Legalization: the Gorilla in the Room

InSight Crime

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Though it is not on the agenda of the Sixth Summit of the Americas, to be held April 14-15 in Colombia, the question of drug legalization will be on everyone’s minds. Guatemalan President Otto Perez Molina has called for countries to debate a new strategy and other leaders in the region, most notably Colombia’s Juan Manuel Santos, have joined him. US President Barack Obama will have to face down them and others in a rare show of unified defiance from US allies in the region. InSight Crime examines the thorny subject in this series of special reports.
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Guatemala Takes the Lead

Edward Fox

After Guatemala's President Otto Perez controversially advocated open debate on drug legalization and decriminalization, it is time to detail the country's stance on legalization and what the government's hopes are for the upcoming Sixth Summit of the Americas.

Just three days into his presidency, Perez said a regional strategy on drug decriminalization and legalization should be debated "as soon as possible," and called out the United States for its failure to engage properly with the issue. However, since then he has played a careful political game, continually calling for an open discussion and refraining from exposing himself as a proponent of straightforward legalization.

Finally, on April 7, Perez penned an op-ed in The Observer in which he explained his position, calling for the regulation of drug production and consumption. Specifically, he said: "Guatemala will not fail to honor 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."

Just what that means in practice is harder to say. For a deeper understanding of how Guatemala sees itself within the debate, we turn to Guatemalan Secretary of Planning Fernando Carrera. Carrera is the man who many say is the architect of Perez’s proposals on drug-related issues. He recently gave a talk at the Woodrow Wilson Center for International Scholars entitled "Drug Policy and Democracy in Central America: A View From Guatemala," that provides a crucial insight into how Guatemala is positioning itself in the ever-turbulent discourse on drug legalization.

"There is a gorilla in the room we need to talk about"

Carrera said much of the drive for Guatemala to open up a space for debate on a change in drug strategy comes from the realization that governments have historically refrained from tackling the issue at all. As Carrera put it: "There is a gorilla in the room we need to talk about."

The premise of the current approach to combating drug trafficking through eradication is fundamentally "Utopian," according to Carrera. We have rationally accepted that we cannot adopt this policy with alcohol and tobacco, yet somehow drugs have been placed in a separate category, he said.

This is not to say that Guatemala advocates the complete liberalization of drugs, where consumption and trafficking are dictated by the market. Carrera stressed that,
like alcohol and tobacco, the government knows drugs can be bad for people, and should be regulated accordingly.

Such a shift toward the creation of a regulated market for "commodities with negative consequences" would create numerous challenges for both society and government institutions. Carrera admitted as much and highlighted four key challenges that would arise:

1. How to reduce violence and collateral damage related to drug markets, such as prostitution and theft. Even in a move from prohibition to regulation, this violence may not immediately disappear.

2. The strengthening of public health systems and social protection schemes.

3. The creation of economic opportunities for drug traffickers, since their business would not be as lucrative as under a system of prohibition.

4. Regulating the sale of such commodities (drugs). For example, how would they be advertised (if at all)? What would the age restrictions be? What taxes would be imposed? How would society be educated on the use of these drugs?

**Why Now?**

With the sensitivity of drug legalization and its possible implications apparent, Perez made an odd choice to take this subject on so early in his presidency. There are numerous theories as to why. Some in Guatemala say it was a smokescreen to distract people from a lukewarm tax reform law he was pushing through Congress at the time. Others point out that it is a no-lose strategy: if Perez has to continue with the current hardline strategy and it fails, he can always say that it’s not his preferred method of fighting crime.

Whatever conspiracy theories exist, Carrera emphasized that there is an increasing sense that the existing approach is failing. Violence levels in Central America are rising, particularly in the "Northern Triangle" countries of Guatemala, Honduras and El Salvador, and consumption rates in the US have dropped only slightly, while rising in Europe.

Perez simply did not want to be placed in a situation where he should be "tougher" on drugs, Carrera added. The only way to avoid this was to throw down the gauntlet immediately, even if the response from others was mixed.

Though Carrera does not mention them, Perez’s positioning has been aided somewhat by Colombian President Juan Manuel Santos and Mexican President Felipe Calderon. Santos has been more forthcoming in his welcoming of legalization as an alternative option, but combined, both presidents helped set the stage for Perez to push the door wide open on the debate, and take it on as an issue that could well define his presidency.
Expectations

Perez is realistic about what the future holds for drug legalization, according to Carrera. Despite the progression from promoting debate to positioning itself as an advocate of drug regulation, the Guatemalan government is under no illusions that such a seismic shift in drug policy can be achieved overnight. It recognizes that any kind of reform of the international framework will take years, if it gets off the ground at all. Furthermore, any change in policy would need international consensus; under no scenario could some countries do it while others, for example the US, continue to practice prohibition.

That is why expectations for the upcoming Summit of the Americas are low. As Carrera outlined, Guatemala is merely hoping that the issue will be talked about and that leaders will come away saying: "It's not a crazy idea."

If governments begin to admit that drug markets cannot be eradicated, this would be a dramatic shift in the right direction, Carrera noted. Open and constructive dialogue is the only way to bring about such a change. However, with drug legalization still apparently off the agenda for this weekend’s summit, Guatemala is in danger of coming away with little to show for its efforts, even given its relatively modest expectations.
Gorilla in the Room: The Expert View on Drug Legalization
Christopher Looft

As the debate over drug prohibition develops, InSight Crime reviews the positions of leading thinkers on drug decriminalization and legalization, finding that the debate is often more nuanced than a simple yes or no.

When Guatemalan President Otto Perez Molina said in January 2012 that he would support a debate over drug decriminalization, he ignited a conversation that has drawn the attention of the entire region. Even the message from Washington has shifted, with Vice President Joe Biden reiterating that the US opposes legalization, but acknowledges that it is a legitimate topic for discussion. As the sixth Summit of the Americas approaches, to be held April 14 and 15 in Cartagena, Colombia, Western Hemisphere leaders are preparing for the next stage of the debate, even though drug policy reform is not an official item on the event's agenda.

While it is useful to understand how these policies are viewed throughout the region, some experts advocate more nuanced views than the current state of the debate has allowed.

The differing positions of three leading US-based thinkers who have spent their careers studying drug policy speak to the degree of complexity of the issue.

Peter Reuter, University of Maryland professor in the School of Public Policy and the Department of Criminology, said during a 2009 speaking engagement he was skeptical of decriminalization but noted that overall consumption has not risen significantly in Portugal since it decriminalized possession of small quantities of all drugs in 2001. Later, he expressed qualified support for decriminalization, but said that in regard to cannabis, consumption was more influenced by popular culture than by government policy.

In the preface to his 2001 book "Drug War Heresies: Learning from Other Vices, Times, and Places," co-authored with Robert MacCoun, Reuter notes that the publication "does not reach a strong conclusion about what should be done." Later, he says full-scale marijuana legalization would produce "no major additional gains to counterbalance the increase in prevalence."

Regarding the prohibition of cocaine and heroin, Reuter and MacCoun note, "The extraordinary prices of cocaine and heroin, the massive involvement of young minority males in center cities, foreign corruption, and the violence of the drug trades are all plausibly much increased by the nation's decision to be highly punitive toward these drugs. Prohibition might be implemented differently with much less of this specific collateral damage."
Mark Kleiman, UCLA Professor of Public Policy, advocates the decriminalization of marijuana (but not its commercial legalization) and the continued prohibition of hard drugs. Kleiman also suggests more specific policy reforms like adapting enforcement and sentencing to mitigate the harmful effects of the drug trade, which he says are, "Violence, neighborhood disruption, and the recruitment of juveniles." Kleiman suggests a variety of policies to overhaul the approach to all recreational drugs, not just illegal ones: much higher cigarette and alcohol taxes, eliminating the drinking age but targeting kids with anti-alcohol abuse advertisements, and better incorporating drug addiction treatment into the health care system, to name a few.

While Kleiman and Reuter argue for a different kind of prohibition, Ethan Nadelmann, executive director of the Drug Policy Alliance, advocates prohibition be discarded altogether, at least for marijuana. In a radio interview from March 2012 Nadelmann suggests marijuana be legalized commercially. Nadelmann also suggested hard drugs be provided to addicts -- but still a step short of a commercially legal regime like those that currently govern the sale of alcohol and tobacco. In addition to these steps toward a legal regulatory framework, Nadelmann's organization advocates a host of reforms aimed at harm reduction, like supervised injection facilities (currently illegal in the US), drug replacement therapy, and clean needle access.

For each of these leading experts, legalization and decriminalization are complex issues. Beyond the difference between commercial legalization and decriminalization, a key distinction exists between the kind of drug under consideration. Each of these scholars considers that marijuana deserves a different treatment, as its use has very different public health consequences than cocaine, heroin, and methamphetamine use.

While these experts hold differing positions on drug policy, they all acknowledge the opportunity for reform. They all hold positions more complex than blanket support for decriminalization or legalization of all drugs. As the hemisphere’s leaders prepare for the Summit of the Americas, the incredible complexity of both the drug policy issue and its potential solutions ensures that the process of region-wide reform will be lengthy and controversial.
Gorilla in the Room: This is Not a Legalization Debate

Daniel Pachecho

In the final installment of the "Gorilla in the Room" series, Colombian columnist Daniel Pacheco* argues that the real challenge for leaders at this week's Summit of the Americas is to steer the debate away from the polarizing and politically untenable positions of full legalization versus full prohibition of drugs.

During his recent visit to Central America, US Vice-president Joe Biden was asked about drug policy, and he responded as you might expect: "There is no possibility that the Obama-Biden administration will change its policy on legalization."

The 33 other governments that currently make up the Organization of American States (OAS) would do well to remember these words, not so much for the clear and unequivocal position Biden stated (and the financial implications crossing this line may have), but for providing the perfect illustration of how the US is simply missing the point.

However, critics of the US policy seem to suffer from myopia as well. While the "failures" of the US war on drugs give this side a well-documented case to argue for changes, it usually leads to the more controversial conclusion that all drugs must be legalized.

Herein lies the challenge for the new breed of drug reformer presidents as they approach the sixth regional summit in Cartagena on April 14 - 15: To break from the decades-long duality of debating prohibition versus legalization that has made for good headlines, but little real progress in dealing with this polarizing issue.

To be sure, OAS members need to push this debate into a different territory, one that more closely resembles a discussion about dealing with something like hepatitis or malaria, than one that counts troop levels, police purged and helicopters deployed.

"Drug consumption is a public health issue that, awkwardly, has been transformed into a criminal justice problem," wrote Guatemalan President Otto Perez Molina in a recent op-ed in the Observer.

Perez has become the latest head of state to try and put this debate on the table, with limited success. Others have taken it further, most notably a group of ex-presidents and other dignitaries who took part on the Global Commission on Drug Policy's damning report on the "War on Drugs."

Of current presidents, Colombian President Juan Manuel Santos has been the most vocal and active voice in opening the debate. While remaining coy about his own position (Santos recently told Epoca of Brazil that he does not support any particular
alternative), the Colombian leader said the summit was important because it is the first time the US is willing to talk about a policy that is "not working adequately."

These are harsh words from the head of a country that has received more than $8 billion in anti-drug aid and is regularly touted in Washington circles as a case of success.

Then there are the practitioners of these policies. During a book launch last year, Colombia’s National Police Director Oscar Naranjo said that Colombia has "mortgaged its drug policy to US interests." It was a show of unusual candor from someone who is trusted in US law enforcement circles.

It will be hard for US policymakers to argue with people like Perez, Santos and Naranjo who stand on the front lines of this "war." Central America is overrun by drug traffickers and Colombia, the US’ closest ally, is still the producer of 95 percent of cocaine consumed in the US (according to the US Department of State), even after the $8 billion injection.

The subtext in this debate is that the formula -- the US provides the money and Latin America provides the dead -- is not working anymore. Ethan Nadelmann, director of the Drug Policy Alliance, one of the most outspoken voices advocating for the end of the war on drugs in the US, seems to think this is the ticket to change. He says that the key in the Americas Summit is to "place the burden of proof on Obama" that the US strategy is working.

But painting a large animal into a corner may not be the healthiest solution. To be sure, the hopes of getting some concrete commitment of change from President Obama, who will be seeking reelection in November, are dim. As James Bosworth noted in his blog, Obama’s own cabinet members’ perceptions of the war on drugs change depending on when you ask. Perhaps if the summit could be delayed a year, there might be a better chance of publicly shifting this debate in a healthy direction.

The irony, of course, is that not one leader has proposed full legalization. Most oscillate between partial legalization (and strict regulation) and decriminalizing some illegal drugs. Many have already taken these steps. Paraguay and Colombia, for example, have had laws decriminalizing the possession of small amounts of illegal narcotics for decades. Chile, Brazil and Mexico joined them in recent years.

The Summit will be, at most, an unprecedented opportunity for key regional leaders to frame what may evolve into a productive policy discussion. One that may begin to take place away from the limelight, more focused on the grey areas between legalization and prohibition. A huge deal of progress might be at hand without having to change the international legal framework of drugs. Can there be smarter crime fighting? What if the more effort is placed on reduction of violence and addiction, and less on drugs?
Making this a "region-wide initiative," especially with the US so hyper-focused on the "legalization" question, will be difficult but not impossible, especially behind closed doors. The US no longer provides so much money, taking away much of its leverage in this discussion. (Even the vaunted Merida Initiative represents in the range of four percent of the total security budget for Mexico.) And if, in the Summit’s final declaration, Latin American manages to squeeze in some wording regarding the need to revise current drug policy, the Cartagena meeting might well end up becoming the historical turning point for drug policy in the Americas.