years and 25 to 35 years for heads of criminal organizations and the financing of terrorist groups) the sentencing scale was significantly lower than the previous one (see above). Ultimately, the new article 298 on micro-

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<sup>881</sup> U.S. Embassy in Lima, "Counternarcotics Roundtable Meeting," 1999 (see n. 859).

<sup>882</sup> Ley N° 27,817 artículo único, Julio 18, 2002, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/27817.pdf>.

commercialization and micro-production adjusted the sentencing scale to three to seven years, including for drug sales to the final user, and six to ten years for aggravated forms.<sup>883</sup> Almost simultaneously, law 28,003 changed the name of Peru's principal government agency to plan and implement drug use prevention programs from Commission to Fight Against Drug Consumption to National Commission for Development and Life without Drugs ("Comisión Nacional para el Desarrollo y Vida sin Drogas," DEVIDA).<sup>884</sup>

Two further changes in 2007 added several activities related to the illicit trafficking with chemical precursors (penalized with five to ten years) and conspiring with others for the purpose of trafficking (penalized with five to ten years) to the list of drug-related crimes.<sup>885</sup> While the above-stated changes significantly lowered the penalties for money laundering, aggravated forms of drug trafficking, and forced cultivation, penalties for drug-related crimes remained among the highest in the region (see table 9). This stands in line with Peru's ongoing fight against illegal coca cultivation, as well as drug production and trafficking, which continued during both administrations. Most importantly, both governments continued the forced eradication of coca, the most controversial element of Peru's counter-narcotics approach. While the eradication of 6,436 hectares of coca in 2001 was much lower than in 1999 (14,733), in 2003 eradication levels rose to 11,312 hectares. In 2006, the first year of Alan García's second presidency, coca eradication reached its highest point since 1999, with 12,688 hectares, and has not dropped lower than 10,143 (in 2008) throughout his term.<sup>886</sup> Despite the continuously high levels of coca

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<sup>883</sup> Ley N° 28,002, supra n. 311, arts. 1 y 2.

<sup>884</sup> Ley N° 28,003, Junio 17, 2003, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/28003.pdf>.

<sup>885</sup> Ley N° 29,037, Junio 1, 2007, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/Leyes/29037.pdf>; and D.Leg. N° 982 art. 1, Julio 21, 2007, ADLP, <http://www.leyes.congreso.gob.pe/Documentos/DecretosLegislativos/00982.pdf>.

<sup>886</sup> UNODC, *World Drug Report 2011*, 100 (see n. 870).

eradication, illicit cultivation increased from 46,200 hectares in 2001 to 61,200 in 2010.<sup>887</sup> While this rise was driven by the aggressive eradication campaigns in Colombia, which incentivized criminal networks to relocate coca production to Bolivia and Peru, the numbers highlight the difficulty in containing coca growth at the regional level.

Once again, there is some evidence that Peru utilized its drug-control campaign to obtain resourced from the U.S. In July 2003, President Toledo met with U.S. Ambassador John Caulfield to request U.S. assistance to combat “narcoterrorism.” In particular, he asked for technological assistance in tracking remaining SL guerillas; financial support for a joint counter-narcotics intelligence center in Pucallpa, northeast of Lima and close to Peru’s border with Brazil; and the opportunity for Peruvian officials to participate in a high-level crisis management simulation.<sup>888</sup>

At the same time, Ponce makes a strong case that Peru’s continuity in drug policy was driven by trade incentives.<sup>889</sup> In 2002, U.S. Congress approved the Andean Trade Promotion and Drug Eradication Act (ATPDEA), which was even more ambitious than its predecessor ATPA, increasing the number of products exempt from tariffs from 5,600 to 6,300.<sup>890</sup> The timing of the new treaty coincided with the deepening of Peru’s export-oriented development model, which led to the negotiation of 19 free trade agreements since 2005.<sup>891</sup> The center piece of Peru’s export-

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<sup>887</sup> UNODC, *World Drug Report 2011*, 99.

<sup>888</sup> The excised embassy cable does not reveal if the crisis training exercise was meant for military or police personnel, or both (U.S. Embassy in Lima, “President Toledo Describes Narcoterrorist Threat and Requests U.S. Technical Assistance,” July 23, 2003, DNSA).

<sup>889</sup> Ponce, “From Freedom to Repression,” 138-141 (see intr., no. 10)

<sup>890</sup> Office of the United States Trade Representative, “New Andean Trade Benefits,” September 25, 2002, [https://web.archive.org/web/20080117234244/http://www.ustr.gov/Document\\_Library/Fact\\_Sheets/2002/New\\_Andean\\_Trade\\_Benefits.html](https://web.archive.org/web/20080117234244/http://www.ustr.gov/Document_Library/Fact_Sheets/2002/New_Andean_Trade_Benefits.html).

<sup>891</sup> OAS Foreign Trade Information System, “Information on Peru,” no date, [http://www.sice.oas.org/ctyindex/per/peragreements\\_e.asp](http://www.sice.oas.org/ctyindex/per/peragreements_e.asp).

centered development strategy was a free trade agreement with the United States, which was signed in 2006 and entered into force in 2009. As highlighted by the embassy's *chargé d'affaires*, Richard Brown, in an interview with "El Comercio" in 2003, advances in trade relations between the two countries were intimately tied to progress in Peru's drug control efforts. In the same interview, he pointed out that Peru was lagging behind U.S. expectations on coca eradication.<sup>892</sup>

While the prospect of U.S. aid and trade benefits are key to explain the continuity of Peru's drug policy, the domestic context also proved favorable. Although "El Comercio" reported about the involvement of some remaining SL forces in trafficking activities, the threat of renewed large-scale terrorist violence had largely diminished.<sup>893</sup> Hence, eradicating coca did not carry the same risks as in the 1990s, when SL forces controlled large portions of the UHV. Furthermore, media reports continued to portray drug trafficking as a grave social problem that was not adequately controlled by the state.<sup>894</sup> Part of the reporting focused on new trafficking routes from Peru to Chile, which led to the arrest of 324 Peruvian traffickers in the Chilean border town Arica.<sup>895</sup> On top of that, articles from "El Comercio," informed about sharp rises of drug sales and consumption in Lima.<sup>896</sup> Ultimately, public opinion data indicated a strong dissatisfaction of Peru's population with problems related to crime control, drug trafficking, and drug consumption

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<sup>892</sup> *El Comercio*, "Para tener luz verde en el ATPA el combate contra las drogas debe ser eficiente y exitoso," 15 de agosto de 2003, A2.

<sup>893</sup> *El Comercio*, "Sendero es el nuevo capo de la droga en el Monzón," 3 de junio de 2007, 1; and *El Comercio*, "Sendero y el fuego de la droga," 3 de junio de 2007, A8.

<sup>894</sup> *El Comercio*, "La lucha antidrogas debe involucrar a todo el Estado," 2 de junio de 2007, A4.

<sup>895</sup> *El Comercio*, "Cuarenta bandas de narcos sacan droga por la frontera sur," 14 de julio de 2002, 1; *El Comercio*, "Bandas transportan droga desde la selva hasta la frontera con Chile," 14 de julio de 2002, A2; *El Comercio*, "Caen bandas que traficaron casi una tonelada de drogas," 15 de julio de 2002, A10; and *El Comercio*, "Hay 324 peruanos presos por narcotráfico en Arica," 15 de julio de 2002, A10.

<sup>896</sup> *El Comercio*, "Hallan más de 70 kilos de PBC en una camioneta," 27 de mayo de 2003, A9; *El Comercio*, "Detectan 1.035 puntos de venta de drogas en la capital," 5 de julio de 2007, A8; *El Comercio*, "Proponen que toda posesión de narcóticos tenga sanción efectiva," 5 de julio de 2007, A8; and *El Comercio*, "Narcos extranjeros pretenden producir droga sintética en el país," 14 de julio de 2007, A19.



According to a 2002 opinion poll carried out by “El Comercio” to estimate how citizens of Peru’s capital Lima perceived state responses to various policy issues, 66 percent of the subjects responded that the control of criminal activities had gotten worse.<sup>897</sup> In a similar poll, conducted in 2007, 55 percent of the respondents stated that crime control had gotten worse under García’s government.<sup>898</sup> This coincides with data from Latinobarómetro, which underlined the worsening perception regarding crime and drugs. In the years from 2001 to 2011, between 65.7 to 78 percent of the subjects responded that the problem of crime had increased “a lot.”<sup>899</sup> In the years 2001 and 2002, 71.7 percent and 57.3 percent, respectively, responded that drug addiction had increased “a lot.”<sup>900</sup> Ultimately, in 2001, 82.8 percent responded that the problem of drugs in Peru was “very serious.”<sup>901</sup> In 2001, public opinion data also revealed support for U.S. drug-control policies. When asked how they thought the United States dealt with the problem of drug addiction, 23 percent of the subjects responded “very good” and 30 percent “rather good,” as compared to only 7.8 percent who responded “very bad” and 10.1 percent who responded rather bad.<sup>902</sup>

The above analysis underlines that even though the United States can be considered the architect of the failed supply control policy, Peru’s domestic context was favorable to the continuation of repressive drug interdiction and coca eradication. The presidency of Ollanta Humala (2011-2016) provides further evidence of how deeply engrained this approach is within

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<sup>897</sup> *El Comercio*, “Se percibe un estancamiento en algunas políticas de Estado,” 15 de julio de 2002, A2.

<sup>898</sup> *El Comercio*, “Tras un año presidente García exhibe su más baja popularidad,” 22 de julio de 2007, A10.

<sup>899</sup> No data was available for the years 2003, 2004, 2006, 2007, 2008, 2009, and 2010 (Latinobarómetro Internet Database: <http://www.latinobarometro.org/latOnline.jsp>).

<sup>900</sup> There was no data for the following years (Latinobarómetro Internet Database: <http://www.latinobarometro.org/latOnline.jsp>).

<sup>901</sup> There was no data for the following years (Latinobarómetro Internet Database: <http://www.latinobarometro.org/latOnline.jsp>).

<sup>902</sup> There was no data for the following years (Latinobarómetro Internet Database: <http://www.latinobarometro.org/latOnline.jsp>).

Peru's government bodies and institutional cultures, despite the overwhelming evidence that prohibition is not working.

### **9.7 Full-Blown Enforcement Under Humala (2011-2016)**

For those critical of forced coca eradication and repressive drug interdiction, the election of Ollanta Humala in 2011 offered a glimmer of hope. The former army officer, who has been described as a leftist nationalist, appointed one of the country's most prominent critics of the "war on drugs" and former advisor of coca growers, Ricardo Soberón, as head of DEVIDA. During his tenure, Soberón aspired to give the agency a more important role in designing and implementing drug policy, next to the police and the military, and redefine the country's cooperation with the U.S. On the operational side, his main objectives were to strengthen police and intelligence investigations against large-scale trafficking organizations; efforts against money laundering; controls of the supply chains of chemical precursors used for drug production; alternative development; and prevention and rehabilitation of drug user, rather than criminal prosecution.<sup>903</sup> As one of his first measures, Soberón announced a stop of Peru's coca eradication program for an indefinite time to reexamine its utility.<sup>904</sup> Several opposition leaders, as well as the previous head of DEVIDA, Ricardo Vega LLona, immediately attacked the measure as irresponsible.<sup>905</sup> Only a

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<sup>903</sup> *La República*, "Ricardo Soberón: la erradicación es una política de estado y la vamos a cumplir," 4 de septiembre de 2011, <http://larepublica.pe/politica/570276-ricardo-soberon-la-erradicacion-es-politica-de-estado-y-la-vamos-a-cumplir>; and *La República*, "Ricardo Soberón negó ante el congreso tener un 'doble discurso'," 13 de septiembre de 2011, <http://larepublica.pe/politica/572723-ricardo-soberon-nego-ante-el-congreso-tener-un-doble-discurso>.

<sup>904</sup> *Reuters*, "Perú frena erradicación cultivos hoja coca por cambios estrategia," 17 de agosto de 2011, <https://lta.reuters.com/article/domesticNews/idLTASIE7A74L120110817>.

<sup>905</sup> *Perú 21*, "Critican que se 'baje la guardia' en lucha antidrogas," 17 de agosto de 2011, <http://archivo.peru21.pe/noticia/1044273/critican-que-sebaje-guardia-lucha-antidrogas>.

week after the suspension, the minister of the interior and former army officer, Oscar Valdés, announced that the country had resumed its eradication efforts.<sup>906</sup>

Soberón's limitations as head of DEVIDA became explicit in leaked communications with the National Confederation of Farmers from Coca-Growing Basins of Peru ("Confederación Nacional de Productores Agropecuarios de las Cuencas Cocaleras del Perú," CONPACCP). In a meeting with the group Soberón stated: "I am not naïve to think that everything that I think about coca and the drug trade will be incorporated into the road map of the new government, but if I do not receive support my presence will not be useful."<sup>907</sup> In an e-mail to CONPACCP members he outlined that even as head of DEVIDA he could not always detain the "violent" eradication of coca crops. Moreover, he clarified that his range of action depended entirely on the country's prime minister, Salomón Lerner, and that he had no influence whatsoever on the actions of the ministers of defense and the interior, Daniel Mora and Oscar Valdés.<sup>908</sup>

In the following, Soberón clarified publicly and before Congress that he would not sabotage the national government's policies and comply with its eradication strategy. While he received public support from President Humala, members of the opposition accused him of advancing a double discourse.<sup>909</sup> In a cabinet reshuffle in late 2011, one of Soberón's few supporters, prime minister Salomón Lerner, was forced to leave the administration and replaced by the former minister of the interior, Oscar Valdés. Due to fundamental disagreements between

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<sup>906</sup> *Perú 21*, "Este martes se reanuda la erradicación," 21 de agosto de 2011, <http://archivo.peru21.pe/noticia/1111225/este-martes-se-reanuda-erradicacion>.

<sup>907</sup> *La República*, "Difunden audio de Ricardo Soberón con junta cocalera," 29 de agosto de 2011, <http://larepublica.pe/politica/568612-difunden-audio-de-ricardo-soberon-con-junta-cocalera>.

<sup>908</sup> *RPP Noticias*, "Difundan email de jefe de DEVIDA Ricardo Soberón a cocaleros," 1 de septiembre de 2011, <http://rpp.pe/politica/actualidad/difunden-email-de-jefe-de-devida-ricardo-soberon-a-cocaleros-noticia-399679>.

<sup>909</sup> *La República*, "Fernando Rospigliosi fundamenta su posición sobre 'doble discurso' de Ricardo Soberón," 18 de septiembre de 2011, <http://larepublica.pe/politica/573802-fernando-rospigliosi-fundamenta-su-posicion-sobre-el-doble-discurso-de-ricardo-soberon>.

Soberón and Valdés about the strategic orientation of DEVIDA, as well as the issue of forced eradication, on January 10, 2012, Soberón resigned less than six months after he took over the post. He was replaced by Carmen Mesías, an expert on drug prevention, and supporter of forced eradication.<sup>910</sup> In an interview after his departure, Soberón expressed his frustration, claiming that Peru's drug policy was hijacked by ignorance, a lack of knowledge, and a concentration of political, economic, and media interests. He also criticized his successor Carmen Mesías for planning to concentrate DEVIDA's efforts on rehabilitation and prevention, which would leave interdiction, crop control, and eradication entirely in the hands of the police and the military.<sup>911</sup>

The brief tenure of Soberón as head of DEVIDA illustrates that the internalized and institutionalized biases towards prohibition and repression present major obstacles for a policy change, even at a time when the international context has become more favorable (see chapters IV and V). Through the rest of Humala's presidency coca eradication reached unprecedented heights, rising from 10,290 hectares in 2011 to 35,868 in 2015, before dropping to 30,150 hectares in 2016.<sup>912</sup> Peru's eradication effort has led to a significant reduction of illicit coca crops from an estimated 62,500 hectares in 2011 to 43,900 hectares in 2016. However, in the same period coca cultivation in Colombia rose from 64,000 to 146,600 hectares, leading to a sharp net increase of total illicit coca cultivation (from 155,600 to 213,000 hectares).<sup>913</sup>

Peru's preference for prohibition and repression is not only reflected in the growing numbers of eradicated coca but also recent legal changes and the number of drug-related arrests.

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<sup>910</sup> Hannah Stone, "Back to Business as Usual as Peru Loses Progressive Drug Czar," *InSight Crime*, January 15, 2012, <https://www.insightcrime.org/news/analysis/back-to-business-as-usual-as-peru-loses-progressive-drug-czar/>.

<sup>911</sup> *La Mula*, "Ricardo Soberón: 'el perdedor de la segunda vuelta está gobernando'," 12 de enero de 2012, <https://lamula.pe/2012/01/12/ricardo-soberon-el-perdedor-de-la-segunda-vuelta-esta-gobernando/lamula/>.

<sup>912</sup> UNODC, *World Drug Report 2018, Booklet 2: Global Overview of Drug Demand and Drug Supply, Latest Trends, Cross-Cutting Issues* (Vienna: 2018), 52.

<sup>913</sup> *Ibid.*

In July 2013, Peru's Congress enacted a reform of the CC to combat citizen insecurity. Law 30,076 denies the possibility to lower a penalty because of age, work or education, as well as conditional liberty, for drug-related convicts, thus making it harder for them to go through a process of rehabilitation.<sup>914</sup> Furthermore, between 2008 and 2014, the prison population for drug-related offenders rose 71 percent, from 11,304 to 19,329, thereby facilitating a sharp increase in Peru's total prison population from 43,466 to 70,813 (63 percent) in the same period.<sup>915</sup>

Although Peru's law does not officially penalize the possession of drugs for personal consumption, drug users constitute the highest number of drug-related arrests. Between 1995 and 2008, Peru's police arrested 116,541 drug users, constituting approximately 70 percent of all drug-related detentions (167,847).<sup>916</sup> Between 2008 and 2013, Peru's police arrested 43,515 consumers, 17,309 suspected micro-traffickers, and 17,568 drug trafficking suspects.<sup>917</sup> Although most drug users do not get punished, they often spend some days, or, in some cases, several weeks or months in prison until their status is cleared.<sup>918</sup> These numbers indicate that at a time when several countries in the region have softened some aspects of their drug policies, Peru has deepened its prohibitionist model. This raises the question, why, different to other countries, Peru has not been able to leave behind policies, which have not detained drug trafficking, consumption, and the illicit cultivation of coca, while fostering a prison population that is well

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<sup>914</sup> Ley 30,076 art. 1 y 5, Julio 24, 2013, ADLP, [http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Expvirt\\_2011.nsf/Repexpvirt?OpenForm&Db=201100083&View](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Expvirt_2011.nsf/Repexpvirt?OpenForm&Db=201100083&View).

<sup>915</sup> Jérôme Mangelinckx, *La lucha contra las drogas en Perú: Una batalla perdida* (Lima: Universidad de Ciencias Aplicadas, 2017), 25.

<sup>916</sup> Soberón Garrido, "Legislation on Drugs and the Prison Situation in Peru," 77 (see intr., n. 10).

<sup>917</sup> Mangelinckx, *La lucha contra las drogas en Perú*, 32.

<sup>918</sup> Ibid. 30-31.

beyond the country's capacities.<sup>919</sup> The following section offers some answers and explains why, even after the country's surprising legalization of cannabis-based medicines in 2017, a break with the prohibitionist policy model is unlikely to happen in the near future.

### **9.8 The Legalization of Cannabis-Based Medicines and Future Outlook**

The above analysis has shown that domestic actors and incentives drove Peru's path towards prohibition at least as much as international pressures. The country's domestic context also helps to explain why the country appears to be reluctant to move beyond prohibition, despite the approach's evident failure and the rising prominence of harm reduction as an alternative policy framework. As outlined above, the police and the armed forces in particular not only benefit from prohibition but incorporated the fight against drugs into their core missions. Changing this culture of prohibition will require political will and leadership. However, such leadership would not only have to overcome institutional and cultural obstacles, but also faces the prospect of strong public opposition. Data from a 2015 survey conducted by the think tank "Asuntos del Sur" underlines why significant changes towards harm reduction are unlikely.

First, only 16 percent of the respondents thought that police interventions and persecution of drug users were not an effective policy. In the region of Latin America (represented by Argentina, Bolivia, Chile, Colombia, Costa Rica, El Salvador, Mexico, Peru, and Uruguay) an estimated 40 percent believed that this policy was not effective. Second, while 37 percent of the region believed that military interventions were not effective to reduce drug trafficking, in Peru only 16 percent thought that military interventions not effective. Third, 23 percent of Peruvian respondents believed that drug production should be legal or not punishable, 20 percent thought that commerce with drugs should be legal or not punishable, and 27 percent believed that drug consumption should be legal or not punishable. In Colombia, the region's largest cocaine

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<sup>919</sup> According to Mangelinckx Peru's prison infrastructure was built for only 30,010 inmates (Mangelinckx, *La lucha contra las drogas en Perú*, 20).

manufacturer, these numbers were much higher: 43 percent, 39 percent, and 44 percent, respectively. In the entire region, 33 percent, 27 percent and 38 percent were in favor of legalizing or not punishing drug production, commercialization, and consumption.<sup>920</sup>

The study also reveals conservative attitudes regarding the use and possible legality of marijuana. On a scale from 1 to 5, representing complete disapproval (1) and complete approval (5) of marijuana legalization, Peru's approval was 2.33, significantly lower than the regional average of 2.83. On another 1 to 5 scale, Peru's approval of Uruguay's specific project of marijuana legalization was 2.08, while the region's approval was 2.33. Even the approval of therapeutic uses of marijuana was comparatively low. On a 1 to 10 scale, Peru's approval was 3.84, while the region's approval was 6.52.<sup>921</sup>

Hence, many observers were surprised, when in November 2017 the country established a regulatory framework for medical and scientific investigations, as well as the import, and possible national production, of cannabis-based medicines.<sup>922</sup> The episode reveals important insights about how flexibilizations of drug policies can happen even in a domestic context that appeared to be highly unfavorable.

The path towards the legalization of medical marijuana began with a police raid of a clandestine marijuana laboratory in Lima's neighborhood San Miguel. However, instead of drug traffickers seeking to make gains from selling psychoactive substances, the laboratory was run by a group of mothers producing cannabis oil and other medicines for their children suffering from diseases as diverse as epilepsy, autism, Parkinson, cancer, fibromyalgia, and multiple sclerosis. These mothers, many of whom told the media how cannabis-based medicines helped to ease their

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<sup>920</sup> Asuntos del Sur – Observatorio Latinoamericano de Políticas de Drogas y Opinión Pública, *Estudio anual sobre políticas de drogas y opinión pública, América Latina* (Santiago de Chile: 2015), 20-25.

<sup>921</sup> Ibid. 25, 26, y 37.

<sup>922</sup> Ley N° 30,681, supra n. 327.

children's suffering had no possibility of accessing these medications legally and thus began producing them on their own.<sup>923</sup>

The incident received wide media coverage and attention from the public, which sided almost unanimously with the mothers, who were facing penal persecution. In the following, the collective “Buscando Esperanza” (Searching for Hope) to which the mothers belonged began a public campaign, not only to protest the harsh treatment they received from the police but also to press for the legalization of cannabis-based medicines.<sup>924</sup> The mothers received immediate support from other civil society groups, even from some with a strong prohibitionist agenda. Peru's Center of Information and Education for the Prevention of Drug Abuse stated that although cannabis has no curative powers, its medicines help to alleviate suffering from degenerative diseases.<sup>925</sup> On February 12, only a few days after the raid, the head of the Commission of Health from Peru's Congress invited the Minister of Health to speak in front of the Commission about the potential benefits of medical marijuana.<sup>926</sup> Soon after, Peru's Ministry of Health created a committee to evaluate the use of such medicines in Peru.<sup>927</sup> Within the same month, the country's executive sent a legislative proposal to Peru's Congress, authorizing the import, commercialization, and use of cannabis-based medicines. The executive also stated that it

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<sup>923</sup> *Perú 21*, “San Miguel: Descubren laboratorio clandestino de marihuana,” 8 de febrero de 2017, <https://peru21.pe/lima/san-miguel-descubren-laboratorio-clandestino-marihuana-63751>.

<sup>924</sup> *Perú 21*, “Convocan marcha para legalizar uso medicinal de la marihuana,” 9 de febrero de 2017, <https://peru21.pe/lima/convocan-marcha-legalizar-medicinal-marihuana-63835>.

<sup>925</sup> *La República*, “Cedro se mostró de acuerdo con legalización de la marihuana con fines medicinales,” 9 de febrero de 2017, <https://larepublica.pe/sociedad/846993-cedro-se-mostro-de-acuerdo-con-legalizacion-medicinal-de-la-marihuana>.

<sup>926</sup> *La República*, “Congreso citará a ministra de salud por uso medicinal del cannabis,” 12 de febrero de 2017, <https://larepublica.pe/politica/847836-congreso-citara-ministra-de-salud-por-uso-medicinal-de-la-marihuana>.

<sup>927</sup> *Perú 21*, “Minsa crea comité para evaluar uso medicinal de marihuana en el Perú,” 16 de febrero de 2017, <https://peru21.pe/lima/minsa-crea-comite-evaluar-medicinal-marihuana-peru-64263>.



was considering a new law allowing the production of medical marihuana in Peru, two years after the original law's implementation.<sup>928</sup>

Between February and July 2017, the Commission of Public Health of Peru's Congress received two further proposals, one from the opposition party "Frente Amplio" and another one from the governing party "Peruanos Por el Kambio." While the first included the right to self-cultivate, the latter included a proposition to cultivate marihuana and produce cannabis-based medicines on national territory so that patients would not have to pay expensive imported medicines.<sup>929</sup> Peru's legislators eventually decided to discuss and vote on the latter project.

In the meanwhile, DEVIDA expressed publicly its support for medical marijuana, as long as its import, production, and use would be under strict control.<sup>930</sup> Furthermore, two well-known personalities from Peru's television started to speak out in favor of medical marihuana telling the country's Congress and public how they depended on cannabis-based medicines, thereby giving the movement additional strength.<sup>931</sup> On October 19, 2017, Peru's Congress almost unanimously voted in favor of the new law, with 66 votes in favor, three abstentions, and only four against.<sup>932</sup>

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<sup>928</sup> *La República*, "Gobierno envía al Congreso proyecto de ley para venta de la marihuana medicinal," 23 de febrero de 2017, <https://larepublica.pe/sociedad/1018361-gobierno-envia-al-congreso-proyecto-de-ley-para-venta-de-la-marihuana-medicinal>.

<sup>929</sup> Jéssica León, "Tres proyectos de ley buscan legalizar uso de la marihuana medicinal en Perú," *La República*, 6 de agosto de 2017, <https://larepublica.pe/sociedad/1070490-tres-proyectos-de-ley-buscan-legalizar-uso-de-la-marihuana-medicinal-en-peru>.

<sup>930</sup> *La República*, "Devida se pronuncia a favor del uso medicinal de la marihuana," 25 de julio de 2017, <https://larepublica.pe/sociedad/1065675-devida-se-pronuncio-a-favor-del-uso-medicinal-de-la-marihuana>.

<sup>931</sup> *La República*, "Carlos Alcántara sorprende con discurso a favor de la marihuana medicinal," 20 de septiembre de 2017, <https://larepublica.pe/espectaculos/1100786-carlos-alcantara-sorprende-con-discurso-a-favor-de-la-marihuana-medicinal-video>; and *Perú 21*, "Francesca Brivio sobre el cannabis medicinal: 'Es un derecho a la salud,'" 20 de septiembre de 2017, <https://peru21.pe/peru/francesca-brivio-cannabis-medicinal-derecho-salud-376781>.

<sup>932</sup> *La República*, "Congreso aprobó por mayoría legalizar el uso de cannabis medicinal," 19 de octubre de 2019, <https://larepublica.pe/politica/1133341-congreso-debate-proyecto-para-el-uso-de-cannabis-medicinal>.

While the passing of the law was celebrated as a major, and unexpected, flexibilization of Peru's legislative framework on drugs, the law also received strong criticisms from the groups that initiated the process. First, even before the law was passed collective's like "Buscando Esperanza" criticized and protested against the denial of the right to self-cultivate and produce cannabis-based medicines on their own. However, several members of Congress dismissed their proposal, arguing that the right to self-cultivate would make the drug more accessible to the country's youth.<sup>933</sup> Second, the original law only allowed the import, production, and use of cannabis-based medicines whose content of marijuana's psychoactive ingredient THC was less than 0.5 percent. However, effective treatment for certain chronic diseases requires a THC content of at least 8.5 percent.<sup>934</sup> After several meetings and negotiations between the Ministry of Health and representatives from civil society, in October 2018 the Ministry conceded that the THC content should be determined by the doctor. This agreement was set to become part of the government regulation implementing the new law.<sup>935</sup>

In February 2019, Peru's government finally issued a regulation, which shall put Law 30,681 into practice. According to the document, both pharmacies seeking to sell cannabis-based medicines, as well as patients seeking to use them have to subscribe to a national register, showing some resemblances to the Uruguayan model.<sup>936</sup>

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<sup>933</sup> Esteban Acuña, "Madres de 'Buscando Esperanza' exigen autocultivo para conseguir cannabis medicinal," *Perú 21*, 24 de septiembre de 2019, <https://peru21.pe/peru/marihuana-medicinal-madres-buscando-esperanza-piden-dejar-produccion-manos-asociaciones-cultivo-377330>.

<sup>934</sup> Jérica León, "Cannabis medicinal: controversia por reglamento que regulará su uso," *La República*, 21 de mayo de 2018, <https://larepublica.pe/sociedad/1246333-cannabis-medicinalcontroversia-reglamento-regulera>.

<sup>935</sup> Jérica León, "Cannabis medicinal: Minsa y colectivos logran acuerdo," *La República*, 5 de octubre de 2018, <https://larepublica.pe/sociedad/1331729-cannabis-medicinal-minsa-colectivos-logran-acuerdos>.

<sup>936</sup> Melina Ccoillo, "Tras larga lucha de colectivos, sale el reglamento que de ley del cannabis," *La República*, 24 de febrero de 2019, <https://larepublica.pe/sociedad/1419163-larga-lucha-colectivos-sale-reglamento-ley-cannabis>.

The above reconstruction of the process towards Peru's legislation and regulation of cannabis-based medicines shows that in the present era, the drug-policy field in South America has become increasingly complex and flexible. Even in one of the region's most prohibitionist countries, under certain conditions, surprising policy modifications are possible. The use of police force against mothers seeking to alleviate the pain of their sick children, illustrated the limitations of marijuana prohibition in a way that resonated with most of society in a short time, compelling the government to act in unprecedented ways (corresponding to incentive D3). While the advocacy of multiple civil society actors as well as the overall public support for the reform were important (incentives D1 and D2), it is highly unlikely that the law would have materialized and received such broad support without the incident.

While some activists have expressed hope that the regulation of the medical marijuana market will eventually lead to a wider reform, including the legalization of recreational marijuana, the above-detailed process also underlines that there are strong levels of resistance, which are likely to prevent this from happening in the near future.<sup>937</sup> First, the initial reluctance to include medicines with THC levels higher than 0.5 percent shows that, apart from alcohol, coca, and tobacco, the consumption of psychoactive substances for recreational purposes is still a taboo in Peru. Second, different to Chile, Colombia, and Mexico, Peru's patients are not allowed to self-cultivate cannabis plants. This denial remains a topic of controversy and has led ongoing protests of pro-cannabis groups.<sup>938</sup> On top of that, Peru's social movement for the legalization of cannabis does not appear to have the same force as the ones in Uruguay and Ecuador. While in Quito cannabis activists occupy houses, hold cultural events and workshops, and interact frequently

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<sup>937</sup> Esteban Acuña, "Luis Gavancho de legaliza Perú: 'la marihuana medicinal regula el mercado y sacará a la planta del narcotráfico,'" *Perú 21*, June 4, 2017, <https://peru21.pe/lima/luis-gavancho-legaliza-peru-marihuana-medicinal-regulara-mercado-sacara-planta-narcotrafico-78886>.

<sup>938</sup> Jérica León, "Colectivos de cannabis: aún falta el autocultivo," *La República*, 25 de febrero de 2019, <https://larepublica.pe/sociedad/1419741-colectivos-cannabis-falta-autocultivo>.

with the policy community, Peru's biggest organization "Legaliza Perú" is mostly active in the digital sphere. Ultimately, the institutional obstacles of a highly prohibitionist culture across several government bodies will be hard to overcome. Even though Peru's National Strategy to Fight Against Drugs for 2017-2021, elaborated by DEVIDA and approved by the country's Council of Ministers, included the reduction of harms and risks of drug use as one of its multiple goals, the area of prevention and treatment, in which harm reduction is located, received the least financial support, representing only 4.3 percent of Peru's drug policy budget.<sup>939</sup> Furthermore, the document promotes a strong prohibitionist discourse, and emphasizes primarily the control of drug supplies, which represents more than half of budget. If funds for alternative development and the fight against terrorism are added to supply control, where they technically belong, the area covers 91.2 percent of Peru's budget.<sup>940</sup> It will be fascinating to observe if Peru's social movements for the legalization of cannabis will be able impact the country's public opinion as well as policy makers in any significant ways. Furthermore, it will be interesting to follow if the sale of cannabis-based medicines will have any impact on how Peruvians view the recreational use of marijuana.

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<sup>939</sup> Presidencia del Consejo de Ministros y Comisión Nacional para el Desarrollo y Vida Sin Drogas-DEVIDA, *Estrategia nacional de lucha contra las drogas 2017-2021* (Lima: Septiembre 2017), 117.

<sup>940</sup> Ibid.

## X. CONCLUSION

The above case studies not only analyzed diverse policy choices, but also displayed multiple processes that have led to these outcomes. As highlighted in each of the chapters, these processes were shaped by specific constellations of domestic and international incentives, the preferences of actors in positions to affect policy choices, and several other factors related to the political cultures and systems, as well as the history of each country. Despite this multiplicity of factors, the three cases illustrate five tendencies and resemblances, which contribute to a more complete understanding of the drug policy field in South America. After outlining these trends in greater detail, the present conclusion also discusses what this dissertation reveals about the effects of international norms on policy choices. The conclusion ends with a brief outlook of the drug policy field in South America and its interplay with international norms and developments.

First, especially the drug policy reforms from the early 1970s to the late 1990s were not incentivized by actual policy problems, but driven by considerations about power, popularity, material benefits, and international standing. Drug addiction was not a serious issue in any of the three cases and international trafficking became a problem once it started to look bad on the countries' reputation or caught the attention of the U.S. Furthermore, joining the "war on drugs" promised unprecedented access to training and resources, especially for the countries' police units and armed forces. Ultimately, although public opinion was not a driving force of drug law reforms, criminalizing more drug-related activities and enacting higher penalties appeared to resonate with large segments of the population, which was exposed to strong prohibitionist discourses in important media outlets. In the present era, drug policies that respond to actual drug-related challenges, or the perception of such problems, are more common. Yet, the framing of the issue as well as the design and implementation of policies are still embedded in power-based calculations, seeking to enhance the popularity of governments rather than finding adequate long-term solutions. The biggest exception is Uruguay's 2013 decision to legalize recreational

marijuana, which most Uruguayans rejected. However, the country's decision makers also viewed the reform as an opportunity to increase the Uruguay's international prestige.

Second, in all three countries important domestic actors and high-level government officials supported prohibitionist drug policies. Although given the global spread of prohibition this is hardly surprising, it nevertheless contradicts the popular notion that the "war on drugs" was a U.S. imposition and that South American countries were victims of external policy models on which they had no influence. The case studies, as well as chapter V, show that South American governments did not only have significant agency in how they implemented prohibition, but also promoted the repression and punishment of drug-related activities domestically and internationally. The establishment of ASEP in the 1970s is particularly relevant in this regard. In the early stages of the "war on drugs" the meetings surrounding this regional agreement could have served as a forum to discuss and formulate alternative policies. However, South American diplomats engaged in the same security-heavy rhetoric and suggested repressive policies, which helped transforming the "war on drugs" from a figure of speech into a hopeless fight against a highly lucrative, adaptable, and violent criminal industry.

The focus on South American agency, both in the implementation of prohibition as well as the construction of the "war on drugs," does not in any way seek to avert responsibility from the U.S. As the case studies illustrate, U.S. support and leadership were, without a doubt, necessary for the "war on drugs" to occur. However, to put prohibition into practice the U.S. depended on the support of South American partners. While in some instances actors from the region supported prohibition enthusiastically and unconditionally, at several moments, governments denied or slowed down key U.S. proposals. Similarly, while in some instances the U.S. was able to guarantee support through the provision of training, technology and the financing of drug-control initiatives, in others South American actors asked the U.S. for help. This demonstrates that the governments from the region had more control over the application

and implementation of drug policies than is usually acknowledged. This reassessment of responsibilities offers a recontextualization of the “war on drugs,” which helps to explain why the region is far from overcoming prohibition in the present era, despite its evident failure and a much more favorable international context for alternatives policies.

Third, the available data suggests that the United States was most successful in advancing prohibition by manipulating the domestic incentive structures and offering preferential market access. Although the threat of sanctions probably played into the considerations of South American governments there is no evidence that fear of sanctions drove specific policy choices. In fact, when the U.S. Congress considered Peru’s decertification in the 1990s, U.S. deputy secretary of state, Lawrence Eagleburger, explained to the chairman of the Senate’s Foreign Relations Committee that cutting aid to Peru would be counterproductive and undermine U.S. goals. Instead of sanctions, the U.S. exercised its influence by offering regular training courses for police units, the armed forces, and customs border patrol agents. Furthermore, in Peru the U.S. explicitly offered financial and technological assistance in exchange for support of its policies. As highlighted in the previous chapter, in some areas the resulting law exceeded U.S. expectations. The linkage between market access and drug control policies was so successful that even countries that were not initially included in the ATPA sought to impress the U.S. government by taking on a leadership role in the fight against drugs. Similarly, when the U.S. offered trade incentives to Peru, the country started eradicating more coca than ever before, even during governments that the U.S. viewed critically.

Fourth, while domestic incentives were important in both time frames analyzed in this dissertation, international incentives are clearly less important in the current era. This is because countries that deviate from prohibition, do not face the same political costs internationally as before. At the same time, although harm reduction has become increasingly popular in recent years, different to prohibition there is no international regime and no important state seeking to

promote or even enforce the approach. Hence, harm reduction advocacy is driven primarily by civil society, whose capacities to affect policy choices are more limited. This does not mean, however, that international developments are unimportant. The global and regional debates about drug policy have strong repercussions about how domestic advocacy groups and, to some extent, government officials operate and formulate policy proposals. Furthermore, local advocacy groups receive training, intellectual and, in some cases, financial support from actors like the DPA, IDPC, and OSF. It is highly unlikely, that Uruguay's marijuana legalization would have occurred without strong international support. Transnational actors not only supported local NGOs but also offered their expertise to the country's parliament, government agencies, and the public, hence providing the project with an aura of legitimacy.

Fifth, the success of local advocacy is strongly tied to specific political junctures that offer windows of opportunity for policy flexibilizations. In Peru, the legalization of medical marijuana can be directly linked to the raid of a clandestine laboratory that produced cannabis-based medicines for children suffering from degenerative diseases, which generated protests and unprecedented levels of support for the victims of prohibitionist drug laws. In Uruguay, the arrest of the 66-year old writer Alicia Castilla, who did not fit into the stereotypes often associated with drug users, for growing marijuana plants at her home created a more favorable context for a policy flexibilization. Furthermore, a series of unrelated killings, which shocked the citizens of the small Southern Cone nation created a political climate, in which high-level government officials were able to make a case, and convince President Mujica, that marijuana legalization would help to reduce violence and the problems associated with criminal groups. Ultimately, in Ecuador the 2007 election of Rafael Correa, who was not supported by any political party but a broad coalition of social movements, allowed civil society groups to place the decriminalization of drug use and harm reduction on the political agenda. What these episodes have in common is that the timing of advocacy is crucially important. While the same arguments and policy



proposals may be dismissed under regular circumstances, they can present a viable alternative for governments in exceptional situations. Hence, successful advocacy, be it from civil society or within the government, needs to be able to read such opportunities and mobilize support quickly if it wants its proposals to move forward.

After having outlined this dissertation's findings about drug policy choices in South America, the following paragraphs briefly discuss the most important lessons about the effects of international norms. Most importantly, the three case studies confirm the assumption that norms, as well as their advocacy and contestation, are influential primarily because they create and alter incentives for governments to act according to their parameters. Almost all policy changes analyzed in this dissertation responded to clear domestic or international incentives. The government of Rafael Correa (2007-2017) even conducted a 180 degree turn in drug policy after the domestic incentive structure had changed. The only exception was Ecuador's 1978 decision to enact draconian and unprecedented penalties for drug-related offenses. This measure appeared to reflect the personal preferences of the military government, which was already set to leave office at the time of the decision. However, the decree was revoked just a few months later by an elected civilian government and thus did not have a lasting impact.

Norm-based incentives were particularly important when norm-following overlapped with the interests of powerful international actors, such as the United States or representatives of the IDCR. Such actors could pressure governments by offering or denying material benefits, or elevating and undermining their international standing. At the same time, domestic power holders, such as the police, the ministry of the interior, or the armed forces also exercised important leverage over policy decisions. Moreover, international norms have critical repercussions on public opinion. Although the advance of prohibitionist drug policies did not emerge from concrete public demands, the repetition of strong prohibitionist discourses for

several decades helps explain why most South American citizens view policies tolerating drug use critically.

The above-outlined support for the assumption that drug policy reforms responded primarily to incentives does not mean that the personal preferences of decision makers do not matter. Especially individuals involved in the drafting of drug laws were able to insert their preferences into the final text when the issue at stake was relatively depoliticized and not subject to strong international or domestic pressure. For example, Uruguay's 1974 decision to legalize the possession of small amounts of drugs for personal consumption can be attributed directly to the preferences of the individuals that drafted the law. The law professor, Dr. Adela Reta, was an advocate of civil liberties and argued publicly that drug addiction was a disease and not a crime. Although the issue was highly politicized and contested internationally, there was no opposition to the argument that drug addicts should not be punished in Uruguay. However, even highly politicized decisions can be affected by personal preferences. For example, Peru's choice to eradicate coca in the late 1970s was favored by anti-coca sentiments of the Peruvian elite and the military government in power at the time. However, coca eradication was stopped temporarily when the domestic context became less favorable. Personal preferences are even more important to explain Uruguay's 2013 decision to legalize recreational marijuana. Although the law depended on a multiplicity of necessary conditions (see table 12), it is evident that Law 19,172 would not have materialized without the support of the highly popular president José Mujica, who appears to have been genuinely convinced that a government-controlled regulation of the marijuana market was a better alternative than prohibition.

Ultimately, international norms were often used as justifications for drug law reforms and policy choices, even when the reasons for the reform were different. For example, in 1974 and 1990 Ecuador used international obligations as a justification for policy choices that were clearly targeted to appeal to the U.S. Furthermore, after Uruguay's government decided to regulate

recreational marijuana to reduce the problems related to organized crime, in coordination with civil society, it advanced a much broader discourse based on harm reduction, stressing multiple benefits in the areas of health and security. This not only increased the law's legitimacy but also allowed the government to draw a connection to Uruguay's tradition as a regulator of so-called social vices.

Mujica's portrayal of Uruguay as an innovator and potential model for others raises the question if South American countries will adapt similar policy models in the near future. Since Uruguay's decision, the U.S. states of Alaska (2014), California (2016), Maine (2016), Massachusetts (2016), Michigan (2018), Nevada (2016), Oregon (2014), as well as the inhabited territories of Guam (2019) and Northern Mariana Islands (2018) legalized recreational marijuana. Furthermore, in 2018 Canada has become the second country to fully legalize and regulate the market for recreational marijuana. Most recently, the government of Mexico has expressed interest in advancing a similar reform. However, so far, no other South American country has shown signs of moving in that direction. There are several reasons why this is the case. Most importantly, while high-profile politicians and public intellectuals have become important advocates of harm reduction and marijuana legalization, public opinion has yet to follow. Although the Uruguayan case has shown that advancing controversial drug policies is possible despite public opposition, as highlighted above the project was possible because of a highly complex set of causes, necessary conditions, and facilitating factors, which are extremely difficult to replicated elsewhere. Although it is possible that other countries will encounter their own political junctures that enable such reforms, the most decisive factor will be whether or not South America's public will become more favorable to tolerating the use of marijuana and other drugs over time.

Marijuana legalizations in the U.S. show that long-term exposure to prohibitionist discourses and practices is not necessarily an obstacle for changes in public opinion. Instead, it

appears that once societies are more exposed to the use of marijuana, public opinion becomes more favorable. As outlined in chapter VII, Uruguayans have become more supportive of marijuana legalization after the law's implementation, despite the fact that it has not yet contributed to improve citizen security as the Mujica government originally envisioned.<sup>941</sup> Yet, rising levels of drug consumption can also lead to prohibitionist reflexes depending on the government in place, framing by the media, and the preferences of important domestic actors. In any case, given the increasingly favorable international context, it is likely that over time more policy flexibilizations will materialize in one way or another. Furthermore, the rising prominence of harm reduction provides domestic actors with new rhetorical resources and governments with new options in dealing with their drug-related challenges that did not exist 30 years ago. Although drug prohibition continues to be the most important norm in guiding policy choices in South America, the framework now has a real competitor. It will be fascinating to observe how this competition will play out in South America and elsewhere.

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<sup>941</sup> Some reports even state that marijuana legalization has contributed to increasing levels of violence as drug traffickers now compete over a shrinking market: Magdalena Martínez, "La legalización de la marihuana eleva la violencia entre narcotraficantes en Uruguay," *El País* (España), 9 de agosto de 2018, [https://elpais.com/internacional/2018/08/09/actualidad/1533827324\\_546108.html](https://elpais.com/internacional/2018/08/09/actualidad/1533827324_546108.html).

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## PUBLICATIONS AND PRESENTATIONS

Beckmann, Nicolas (2015). *The Expansion of the Drug Trade in Venezuela: Causes and Consequences*. Boletín del Instituto de Seguridad Internacional y Asuntos Estratégicos. Edición Especial “La Crisis en Venezuela.” Consejo Argentino para las Relaciones Internacionales. No. 60: 4-13.

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