International Drug Policy: Between Myths and Reality

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Abstract

For a long time, international drug policy was seen as a policy of prohibition whose sole aim was to eradicate drug addiction. The so-called opioid crisis that has hit the United States over the last twenty years has reminded the public opinion that drug addiction can come from completely legal channels and that what is prohibited in the field of drugs are not the substances themself but the ways in which they are produced, commercialized, and consumed. This article reviews the history of international drug policy and attempts to discern what is reality and what is a myth. It shows that drugs have never been banned at an international level, but rather controlled to ensure that medical needs are met. Moreover, although the United States played a major role in the international drug policy after the Second World War, they were not its instigators. The credit goes mainly to the Europeans who invested in the League of Nations during the interwar period.

Keywords: International drug policy, opioid crisis, history of drug, war on drug, international drug control

Política Internacional de Drogas: Entre Mitos y Realidad

Resumen

Durante mucho tiempo, la política internacional de drogas fue vista como una política de prohibición cuyo único objetivo era erradicar la toxicomanía. La llamada crisis de los opiáceos que ha golpeado a Estados Unidos durante los últimos veinte años ha recordado a la opinión pública que la adicción a las drogas puede provenir de canales completamente legales y que lo que está prohibido en el campo de las drogas no son las sustancias en sí sino las formas en que se que se producen, comercializan y consumen. Este artículo

doi: 10.18278/ijc.10.1.10

repasa la historia de la política internacional de drogas e intenta discernir qué es realidad y qué es un mito. Muestra que las drogas nunca han sido prohibidas a nivel internacional, sino más bien controladas para garantizar que se satisfagan las necesidades médicas. Además, aunque Estados Unidos jugó un papel importante en la política internacional de drogas después de la Segunda Guerra Mundial, no fueron sus instigadores. El crédito va principalmente a los europeos que invirtieron en la Sociedad de Naciones durante el período de entreguerras.

Palabras clave: Política internacional de drogas, crisis de opioides, historia de las drogas, guerra contra las drogas, control internacional de drogas

国际毒品政策：传闻与现实

摘要

长期以来，国际毒品政策被视为一项禁止政策，其唯一目的是根除毒瘾。近二十年来，席卷美国的所谓阿片类药物危机提醒公众，毒瘾能来自完全合法的渠道，并且毒品领域中禁止的不是毒品物质，而是其生产方式、商业化方式以及消费方式。本文述评了国际毒品政策史，并试图辨别什么是现实，什么是传闻。本文表明，毒品从未在国际层面上被禁止，而是受到管制以确保满足医疗需求。此外，虽然美国在二战后的国际毒品政策中发挥了重要作用，但却并不是该政策的发起者。该政策主要归功于在两次世界大战期间对国际联盟作贡献的欧洲人。

关键词：国际毒品政策，阿片类药物危机，毒品史，禁毒战争，国际毒品管制

On February 3, 2021, the consulting firm McKinsey reached a $573 million settlement with 47 U.S. states to end lawsuits regarding the so-called opioid crisis.[1] The firm was accused of having, through its advice, favored undue sales of Oxycontin, a drug containing a very powerful opiate, oxycodone, manufactured by the pharmaceutical company Purdue Pharma. Derived from opium via thebaine, the substance is generally prescribed to relieve acute pain but has a high risk of addiction. In the United States, prescription opioids are suspect-

ed of having caused the death of 17,000 people in 2017 alone, more than heroin deaths (14,000).[2] In total, opium derivatives, from both the licit market and illicit trafficking, have caused the deaths of over 450,000 people between the years of 1999 and 2018.[3]

The situation is not bound to the USA solely. The increase in opiate use, albeit in much smaller proportions, is also observed in Europe.[4] This episode is a powerful reminder that drug abuse is not just a matter of illicit supply. Far from being prohibited, drugs are first and foremost regulated and controlled, allowing the pharmaceutical industry to sell and doctors to prescribe substances containing opiates.

The opioid crisis does not reveal the failure of drug prohibition but a failure of control, which takes us back to the very origins of international drug policy at the turn of the 20th century. At that time, the drug problem was both moral and medical. It was moral in the sense that the non-medical use of certain psychoactive substances had always been the object of social condemnation because of the loss of self-control that it could cause and the social and physical decay that sometimes followed.[5] At the end of the 19th century, several substances such as ether, alcohol or opium were thus blacklisted by temperance leagues, clerics and even some doctors.[6] For them, the horizon of expectation was abstinence, i.e., the eradication of bad habits linked to these substances which were then constructed as vices, as underlined by the use of the term 'mania' for morphine addiction: morphinomania.[7] The borderline with medicine was not very clear and many doctors became advocates of this hygienist vision, setting up these bad habits as pathologies, even coining the expression "drug addiction".[8] However, doctors and pharmacists are confronted with another issue, which is the whole problem of modern drugs: the therapeutic use of some of these substances, in particular opiates which are particularly powerful analgesics, and which are indispensable when pain becomes severe. For the latter, it is by no means a question of prohibiting drugs, but of regulating and controlling their availability and prescribing.[9]

From that time onwards, opiate drugs were diverted for non-medical use, either because they were sold over the counter or because doctors were indulging in complacent prescriptions, causing a health crisis in the United States[10] that is very similar to the one the country is experiencing at the beginning of the 21st century. International drug policy was born out of this dual problem, but then, as now, there has never been any question of an outright ban of drugs. At the first conference held in Shanghai in 1909, it was recognized that opium and its derivatives as well as cocaine could be used for medical purposes. The whole challenge of international drug policy was to establish a global regulatory system for drugs used in medicine. The belief in the existence of a prohibition regime comes from the focus on the moral dimension of the problem and the emphasis on the repression of non-medical use.

Controlling the availability of drugs globally

By the end of the 19th century, the non-medical use of opium, morphine, heroin, and cocaine had become a major health problem in many Western countries where the availability of these products was insufficiently controlled. The response was to give doctors and pharmacists a monopoly over the dispensing of these products, based on the understanding that these professions were best able to determine what was of legitime medical use and what was not. However, the pharmaceutical industries remained free to manufacture the quantities they wished, which, through the complexities of international trade and smuggling, led to some drugs, although produced in a completely legal manner, being introduced on the black market.

International drug policy, which came into being following the Hague Convention in 1912, sought first and foremost to break this link by ensuring that the production of the pharmaceutical firms was limited to medical and scientific needs.[11] Conducted under the aegis of the League of Nations, then the United Nations, this policy was built up in successive stages between 1920 and 1972.[12] The first was the adoption, in 1925, of a system of international import and export controls that prevented any diversion of legally produced drugs to the illicit market. To ensure its full effectiveness, a supranational body, the Permanent Central Committee, was created to verify the *bona fides* of trade. This policy, known as "system of certificates", is still in force today under the responsibility of the International Narcotics Control Board (INCB).

However, pharmaceutical companies continued to manufacture far more drugs than the world's medical needs could absorb, so that non-medical consumption continued to be supplied by firms whose production was entirely legal.[13] The 1931 Convention imposed a strict limit on the number of narcotics that could be manufactured by each country based on a system of estimated world medical requirements that covered the entire planet, including countries that were not parties to the convention. The 1925 and 1931 conventions made it impossible for the pharmaceutical industry to supply drugs for illegal consumption unless they went underground or exploited loopholes in national health systems.[14] Opium production, despite a first attempt in 1953, remained outside the control system until the adoption of the 1972 protocol.[15] At that time, a large part of the raw material used in the production of natural opiates by pharmaceutical firms came directly from the poppy straw without passing through the opium stage. Gradually, opium production for licit purposes ceased in all countries of the world except India and China, which are today the last countries to maintain significant legal opium production.

From the mid-1970s onwards, the control system for the licit supply of drugs was in place, covering all stages from cultivation, through manufacture and international trade, to distribution by doctors and pharmacists. However, it is important to note that only the cultivation, manufacturing and import/export stages

are subject to direct international control, while national trade and especially the control of doctors and pharmacists are left to the discretion of the states. This is why the opioid crisis in the United States reveals not so much the failure of international drug policy as the failure of American control mechanisms, even though the country has been the champion of the fight against drug abuse for over a century. Such a hiatus has only been possible because of the moralistic view that is usually taken of drugs. As an absolute evil, a scourge of humanity, drugs cannot be at the same time the indispensable auxiliaries of modern medicine and thus have the double face of poison and remedy that the Greek term *pharmakon* recognizes. It is for this reason, it seems to us, that the opioid crisis was able to occur. The American authorities in charge of the drug problem were obsessed with the fight against illicit use and neglected to control licit use.

The war on drugs

International drug policy has long been perceived as a prohibition enterprise, neglecting the regulatory aspects that are nevertheless constitutive of it.[16] This representation is based on two distinct phenomena that frame the implementation of the control system while concealing it. On the one hand, the action of moral entrepreneurs who, in the first third of the twentieth century, by emphasizing the eradication of smoked opium, gave the impression that they were seeking a pure and simple prohibition of substances. On the other hand, the reorientation of international drug policy itself, from the 1970s onwards, which under the influence of the United States in particular, focused on the repression of illicit uses, while neglecting the management of licit uses.

The first opium conference, held in Shanghai in 1909 on the initiative of the American president Theodore Roosevelt, was inspired by Bishop Brent, an Anglican bishop of the Philippines, who had succeeded in banning the use of smoked opium in the archipelago and who wished to extend this policy to the whole world.[17] The prohibitionist tendencies of the American delegation that were led by Brent were not met with much support except from the Chinese delegation. They saw this as an opportunity to challenge the presence of Europeans in China. The other states present at the conference were anxious to preserve the revenues they derived from the sale of opium in their Asian possessions,[18] but more generally from the trade of so-called manufactured drugs.[19] Above all, it became clear that while drug abuse was harmful, it was impossible to ban opium and its derivatives entirely because of their medical use. Although it did not produce any concrete measures, the Shanghai conference however contributed to constructing the drug issue on a highly moral level,[20] which favored a prohibitionist reading of international drug policy.[21]

Brent also participated in the 1912 conference, which he chaired, and which led to the first international opium convention where the suppression of

drug abuse was set as a universal objective from the very first lines.[22] However, the concrete means of achieving this goal did not, as we have seen, take the form of a ban on the substances in question, but rather the regulation of their use. When the follow-up to the 1912 Convention was taken over by the League of Nations in 1920, the United States, which had refused to be a member, found itself *de facto* marginalized and moved from being a leader to a follower. The Advisory Commission on Opium Traffic was thus created without them, although an assessor's seat was offered to Mrs. Hamilton Wright, widow of Dr. Hamilton Wright who had assisted Brent at the 1909 and 1912 conferences and who was the promoter of the first American federal drug law, adopted in 1914.

From 1923 onwards, the United States officially participated in the Commission's meetings with a special status, being represented by Brent. The hiatus between the American moral entrepreneurs, who were bent on eradicating smoked opium, and the Europeans, who were concerned, on the one hand, with preserving the income from the sale of opium in their Asian colonies and, on the other, with protecting their pharmaceutical industries in a global context of drug control, became apparent in the winter of 1924–1925. At this time, two conferences on drugs were held in parallel in Geneva. The first, to which the United States was not invited, dealt only with smoked opium and concerned only those states that still accepted this use in the territories under their authority, mainly in Asia. The second, in which the United States participated, was addressed to all states, and aimed mainly at regulating the supply of so-called manufactured drugs (morphine, heroin, cocaine). The American delegation was indignant about not being invited to the discussions on smoked opium. Faced with the refusal of the Europeans to invite them, they decided to leave the second conference with a bang, which meant that the United States was not party to the 1925 Convention which established the regulation of the international drug trade, including opium. Faced with this bitter diplomatic failure, the United States changed its strategy.

In the years that followed, the State Department made sure to send to Geneva professional diplomats who were much more thoughtful, and above all more attentive to the licit dimension of the problem. Even Harry Anslinger, the famous head of the Bureau of Narcotics, known for his crusade against marijuana in the United States, and a figure from whom Howard S. Becker built his concept of the moral entrepreneur, never took radical positions at the international level when he represented his country. Although they had a definite ideological influence, moral entrepreneurs were never able to reduce international drug policy to a pure prohibition policy, as was the case with alcohol prohibition in the United States during the 1920s. The regulation of licit activities, notably because of the economic and strategic stakes involved, systematically prevailed between 1920 and 1970. Thus, the 1961 Convention, which shows a definite inclination towards an increase in repressive provisions, particularly regarding non-medical consumption, remains above all a text which regulates licit activities.[23]

The situation changed dramatically in the early 1970s, when the organization and management of the licit drug supply ceased to be the priority of international drug policy and the focus shifted increasingly to drug abuse control. There are two reasons for this shift. The first was the completion of the control system which, with the integration of poppy cultivation, now covered all links in the production chain. The other reason is the explosion of drug consumption from the illicit market among the youth of Western countries.

As early as 1970, the UN Commission on Narcotic Drugs recommended the creation of a United Nations Fund for Drug Abuse Control (UNFDAC). It was created the following year, thanks to the United States, which saw it as an opportune relay for the war on drugs launched by President Nixon in June 1971. As a voluntary fund, the UNFPA had the double advantage of allowing States to decide freely on the amount they wished to invest and the operations they wished to carry out. The UNFPA's actions focused mainly on education and prevention, as well as promoting alternative crops to opium and coca leaves. However, the multiplication of programs and their dependence on donors contributed more to weakening the unity of action of international drug policy than to strengthening it. Set up in parallel and independently of the existing bodies, and benefiting from a considerable influx of money, the Fund ended up creating all sorts of tensions and administrative jealousies.[24]

The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in 1988, reinforced the idea that international drug policy was primarily a policy of repression, heralding important institutional changes. In 1991, UNFPA was merged with pre-existing bodies, including the Division of Narcotic Drugs and the Secretariat of the Commission on Narcotic Drugs, into the United Nations International Drug Control Program (UNDCP). In 1997, UNDCP absorbed the Centre for International Crime Prevention (CPIC) to form the United Nations Office on Drugs and Crime (UNODC). In 2002, the new entity was renamed the United Nations Office on Drugs and Crime (UNODC), the name we still know today. The creation of a fund dedicated to the fight against drug abuse, and the following merging with the center for crime prevention, gave the international drug administration a face which was resolutely turned towards the fight against illicit use. The other dimension of drug policy, namely the control of licit supply, was increasingly sidelined and carried out mainly by the INCB (International Narcotics Control Board) and its Secretariat. The United Nations General Assembly, in its various political declarations and its ten-year drug eradication programs, echoed this focus on the repression of illicit use, maintaining a Manichean vision of the drug problem.[25] The successive failures of the two ten-year drug abuse eradication programs and the harmful consequences of repression policies have led to the emergence of a strong criticism of the war on drugs, which may have led some to believe that the consensus of international

drug policy was fractured*. However, these criticisms have not led to a profound questioning of international drug policy, but, on the contrary, to a rediscovery of the principles of control and regulation which are at its foundation**.

Conclusion

When President Clinton announced at the United Nations General Assembly in June 1998 that drug use would be cut in half in the United States in ten years,[26] he certainly did not suspect that the opioid crisis then emerging would have no illicit origins but would be caused by American pharmaceutical laboratories and doctors. The opioid crisis in the USA reminds us that drugs do not have to be of illicit origin to cause abuse. This is because of the special status of drugs, which as the active ingredients of many medicines, are legally available in everyday life. Drugs have never been prohibited but controlled. The belief that drugs are prohibited is a moral and not an objective view of reality. It is a myth that not only distracts us from what a drug policy really is, but also makes us ignore the dangers generated by the absence of effective control.

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