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## ■ AQ FEATURE

# Inroads or Detours in the Drug Debate?

BY [Bernardo J. Rico](#)

## Decriminalization or depenalization will do nothing to halt drug-related violence.

In June, 15 gunmen traveling in three vehicles attacked a police station in the small town of Salcaja in the northern Guatemalan highlands. By the time the shooting ended, eight policemen were dead—and one, the station's deputy inspector, was kidnapped. The motive was initially unclear, but the government's

subsequent investigation revealed that the deputy inspector and a few of the police who were murdered had heisted \$740,000 from the leader of a local narco-trafficking organization connected to Mexico's notorious Gulf Cartel.

Adding special poignancy to the attack, only a week earlier, the General Assembly of the Organization of American States (OAS) gathered in Antigua, Guatemala and expressed its concern over the spread of violence in the region. Central American delegates in particular were acutely aware that the escalating murder rate in the isthmus could be attributed to Mexican cartels infiltrating and taking over drug trafficking in Guatemala and Honduras.

Mexican cartels started taking their business operations and cocaine transit routes to Central America after 2006, when former President Felipe Calderón (with U.S. support) began breaking up criminal syndicates and interdicting the flow of narcotics to the U.S. border. Violence soon followed; today Guatemala and Honduras face the same levels of crime and insecurity that have plagued Mexico for a decade.

The Guatemalan and Honduran governments have stepped up interdiction efforts, with U.S. support, but have stopped short of officially declaring war on the cartels. Both governments lack the resources and state capacity to follow the example of Mexico, and the violence and bloodshed in Mexico since 2006 (with over 70,000 dead) are hardly a positive example of how to tackle the issue. As a result, government officials and organizations like the OAS have started to call for new strategies to solve the region's drug problem and—more critically—reduce the violence.

### **A False Dichotomy?**

Up until a few years ago, most strategies for coping with the threat fell into two camps: intensifying the drug war or outright legalization. Yet other options are beginning to emerge, ranging from depenalization to decriminalization. These options were contained in the OAS report presented at last year's Assembly that attempted to refocus the discussion to a broader comprehensive state- and community-building strategy to target the root causes of crime and violence.

The Report on the Drug Problem in the Americas contains two parts: an analytical report that discusses the current reality of drug use, production, transit, and trafficking in the region, and public policies in place to address these issues; as well as scenarios that outline possible future trends for the drug problem under different approaches. Two of the four scenarios, "Together" and "Pathways," outline what could happen if governments choose to align their approaches or take separate pathways, respectively. The "Resilience" scenario describes what the outcomes could be if policies focus on people and community-building rather than suppressing drug production or altering the regulatory regime. The fourth scenario, "Disruption," warns of what could happen if governments are unable to achieve a shared vision on how to address this problem.

Regrettably, there was little informed exchange at the Assembly, suggesting members didn't read the report or lacked the political will to openly consider some of its more contentious proposals. Instead, the OAS tabled the document and postponed discussion, pending further study by its drug policy arm, the Inter-American Drug Abuse Control Commission—known by its Spanish acronym, CICAD—in anticipation of an OAS special general assembly to discuss regional drug policy in 2014.

There is consensus that the drug war approach has failed. As the official OAS Assembly Declaration from Antigua notes, most OAS members now recognize drug abuse as a public health problem, requiring governments to prioritize prevention, treatment and rehabilitation. Another opinion—from Mexico and

Guatemala, who are on today's front line of the cartel violence—favors dismantling the most dangerous cartels and criminal organizations to reduce the atrocities, recognizing the futility of trying to eliminate drugs entirely from society.



Boots on the ground: A Salvadoran anti-narcotics officer stands guard over 392 pounds (178 kilos) of cocaine, seized as it crossed the border with Guatemala. Photo: Ulises Rodriguez/Reuters

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While the OAS report concluded under its “Pathways” scenario that “it would be worthwhile to assess existing signals and trends that lean toward the decriminalization or legalization of marijuana,” members still oppose complete legalization of hard drugs. The report even concludes that there is “no significant support, in any country, for the decriminalization or legalization of the trafficking of other illicit drugs.”

Then why have the nuanced alternatives of decriminalization and depenalization—both often confused with legalization—generated so much controversy and at the same time such high expectations to rescue the region from excessive violence and corruption? Certainly, a scarcity of credible examples, plus misconceptions of their success, are partly to blame.

But the clamor for drug policy reform (which often focuses on consuming countries' responsibilities and not on options in transit countries) has diverted the focus from the more profound problems facing these violence-ridden transit countries—endemic corruption and weak states that lack the collective political will and institutional strength to make meaningful progress.

It's important, first of all, to understand that neither of these options has anything to do with “legalization.” Legalizing a drug removes the prohibition on its production, sale or consumption, albeit with government regulation. Uruguay is the only nation to have recently approved legislation to legalize marijuana, which will allow the government to control most of the stages from production to consumption.

Colorado and Washington are the only U.S. states to have legalized the recreational use of marijuana; possession and sale for medical purposes is permitted in 20 other states. However, marijuana remains on the U.S. federal government's list of "controlled substances" as an illegal narcotic. Even though the U.S. Department of Justice has indicated it is reconsidering whether it will enforce federal penalties, marijuana legalization still violates UN drug treaties, primarily the 1961 Single Convention on Narcotic Drugs.

The growing marijuana legalization movement may have reframed the overall debate about drug reform, but it is irrelevant to the goal of curbing drug violence in transit countries, such as Honduras and Guatemala. They have the first and fourth highest murder rates, respectively, in the world—not because they consume marijuana or hard drugs, but because they form an integral part of the trafficking machine for cocaine and, increasingly, heroin and methamphetamine.

In Mexico, marijuana trafficking generates just 17 percent of cartel revenue, compared to 68 percent from hard drugs—slightly more than the estimated revenue earned from non-drug activities like human trafficking (15 percent).

Historically, depenalization and decriminalization have been used to address consumption. Under depenalization, drugs remain illegal, but possession of small amounts carries minor penalties such as fines, rather than imprisonment. Since the 1970s, many U.S. states have depenalized limited amounts of marijuana as misdemeanor offenses. Mexico has broadened depenalization to include small amounts (a half gram) of hard drugs, but the amounts seem irrelevant to many—a half gram of cocaine is less than the typical minimum of one gram sold on the street. There are compelling humane and economic reasons for such policies, but they are not likely to reduce violence in transit countries.

Decriminalization is a point further along the continuum, addressing drugs (and substance abuse) as a public health issue rather than a criminal justice or law enforcement challenge. The only country to have decriminalized the consumption of all drugs is Portugal. The sections of the Portuguese penal code regarding drugs were revised in 2001 to incorporate an administrative system of fines and treatment plans. Lawbreakers are ticketed and referred to hearings by a three-member panel, including legal, health and social services experts. The panel can suspend proceedings for first-time offenders, issue fines and force addicts into treatment. Using drugs is technically still illegal and selling them remains a penal offense.

Since decriminalization took effect, Portugal appears to have achieved its stated goal of harm reduction for heroin addicts by destigmatizing their problem. Heroin addiction and AIDS cases from dirty needles were on the rise in the 1990s. Now more addicts seek treatment, which has led to a decline in reported cases of HIV, hepatitis B and C and drug overdoses.

Nevertheless, consumption of all drugs has risen modestly—most notably for cocaine and heroin. If the aim is to reduce the amount of drugs trafficked and the associated cartel violence, it's difficult to conceive the decriminalization of consumption alone as a suitable policy for curtailing trafficking—and consequently, violence—in transit countries.

On the face of it, then, neither depenalization nor decriminalization seem relevant as violence-reduction strategies for transit countries, given their focus on consumption, which is so far not a major issue in Central America. Americans use cocaine at a rate 11 times greater than Guatemalans, with 90 percent of U.S.-consumed cocaine passing through Guatemala and Honduras. Since most areas with major drug seizures in Central America have double the homicide rates of those areas with scant trafficking, presumably a country like Guatemala wishes to lessen the violence attributed to drug smuggling, and not necessarily reduce domestic drug demand.

## Could Depenalization and Decriminalization Be Applied to the Sale and Transit of Drugs?

The U.S. government recently amended the penalties for the sale of narcotics by non-violent dealers in a measure issued by the attorney general in August of 2013. Prosecutors are now instructed to “eliminate references to the amount of drugs confiscated that would have previously triggered mandatory minimum sentences” for non-violent defendants who meet certain criteria, including not belonging to any major drug trafficking organization. But in Central America, where drug cartels monopolize distribution and are the primary source of violence, such policies would have little impact.

What would happen if Guatemala depenalized the trafficking of large quantities of drugs? Applying lighter sentences to the least belligerent cartels might direct scarce law enforcement resources toward those smugglers who use violence to sustain their business and destabilize society. Such broad-scale formal or de jure depenalization could promote a gradual decline in violence where, ultimately, only the least-violent cartels survive.

Yet, is this any different than targeting the most notorious drug cartels under existing laws, a strategy that appears to be bearing some fruit in Mexico? Such de facto depenalization obviates the need to alter current legislation while providing the same benefits. It is also less likely to overtly violate UN drug conventions.

Formally depenalizing trafficking appears to yield minimal benefits over an unorthodox policy like de facto depenalization, so might decriminalization be a more effective approach? As with the decriminalization of consumption, a different legal framework would be required to replace incarceration with graded sanctions that would increase in severity with the frequency of offenses and the amount of drugs confiscated.

While violent traffickers would be brought to justice, non-violent offenders—and those without violent criminal records—could be referred to a panel of experts to facilitate their rehabilitation and ultimate reintegration into society. This is undoubtedly a lofty proposition, but it really requires intervention to ensure that offenders are provided the legitimate skills needed to prepare them for employment that pays more than smuggling drugs (and it also requires that such jobs exist).

### A Path to a Failed State

Notwithstanding the cost of implementing such a system for the resource-strapped Central American governments, there is a more profound, structural shortcoming: the extremely weak state. The Worldwide Governance Indicators of the World Bank and the Brookings Institution have consistently placed Guatemala and Honduras in the lowest 20th percentile for the rule of law and among the worst in Latin America. Likewise, Transparency International’s Corruption Perceptions Index ranks both countries among the bottom 35 percent globally.

If glaring institutional weakness and corruption are the primary challenges, how could a government body charged with transparently imposing sanctions under decriminalization, or lesser penalties under depenalization, be any more effective at reducing crime, corruption and violence?

It is more likely that the cartels would continue to co-opt law enforcement, judges and politicians, rendering such a modified policy regime meaningless.

As if garnering the sufficient resources and capabilities weren’t enough of a challenge, politics is another barrier. In Guatemala and Honduras, both conservatives and liberals want to limit the government’s power—for different reasons. Conservatives prefer minimalist institutions, supported by a small tax base. Liberals

fear the return of the military's strong hand. Guatemalans in particular recall the atrocities from its 36-year civil war. Both factions desire a government that is limited in power and reach, invariably preventing the formation of a state effective enough to ensure peace and stability, while still supporting policies—like decriminalization—that would hypothetically reduce cartel violence without ceding more control to the government.

Ultimately, a country like Guatemala could decide to go it alone and not pursue any cartel, violent or not. This would imply the de facto legalization of drug trafficking according to the OAS report under its “Disruption” scenario. Countries less affected by cartel violence would likely resist such a laissez-faire approach—fearful that the criminality could spill over to them—and continue to seek collective solutions.

Moreover, such a policy of accommodation with the cartels would clearly violate UN drug conventions, risk development aid, and create conflict with powerful consuming countries. The end result would only accelerate the flow of drugs through transit countries, increasing their attractiveness to criminal syndicates, of all sorts, and further compromising the rule of law—not to mention foreign investment, economic aid and regional strategic alliances. Any country that pursues such a policy could very well end up a narco state.

More than a decade ago, Colombia was under siege by the cartels, suffering from the world's highest murder rate and ranking among the worst in rule of law in Latin America. Primarily through the government and private sector's own resolve to strengthen institutions, including reforming the national police, Colombia subsequently halved its homicide rate from the dark days at the height of the violence.

Socially minded but firm mayors like Sergio Fajardo of Medellín and Antanas Mockus of Bogotá helped in reducing crime and violence and revitalizing entire communities in their cities. But it was the political leadership of then-President Álvaro Uribe that brought a “new level of focus to the conflict previously unseen” that was the decisive factor, according to Michael E. O'Hanlon and David Petraeus in their recent Brookings article, “The Success Story in Colombia.”

Clearly, U.S. military and financial support played a key role in the dramatic turnaround, as did the inextricable goals of weakening the FARC and paramilitary groups. Additionally, while the Medellín and Cali syndicates were replaced with smaller, lower profile ones, much of the trafficking power later shifted to the Mexican cartels.

This balloon effect—when applying resources to one country moves narco activity to another—subsequently materialized in Central America after Mexico began its war against the cartels in 2006. It does not explain why, however, in 2005, Honduras and Guatemala already had the seventh and third highest homicide rates in the world, two years before the Mexican cartels' incursion into the region and a decade after Guatemala's civil war ended. Instead, it seems that the drug cartels' financial strength and firepower have only exacerbated a weak state and a culture of violence.

Unintended consequences will inevitably result as individual countries pursue policies that remedy their particular challenge to the region's drug problem. The experiences in Portugal and Colombia may even reflect the mirage of a twenty-first century global drug policy that simultaneously reduces harm, use, trafficking, and violence.

Yet, Colombia's success in strengthening its institutions and reducing murder rates should, at a minimum, encourage Guatemala and Honduras to re-examine their aversion to state- and community-building—the “Together” and “Resilience” scenarios so prominently featured in the OAS report. As the world's primary consumer of drugs and a steadfast opponent of legalization, the U.S. should strongly support this effort—

well beyond its current commitment through the Central America Regional Security Initiative (CARSI).

But establishing the institutional infrastructure and popular consensus necessary to address crime and violence at their roots and create a more secure country is no easy or short-term task. As Francis Fukuyama concludes in *The Origins of Political Order*, “The prolonged historical struggles that were required to [build effective political institutions in other countries] should imbue us with a certain degree of humility in approaching the task today... Building an institution... requires a great deal of hard work to persuade people that institutional change is needed in the first place.” Although arduous, that’s where the solution to this problem lies. Further deliberation on decriminalization and depenalization in transit countries is a needless diversion that only obscures the bumpy road ahead.

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