The Global Drug Prohibition Regimen and its Echoes in Brazil

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Abstract

The global drug prohibition regime, supervised by the UN, was universally consented and has influenced drug policy in all countries around the world. Once the United States had a major role in bringing this agenda to the UN, its influence on Brazilian drug policy has been especially important, since the so-called "war on drugs" has been mainly directed to Latin America. Following a process that was consolidated internationally, Brazil has enacted the prohibitionist and repressive policy established by the UN. Since the 1980s, drug trafficking has been considered a security issue for the nation-state, a perception that was also internalized in Brazil, where the sense of emergency in combating the drug trafficking was introduced in its institutions. The result of this pathway inherited from UN is questionable and, because of this, there is a clear breaking in the consensus that marked the UN global prohibition regime since its creation. This article will present the Brazilian domestic legislation within UN drug trafficking policies framework, will analyze how Brazil is reacting to the new alternatives and how it has been questioning the UN global prohibition model.

Key Words: Drug Trafficking - Brazilian Law - Global Drug Prohibition Regime
Abstracto

El régimen de prohibición mundial de las drogas, bajo la supervisión de la ONU, fue universalmente consentido y influyó las políticas de drogas en todos los países del mundo. Si los Estados Unidos tuvo un papel importante en llevar este programa a la ONU, su papel en la política de Brasil fue especialmente importante, ya que su llamada "guerra contra las drogas" se ha dirigido específicamente a América Latina. Segundo un proceso que se consolidó internacionalmente, Brasil incorpora a su legislación el modelo prohibicionista y represivo de lo régimen establecido por la prohibición mundial de las Naciones Unidas. Sobre todo a partir de 1980, el tráfico de drogas comenzó a ser tratado como un problema de seguridad para los Estados, la visión que, a su manera, también fue construida por Brasil, que introdujo lentamente el estado de emergencia para combatir el narcotráfico en su leyes e instituciones. El resultado de esta opción se consideran cuestionable y es notable el rompimiento del consenso internacional sobre este régimen de prohibición global. Este artículo discutirá como Brasil se inscribe en este proceso, como su legislación interna ha internalizado sus compromisos internacionales, e cuales fueron los resultados de estas medidas y cómo Brasil está respondiendo a ellas.

**Palabras clave:** Tráfico de drogas - Legislación brasileña - Régimen de Global Prohibición de las Drogas
**Introduction**

Drug trafficking has become an international issue since some States, aware of their transnational nature and their individual inability to regulate it, took their domestic concerns to international jurisdiction through the construction of a global prohibition regime that would promote national laws homogenization, police cooperation and the international agencies empowerment (ANDREAS et al., 2006: 3-7). According to Andreas et al. (2006:4), the modern era of international crime control was precisely initiated by a campaign against drug trafficking promoted by the United States between the 1960s and 1970s, which was eventually incorporated by the UN and other countries by substantial unanimity.

International regimes are "principles, norms, rules and decision-making procedures around which expectations converge in a given sphere of problems" (KRASNER, 1982: 85). The global prohibition regimes promote the cooperation between States in their jurisdictions and law enforcement measures to ban a particular activity. Transnational activities, such as drug trafficking, are objects of global prohibition regimes once domestic and unilateral measures are evidently inadequate, since these are crimes that cross borders and national jurisdictions (ANDREAS et al. 2006: 18).

This global concern is a response to an unprecedented intensification of globalization, represented by economic liberalization and communications innovations that allowed the growth of financial and products trade among people and States, which also represented a huge business opportunity for transnational crime (UNODC, 2010: II). Once crime activities nowadays easily cross boundaries, the function of State police has also become increasingly integrated into international relations, subject hitherto restricted to the domestic agenda of states (ANDREAS et. al, 2006: 7).

The popularization of the marijuana and LSD use during the 1960s, associated to the counterculture and social protest movements, increased the visibility of drug problems in the society and a moral panic urged authorities to take measures of repression related to drug worldwide (CARVALHO, 2013: 51). This scenario was especially remarkable in the United States, where the explosion of drug use among young people and the drug cartels strengthening in Latin America began issuing warnings about a new emerging threat.
Along with this process, and because of the United States influence in the world, a UN global prohibition regime started to be drawn. Its main references are the Single Convention on Drugs of the United Nations from 1961, the Convention on Psychotropic Drugs from 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic (also called Vienna Convention) from 1988. These are basic references for the State to adopt a relevant legal framework in drug enforcement, albeit in the form of protocols of intention.

They were all ratified in Brazil and they had a strong influence on Brazilian legislation and public policies related to the drugs. The purpose of this paper is to present how the system of global drug prohibition has influenced Brazilian institutions and laws on drug prohibition and repression. From this overview, I will make a critical reading of the results obtained by the UN model and on how the consensus around it has been questioned and revised at the UN, pointing to the reactions in Brazil on these changes. In the first section, I will present how the drug problem has become the object of international concern. Then, I will point out the turn in drugs treatment after the end of the Cold War and how Brazil, despite living in that instant a process of democratization, maintained its repressive and authoritative laws around the topic of drugs following the trend that was consolidated internationally. Finally, I will present a critical reading of results promoted by the current international regime, especially in Brazil, and how the unanimity around it has been disassembled, based on its failure. In this context, I will point out how and if Brazil has responded to these changes.

**Drugs: an international issue**

In 1961, the Single Convention on Drugs was signed under the United Nations umbrella, aiming at unifying all previous treaties on drugs and at formalizing the process of internationalization of drugs control. The agreement stemmed from the recognition by the parties that "the addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind" (UN, 1961:1). The function of this convention was to encode all substances regarded as narcotic drugs, to prohibit recreational drug use, while still allowing its medical or scientific use, and to introduce guarantees of treatment to addicts, giving no great emphasis on the issue of trafficking. It
would be the responsibility of national laws to control drug production, distribution and sale. The convention has agreed on phasing the gradual elimination: 15 years for opium and 25 years for coca and cannabis. Ten years later, the Convention on Psychotropic Substances of 1971 listed an even wider range of substances that would be banned under the regime, including the new psychotropic drugs, such as stimulants, amphetamines and LSD, which had been popularized among young people worldwide, including Brazil. It took six years for the Convention to enter into force (INCB, 2008: 3).

The origins of these agreements date back to the Opium Convention from 1912, the first international agreement that regulated the trade and consumption of drugs (INCB, 2008:2). A campaign launched by China against the opium trade in 1906 was followed by a U.S. proposal, called by Theodore Roosevelt, to organize an international conference to address the issue, the Conference Shanghai in 1909. Until all multilateral commitments in this matter were unified in 1961, there were seven agreements with a very limited number of countries, with no specific strategy to implement them. The international consensus on this matter resulted of great effort carried out by the United States, where prohibitionist movements had strengthened, based on moral-religious and economic concerns, which associated the drug consumption to moral degradation, immigrants, underprivileged classes, in a way to control the international trade in opium in Asia (MCALLISTER, 2000: 27).

These initiatives were followed by the American "war on drugs" started in the 1970s. In the United States, as well as in Brazil, the drugs at that time were related to social movements, protests and opposition to the government (BOITEUX, 2011: 31). According to Andreas et al. (2006: 173), the United States used the United Nations to create, oversee and universalize the prohibition of drugs throughout the world, aiming at promoting the American law enforcement interests abroad, reproducing social and ethical standards in the world, which would be unilaterally implemented by the newly created Drug Enforcement Administration (DEA), American enforcement agency against drugs, which had offices all around the world. In Brazil, specifically, the DEA is directly involved in combating drugs in cooperation with the Brazilian Federal Police, providing operational infrastructure and training.

Since the Opium Conference in Shanghai, the United States holds a leadership position in the development of the global drug prohibition regime and its international
efforts in the "war on drugs" are unique (ANDREAS et. al, 2006: 42). This policy was undoubtedly a success, since it clearly embodies the wide international consensus on these terms stated in the UN system, approved and/or internalized into national law by all member countries. Nowadays, 96% of the member countries are signatories to the 1961 Single Convention, and 94% are signatories to the 1971 Convention (UN, 2008).

A Threat to International Security

Since the late 1980s, the American crusade in the "war on drugs" has changed its tune. The rethinking of the United States security agenda, particularly with regard to the insertion of the drug war as one of its priorities, had a major impact on Latin America. The fear about the Soviet influence in the region was replaced by concerns about the threat posed by drug trafficking. In this context, the South came to be considered a region without control and, hence, a threat for the international system. According to Andreas et al. (1995: 75-76) from the 1990s on, the United States turned to Latin America with basically two fronts: the promotion of economic liberalization (the so-called Washington Consensus) and the fight against drugs production and trafficking. According to the 1990 National Security Strategy (NSS), the United States would increase its "efforts to reduce both supply of and demand for illicit drugs" and internationally "attack the production of such drugs, and multinational criminal organizations" (U.S.A., 1990: 7).

Drug trafficking in Latin America, origin of most of the drugs consumed in the United States, particularly cocaine and heroin, has been significant since the 1970s, but in the late 1980s and in the 1990s reached unprecedented proportions (PEREIRA, 2011: 23). Problems, which had been hitherto characterized as domestic and had ended up diluted by the debate on the disputes between the Soviet Union and the United States, were then included in the internationalized and international security agenda (VILLA, 2010: 24).

The capture and trial of President Noriega of Panama for involvement in trafficking already in 1989, the 2000 Plan Colombia and the Andean Regional Initiative 2001 were major milestones of the new hemispheric diplomacy. Since then, the transnational crime, especially drug trafficking, had become an issue of international security. The potential
destabilization potential of drug trafficking in Latin America for the hemisphere and United States’ security rendered it a real threat (BAGLEY, 1988: 162).

The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (or the Vienna Convention) was signed in 1988. Its focus was primarily the fight against illicit drug trafficking through cooperation among the signatory countries in response to the growth of criminal organizations, especially in Latin America. Its main innovation was the control over the chemicals precursor and money laundering, the emphasis on drug trafficking, and the criminalization of drug possession and use (UN 1998: 80).

In the preamble a concern is presented about the "relationship between illicit traffic and other related organized criminal activities which undermine the legitimate economy and threaten the stability, security and sovereignty of states" (UN, 2013 [1988]: 132). In addition, the 1988 Convention for the first time linked drugs to criminal organizations. Since the 1990s, almost all UN documents began referring to drug trafficking as a security issue. It seemed then that the consensus among governments had been achieved, considering the global drug safety challenge to be fought by all countries.

In 1998, the 20th Special Session of the UN General Assembly (UNGASS) was launched to address the issue of drugs. The final statement issued by the meeting exposed the urgency attached to the issue of drug trafficking. All parts recognized that "drugs are a serious threat to the health and wellbeing 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"(UNGASS 1998: 3).

Drug Trafficking and Security in Brazil

The Single Convention on Drugs was ratified by Brazil in 1964 (Decree No. 54216/64) and the Convention on Psychotropic Substances of 1971 in 1977 (Decree No.
Both had a strong influence on national legislation. The issue of drugs grew in importance in public spaces during the 1970s, due to the increase in production and demand for cocaine in the United States and Brazil, and due to the growing power of organized crime related to drugs in Colombia (SILVA, 2013: 129). However, Brazil's concern on the issue of drugs in this period was restricted to a very specific domestic context, and Brazilian presence in international forums dealing this subject was very shy.

Between 1964 and 1985, Brazil experienced a period of military dictatorship. In the context of the Cold War, the military, particularly the Army, received some funding and support from the United States, which was concerned with preventing the rise of the left in Brazilian politics. The authorities, concerned about Brazilian political order, feared that the youth, the "mass of maneuver ideal for subversion", would be easily manipulated under the influence of drugs (O ESTADO DE S. PAULO, 1971:18). In this period, drugs crimes were commonly included in the National Security Law (Decree-Law 314/67), though not overtly described there, since its consumption was directly linked to political subversion (FOLHA DE S.PAULO, 1971:12).

In this context, the Drug Law (Law No. 6.368/76) was approved in 1976. For Carvalho (2013: 90) and Boiteux (2011: 31) this law solidified the idea of the drug dealer as an enemy and user as a mentally disabled person, subject to compulsory hospitalization. As recommended by the international regime, users (mandatory hospitalization and 6 months to 2 years in prison) were differentiated from traffickers (3 to 15 years in prison), enabling Brazil to ratify the 1971 Convention in 1977 (Decree No. 79.383/77). In 1980, the Prevention, Control and Suppression of Narcotics National System (Decree No. 85.110/80), included the creation of the Federal Narcotics Councils (COFEN) as central office. Chaired by the Minister of Justice, COFEN was the national institution dedicates to drug policies in Brazil.

The 1988 Convention was ratified in Brazil in 1991 (Decree No. 154/91). In general, the Brazilian behavior in specialized UN conferences was very warm, slightly more reactive than purposeful. Still, its commitment has encouraged a number of laws that altered drug-related criminal system in the following years. The law on expropriation of land from illegal plantations of psychotropic drugs was approved in 1991 (Law No. 8.257/91), the organized crime was typified in 1995 (Law No. 9.034/95), the international recognition on the link between drugs and organized crime was established, and the money
laundering was criminalized in 1998 (Law 9.613/98), as a result of direct pressure from the UN on Brazil.

In the second half of the 1980s, the country was in a process of political transition to democracy after two decades of military dictatorship. In light of the National Constituent Assembly of 1987 and the promulgation of the Constitution of 1988, a series of advances in terms of individual rights and human rights were consolidated. The repressive model regarding drugs policies, although, remained unchanged (CARVALHO, 2013: 90-91). The 1976 Act remained in force, as the new Heinous Crimes Law (Law 8.072/90) included drug trafficking, removing some of guarantees for those accused and condemned for trafficking.

The law of organized crime (Law No. 9034/95) was passed in 1995 and, in the next year, the National Action Program Drug (PANAD) was created. At the time of its release, the Justice Minister, Nelson Jobim, stated that

Summarizes clearly the will of the Brazilian state of facing the problem head on (...). The dealer shall be treated as a public enemy and the penalties to be imposed it is increasingly hard. (CARVALHO, 2013: 141).

In 1993, the National Bureau of Narcotics (Law No. 8.764/93) was created, under the Ministry of Justice, in order to supervise and oversee the implementation of the policies created by COFEN. In 1998, these organizations were respectively transformed into the National Drug Council (CONAD), a regulatory agency, and the National Anti-Drug Secretariat (SENAD), an executive secretary attached to a military bureaucracy, the Military Office of the Presidency, both incorporating the National Drug System (Decree No. 2632). Fernando Henrique Cardoso (president between the years of 1995 and 2003) announced the creation of these bodies during the 20th Special Session of the UN General Assembly, in 1998. In his speech, the president said that Brazil would “stand by and watch this enemy [drugs]” (O ESTADO DE S. PAULO, 1998:4).

According to the national secretary of SENAD, Walter Maierovitch, in this period there was a clear change of attitude by the government on the issue of drugs, which according, to him, was an "attack on the democratic state." As a result, in terms of public policy over the 1990s, the Federal Police was refitted and the Armed Forces have gained some prerogatives in the drug war, participating in drug trafficking combating operations
in the Amazon with intelligence and logistical support (PROCÓPIO, 1998:85). These projects have opened a precedent for the use of the Armed Forces in the fight against drug trafficking.

The transnational crime was included as a regional security concern for National Defense Policy launched in 1996. According to the document,

It is considered that South America, for its remoteness from global sources of tension, is the most demilitarized region of the world (...) at the regional level, there remain some areas of instability that can have negative effects on Brazilian interests. Are of concern the actions of armed gangs that are active in the countries bordering the Brazilian Amazon and the international crime (BRAZIL, 1996:10).

The Operations Rio I (1994) and Rio II (1995), employed in order to occupy slum areas in Rio de Janeiro, dominated by drug trafficking, are striking examples of the new Armed Forces role in public security. Since then, a number of legislative reforms have regulated the Armed Forces police power. In 1998, an amendment to the aeronautical code (Law nº 9.614/98) was proposed to allow aircraft destructions against airplanes suspected of illegal drug trafficking (FEITOSA et al, 2012: 66). In 1999, the Supplementary Law No. 97 of 1999, which rules on the responsibility to ensure law and order in the country, formalized the use of the Armed Forces against crime. Later, in 2010, the Complementary Law No. 136 approved the use of the Armed Forces against cross-border crimes. The Strategic Border Plan implemented in 2011 consolidated the presence of the military in combating transnational crime in border areas, not as auxiliary forces. Offensive operations across borders, called Operation Ágata, are controlled by the Defense Ministry and executed by the three armed forces in a permanent basis.

The end of a consensus

The 1988 Convention agreed to create a drugs-free world within ten years. According to the UNODC data, the opium production, for example, rose from approximately 2 tons in 1986 to 5 tons in 1997, and the production of coca leaf jumped
from 250 thousand tons in 1986 to 350 thousand tons in 1997, one year before the deadline established in 1988 (UNODC 1999: 4-5).

The 20th Special Session of the UN General Assembly on drugs was opened in 1998, in order to review the previous strategies. Despite the failure in reaching the goals proposed by the 1998 Convention, the final policy statement, agreed by consensus by the Member States, reproduced the same ideas, reaffirming the validity of the three conventions and extending the previous deadline for another ten years. The slogan of the document was "a drug-free world - We can do it!" (UNGASS 1998: 39).

From 1998 to 2008, according to UN data, the annual consumption of opiates has increased by 34.5%, cocaine by 27%, and cannabis by 8.5% (GLOBAL COMISSION ON DRUGS, 2011: 4). Following the repeated failure, in 2009 a Political Declaration and Plan of Action on International Cooperation was proposed by a new General Assembly Special Session in 2009 (UNGASS). In this period, the UN drug control system experienced an increase in internal tensions (BEWLEY-TAYLOR, 2012: 50).

Most of the disagreements that arose in the UNGASS 2009 revolved around the notion of harm reduction, proposed specially by European countries, which defended a drug policy change in the sense of health-oriented interventions, aiming to reduce harms associated with drug use. The term was not used in the final statement, because of the United Stated pressure followed by some countries such as Colombia, Japan, China and Russia. The notion that the failures were due to inadequate implementation and lack of political will prevailed.

During the UNGASS 2009, the Brazilian Institutional Security Cabinet Chief Minister, General Jorge Armando Felix, said that the goal of a world free of drugs established during the 1998 UNGASS proved to be unattainable, and pointed to the social consequences of rising violence and incarcerated population, associated to the drug illegal market, as well as increased mortality of youngsters, and social exclusion (BOITEUX et. al 2013: 26).

Harm reduction is a set of policies and practices aimed at reducing the harm associated with the use of psychoactive drugs by people who cannot or will not stop using drugs (IHRA, 2010:1). Switzerland and the Netherlands, for example, adopted the
prescription of drugs and supply of syringes, mainly heroin, as a dependence treatment method. Decriminalize the user, supply and control their dependence was thought as a way to isolate them from criminal activity and to avoid greater damages associated with drug use, such as poisoning and disease transmission by syringes. Since 2001, the use and possession of all illicit drugs was decriminalized in Portugal in order to replace prison to therapeutic alternatives. In the United States, although federal law does not permit the use of marijuana at all, some individual states have legalized the medical use of marijuana, and in the case of Colorado and Washington also the recreational consumption. Finally, the most radical and emblematic case was Uruguay, which, last year, liberalized the trade and use of marijuana for medical and recreational purposes.

In Brazil, the toughness in relation to organized crime and trafficking, through the use of military means to combat it, has been accompanied by an attempt to reduce penalties on users. The Harm Reduction Policy was officially recognized and regulated by the Federal Government in 2005 by the Ministry of Health (Ordinance n.1.028/95). Although questioned by some sectors of society, such as the Catholic Church or Anonymous Narcotics, the proposal was certainly a milestone in proposing "actions aimed at reducing social and health damage arising from the use of products, substances or drugs that cause addiction” and in treating users on the basis of public health.

A New Drug Law (Law No. c) was approved in 2006, in order to review and update the former 1976 law. The project presentation, titled "Brazil in Fight to Win Over Drugs", expressed the concern about "winning the fight against the most serious threats to the socioeconomic development of nations." The distinction between drug users and traffickers determined that the user would not be subject to custodial sentences, but rather to socio-educational measures applied by the Special Criminal Courts. On the other hand, this law has imposed tougher penalties to drug trafficking activities and increased jail time (5-15 years). The new Drug Law was considered more advanced and balanced by specialists, once users were not sent to jail. After the creation of the National System of Public Policies on Drugs (SISNAD), provided by this law, greater emphasis was placed on preventing the misuse of drugs.

Despite its "respect for the fundamental rights of the human person, especially the autonomy and freedom" (Art. 4), this law still lacks clear criteria for the law enforcement agent to be able and distinguish users from traffickers. The Article nº 33 defines that those
who import, export, forwarding, prepare, produce, manufacture, purchase, sell, expose for sale, offer, take deposit, carry, bring, store, prescribe, administer, deliver or provide drug consumption shall be punished with imprisonment. In Article 28, users are defined as those who acquire, hold, have in storage, transport or carry drugs with them, for personal use, without authorization. Both definitions include “bring”, which means that the judgment on one’s intention (selling or using) will determine their penalty.

The lack of precision results on arbitrary decisions based on prejudiced assumptions, which in practice ends up disadvantaging the lower strata of society (BOITEUX, 2011: 33). This attitude is legitimized by Article 42, which states that "the judge who establishes penalties shall consider, with precedence over the provisions of article nº 59 of the Penal Code, the nature and quantity of the substance or product, personality and social behavior of the agent”. As a result, from 2005 (before the new law was passed) to 2013, the prison population by drug trafficking-related crimes increased from 33,000 (11% of total) to 146,000 (26% of total), unlike the predicted (DEPEN, 2005; 2013).

UN data shows that deaths caused by drug use are relatively low in the Americas (UNODC, 2011:38), but the drug war and the violence between criminal groups is considered a major cause of violence in the region. In addition, the latest data collected by UNODC (2014:11-15) show that 36% of homicides in the world occurred in the Americas in 2012, with a rate of nearly 12 deaths per 100,000 inhabitants, almost twice the global average (6.2), in which 30% were related to organized crime. The homicides rate in Brazil (23.5 in 2007 to 25.2 in 2012) is among the highest in the world (UNODC, 2014:127).

Researches have revealed that the current model of drug enforcement were unable to reduce its production, trade and consumption. Alcohol, tobacco, opium, cannabis, coca and coffee have been consumed in different societies for thousands of years for various medicinal, ritual or recreational purposes, so that hardly any attempt, however global it may be, will eliminate the production and consumption of drugs in the world. What matters, as the data shows and as some countries have recognized, is to emphasize the harm reduction on drug consumption.

Conclusion
A uniform international model on production, trade and consumption control of certain substances sustains the UN drug prohibition regime. The model advocates the prohibition, abstinence and criminalization of illicit products. Albeit defending the distinction between users and traffickers, the regime rejects proposed alternatives that include harm reduction, legalization/regulation of certain substances consumption, and does not recognize the rights of communities to do the ritualistic use of prohibited substances.

The Brazilian criminal model of drug control is remarkably inspired by international UN conventions, specially after the 1990s, when drug began to be understood as a threat to state security and international security. Although it is aligned with the European countries on the importance of harm reduction, as stated in the new law on drugs 2006, what is de facto observed is a clear punitive hardening in repressive measures against traffickers, strengthening the American perspective of blaming the supply side, generally resulting in violence against the most vulnerable members of society.

The repressive laws against drug offenses were not effective in reducing consumption, production and trafficking of illegal drugs. Rather, there was a significant increase in imprisoned population in Brazil in the past 20 years, with no supply or consumption reduction. This result was reproduced worldwide. In response to this failure, it is possible to note the breakdown of international consensus on drug policy firstly built in the 1960s. Some states or federal units, such as the United States itself, have adopted alternative policies individually, although agreements at the multilateral level fail to recognize them. The militaristic prohibitionist model is still dominant among countries and the drug problem is still the cause of violence, but the strength of the public debate on the need for change in the concepts proposed one hundred years ago by the UN is remarkable, and it has resulted in national laws changes around the world, including Brazil.

References


