



Research Paper

A Legal Critique of Drug Liberalization as an Alternative Panacea to Combat Drug Trafficking

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Abstract

The agitation for drug liberalization policy as opposed to prohibitionist approach has not just started and same remains unsettled till date. The advocates believe that drug liberalization offers a number of appeals such as reduction in crime, spiking of tax revenue, lowering of criminal justice expenditures, improving public health, increasing traffic safety and generally stimulates the economy. A number of studies have examined the impact of drug legalization across the world. However, available reports on the consequences of drug liberalization have been inconsistent perhaps due to limited data. Those who are against drug liberalization policy have strenuously argued that the approach will open a floodgate for increased vices in the society and equally serve as an attraction for those who have hitherto not indulged in illicit drug consumption among other socio-economic, political and cultural adverse effects. The pros and cons of drug liberalization policy as an alternative to drug war constitute the thrust of this paper.

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I. Introduction

Combating illicit drug trade in any jurisdictions of the world has been a herculean task and recorded negligible success despite several drug control conventions and huge financial commitment to the cause. This development has provoked the thought for a policy change from the current prohibitionist approach to liberalization of drug policy. This view has dovetailed into the emergence of certain principles of liberalization such as legalization and decriminalization.

The advocates of liberalization policy do not make any pretext that the policy is full proof measure to tackle the drug challenge. Rather, their point of emphasis lies in comparative advantage which they claim liberalization policy measure has over the traditional drug war. Therefore, just like any imperfect man made policy measures, liberalization policy presents some put offs which would be considered in the paper with a view to espousing whether or not the policy measure should be embraced as a better alternative to the prohibitionist approach.

Drug Legalization

The proponents of legalization canvassed that the main thrust of drug policing law is prohibition which they claim engenders violence and does no good to either people's health or security. Hence, the legalization school of thought supports regulation with the objective of maintaining the health and security of people while at the same time respecting human rights to use whatever kind of drugs as individual may consider necessary.

It has equally been stressed by this group that the failure of law enforcement agencies to control the supply of drugs in producing countries has led, in many cases, to an increased reliance on military intervention to bolster drug control efforts¹. Efforts to curtail drug use by police and military crackdowns have increased the

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¹ The White House (2012): "White House Presidential Determination: Memorandum of Justification for Major Illicit Drug Transit or Illicit Drug Producing Countries for Fiscal Year 2013. *Washington, D. C. September 14.*

wealth of drug traffickers and the violence associated with the drug industry has led to a spike in human-rights abuses, generated instability and created major obstacles to economic development².

Furthermore, given the levels of poverty and the power of drug money in drug producing countries, increased contact between the military and drug traffickers may well result in increasing institutionalized corruption within the armed forces - which in many cases already have a history of maintaining symbiotic relationships with the drug industry³. It has been further argued that increased militarization cannot be effective because it does not address the roots of the drug problem such as poverty in developing countries and demand for drugs in developed countries among other factors.

It is the contention of the drug liberty school of thought that the global government's efforts to combat illegal drugs have been a total failure. The money spent on government efforts to combat the illegal drug trade can be better spent on substance abuse and treatment for users who abuse drugs. Tax revenue to be collected from drugs sales pursuant to legalization would substantially outweigh the social costs of legalization⁴.

The primary opposition to the liberalization of drug policies is based on the belief that drug use would increase if the penalties on it were removed and therefore that the adverse social, political and economic effects that societies endure would be as great as or worse than those suffered under the present prohibition régime⁵. There is also the fear that children would be more exposed to drug use if the social stigma attached to it were removed⁶. Finally, there are concerns about the practical difficulties of legal distribution of drugs to so many users.

On the other hand, the drug legalization school of thought has contended that increased drug abuse does not appear to be the inevitable result of the liberalization of drug laws. According to this school, in several Latin American countries, the easy availability of cocaine at low prices has not given rise to any substantial cocaine abuse problems. In Amsterdam, where both cannabis and cocaine are easily available, the use of both drugs is significantly lower than in the United States, where drug use penalties are severe⁷.

Another argument put up by legalization group is that drugs have little intrinsic value⁸. It is prohibition that gives an astronomical price support to traffickers⁹. The profits are extreme and so are the violence and corruption needed to protect them. The net effect of a change in drug policy from prohibition to legalization would be sharp decrease in price and a modest increase in quantity demanded. Less revenue in the drug market equates to substantially lower profits for drug traffickers. With lower profits, criminals will likely leave the drug market, abandoning drug production in search of other more profitable and likely illicit, markets¹⁰. Additionally, the illicit drug market is closely linked to these other illicit markets, like the arms trade, human trafficking and terrorism. For instance, illegal investments in the drug trade often fund criminal organizations that procure weapons in the arms trade and train terrorists¹¹.

² Ibid

³ United Nations Research Institute For Social Development (1994): *Illicit Drugs: Social Impacts and Policy Responses*, UNRISD Briefing Paper No. 2, World Summit For Social Development, November.

⁴ For a preview of all potential arguments that the pro-legalization movement will make, one need go no further than the Web site of the Drug Policy Alliance. The Drug Policy Alliance: *Alternatives to Marijuana Prohibition and the Drug War*, <http://www.drugpolicy.org> (last visited August 31, 2010). The Web site contains a section titled "Myths and Facts About Marijuana." The Drug Policy Alliance: *Myths and Facts About Marijuana*, <http://www.drugpolicy.org/marijuana/factsmyths/> (last visited August 31, 2010). According to their Web site, the Drug Policy Alliance Network is the "nation's leading organization promoting policy alternatives to the drug war that are grounded in science, compassion, health and human rights." George Soros is on the Board of the Drug Policy Alliance. The Drug Policy Alliance: *Board of Directors*, Drug Policy Alliance, <http://www.drugpolicy.org/about/keystaff/boardofdirec/> (last visited August 31, 2010).

⁵ US Drug Enforcement Administration (May 2003) "Speaking Out Against Drug Legalization" U.S. Department of Justice.

⁶ Simon, T. (2008): "Marijuana: Facts for Teens", 7th Mar., available at http://www.drugabuse.gov/pdf/teens_Marijuana_brochure.pdf.

⁷ United Nations Research Institute For Social Development *note* 205.

⁸ Koch, J. V. (1971): "The Economics of Drug Control Policies". *The International Journal of the Addictions* 6: Pp. 571-584.

⁹ Ibid

¹⁰ Grupp, S. E. (1973): "Police and Illicit Drug Markets: Some Economic Considerations". *British Journal of Addiction* 68: Pp. 351-362.

¹¹ Audra, K. G. (2005): "Smuggling and Trafficking in Africa, in *Transnational Threats: Smuggling and Trafficking in Arms, Drugs And Human Life*", at 113, Pp. 117-19; Rollie, L. (2005): "South Asian Organized Crime and Linkages to Terrorist Networks", *Transnational Threats: Smuggling And Trafficking In Arms, Drugs And Human Life*, at 164.

There are numerous economic and social impacts of the criminalization of drugs. Prohibition increases crime (theft, violence, corruption) and drug price and increases potency¹². In many developing countries, the production of drugs offers a way to escape poverty. Milton Friedman estimated that over 10,000 deaths a year in the United State are caused by the criminalization of drugs and if drugs were to be made legal, innocent victims such as those shot down in drive by shootings, would cease or decrease¹³. The economic inefficiency and ineffectiveness of such government intervention in preventing drug trade has been fiercely criticized by drug-liberty advocates.

The immediate benefit of legalization would be a reduction in the violence associated with the drug trafficking aspect of the trade. Prohibition creates the opportunity for self-help violence in the drug trade by driving the market underground¹⁴. Legalization would create a legitimate market for drugs, allowing conflicts to be settled in courts of law and attracting commendable market players rather than criminals, much like what happened after the prohibition of alcohol ended in the United States in the 1930s¹⁵.

It is further stressed by this group that drug addiction is a disease to be treated as people are not willfully creating havoc¹⁶. Rather, more often than not, they are doing something that they find will assist them in their lives, even if it is temporary and it gets them into all sorts of other problems¹⁷. People may choose to take drugs to rebel, to escape, to cope, to survive, to belong or to register resignation and defeat¹⁸. The current global increase in the consumption of illicit drugs may be related to changes in society, including reduced family and community cohesiveness, increased unemployment and greater feelings of alienation¹⁹. It should be noted that some criminals derive intrinsic satisfaction from unleashing sorrows on others even for no just cause. A good illustration is the senseless and incessant killings of innocent citizens in Nigeria by the book haram set. It is therefore a truism that some people will not willfully create havoc. I

People have and always will take intoxicants that provide pleasure and harm. But there are ways in which these activities can be made safer, less damaging to individuals, to society, to the world. The huge amount of money the world spends on the global war on drugs could instead go towards health, addiction treatment and prevention and other socially useful things²⁰. Legalization is also said to be capable of dramatically reducing prison populations as drugs addicts may cease to go to jail thereby reducing prison expenses. It would also lower the risk of death by overdose because the strength and quality of drugs would be marked and controlled²¹.

In a world where drug-taking is not a crime, addicts would be less likely to go underground, less likely to share needles and more likely to test for HIV. Millions of new HIV infections could be averted²². Other human rights abuses generated by prohibition could be reduced, such as capital punishment in certain countries such as Iran, Saudi Arabia and Singapore, Indonesia among others²³. Finally, legalization would provide a decent living, without fear, for thousands of farmers and producers in some of the world's poorest countries.

Decriminalization

Decriminalization which is another form of liberalization policy measure is not a strictly defined legal term, but its common usage in drug policy refers to the removal of criminal sanctions for possession of small quantities of currently illegal drugs for personal use, sometimes with civil or administrative sanctions instead²⁴. Decriminalization means removing some penalties or at least looking the other way and this may occur at the

¹² Thornton, M. (2010): "The Economics of Prohibition", *British Journal of Addiction*, Vol. 75, Pp. 42-56.

¹³ Friedman, M. (1998): "There's No Justice in the War on Drugs". *New York Times* 1st November.

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Wagstaff, A. & Maynard, A. (1988): "Economic Aspects of the Illicit Drug Market and Drug Enforcement Policies in the United Kingdom", Home Office Research Study 95, London.

¹⁷ Wagstaff *note* 218

¹⁸ Ibid

¹⁹ United Nations Research Institute For Social Development *note* 205.

²⁰ U.S. Department of Health and Human Services (2006): National Institutes of Health, National Institute on Drug Abuse, "Research Report on HIV/AIDS," March, page 2.

²¹ American Academy of Pediatrics Committee on Substance Abuse and Committee on Adolescence Policy Statement (2004): "Legalization of Marijuana: Potential Impact on Youth," *Pediatrics*, Vol. 113, No. 6, June: 1825-1826.

²² Joffe, A. & Yancy, S. (2004): "Legalization of Marijuana Potential Impact on Youth," *Pediatrics*, Vol. 113, No.6, June

²³ Ibid

²⁴ Stephanie, H. (2007): "In West Africa, Threat of Narco-States," *Council on Foreign Relations Daily Analysis*, July 10.

user, producer or trafficker levels in the drug chain and may range from complete abandonment of controls to the selective relaxation of absolute prohibition²⁵.

This policy measure calls for reduced control and penalties compared to existing laws. Proponents of drug decriminalization generally support the use of fines or other punishments to replace prison terms and often propose systems whereby illegal drug users who are caught would be fined, but would not receive a permanent criminal record as a result. A central feature of drug decriminalization is the concept of harm reduction.

In some ways, drug decriminalization constitutes an intermediate between prohibition and legalization and has been criticized as being "the worst of both worlds", in that drug sales would still be illegal, thus perpetuating the problems associated with leaving production and distribution of drugs to the criminal underworld, while also failing to discourage illegal drug use by removing the criminal penalties that might otherwise cause some people to choose not to use drugs. However, it has been argued that the decriminalization of possession of drugs would redirect the focus of the law enforcement system of any country to put more efforts into arresting dealers and big time criminals, instead of arresting minor criminals for mere possession and thus be more effective.

The advocates of decriminalization opined that if drug use were decriminalized in consuming countries, there would be no crime tax for traffickers, smugglers and pushers to reap and, therefore, no reason for them to carry out turf wars, assault police, terrorize neighbourhoods and undermine countries' institutional integrity²⁶. With decriminalization, savings from a cutback in law enforcement expenses could be spent on other programmes, such as drug education and treatment. In terms of health, clean drugs, clean needles and a humane environment could reduce the incidence of drug-related HIV transmission²⁷.

However, decriminalization would not have the same effect on the market as legalization. Since in a decriminalized world, production and trafficking would still be illegal, so there would still be the potential for high profits, yielding an incentive for self-help, violence and the drug trade would remain profitable for dangerous criminal organizations. Additionally, under a decriminalization framework, countries would be faced with the same domestic drug problems as legalization.

It should be noted that decriminalization can only aspire to reduce harms created and costs incurred by the criminalization of people who use drugs and do not reduce harms associated with the criminal trade or supply-side drug law enforcement. Moreover, if inadequately devised or implemented, decriminalization will have little impact, even potentially creating new problems (such as expanding the numbers coming into contact with the criminal justice system)²⁸.

Notwithstanding the shortcoming in decriminalization policy measure, decriminalization can be seen as a part of a broader harm reduction approach, as well as key to creating an enabling environment for other health interventions. Basically, decriminalization is seen as contributing towards better targeting of health responses, which should in the long run reduce the development and extent of drug-related problems, such as overdose, HIV, TB²⁹. However, this is also dependent upon having sufficient treatment places and responses that meet current drug needs³⁰.

Decriminalization has enabled earlier intervention and more targeted and therapeutic responses to drug users, increased collaboration across a network of services and the increased attention to adopting policies that work³¹. This is perceived to be reducing the level of current and future drug use and harm. The concept of reducing the harms associated with people unwilling or unable to stop using drugs³² is certainly central to any drug policy model.

²⁵ Peter, R. M. (1986): "Risk and Prices: An Economic Analysis of Drug Enforcement", *Crime and Justice: An Annual Review of Research*, Vol. 7.

²⁶ Laurence, M. V. (2013): "Decriminalization, Legalization, or Freedom". April 9, available at <http://fff.org/explore-freedom/article/decriminalization-legalization-or-freedom/>

²⁷ Lambo, T. A. (1965): Medical and Social Problems of Drug Addiction in West Africa. *Bulletin on Narcotics*, 27(1), pp. 3 – 13.

²⁸ International Drug Policy Consortium (2010): "Time for an Impact Assessment of Drug Policy". <http://idpc.net/publications/2010/03/idpc-briefing-timeforimpact-assessment>

²⁹ Brugal, M. T. & Domingo, S. A. (2005): "Evaluating the Impact of Methadone Maintenance Programmes on Mortality Due to Overdose and Aids in a Cohort of Heroin Users in Spain", *Addiction*, Vol. 100, No. 7, Pp. 981-989.

³⁰ Allen, L., Trace, M. & Klein, A. (2004): "Decriminalization of Drugs in Portugal: A Current Overview", *Drug Scope and the Beckley Foundation*, London.

³¹ Agra, C. D. (2002): "The Complex Structures, Processes And Meanings Of The Drug/Crime Relationship", in S Brochu, C da Agra & M-M Cousineau (eds), *Drugs and Crime Deviant Pathways*, Ashgate, Aldershot.

³² Harm Reduction International (2006): "What is Harm Reduction?" <http://www.ihra.net/what-is-harmreductionm>.

Consideration of Drug Liberalization Policy in Selected Jurisdictions.

The quest for a change of gear from the direction of prohibitionist to drug liberalization policy has not just begun as there has been inclination towards that direction for many years past in several jurisdictions. For instance, in the Czech Republic, until 31 December, 1998, only drug possession "for other person" (i.e. intent to sell) was criminal (apart from production, importation, exportation, offering or mediation, which was and remains criminal) while possession for personal use remained legal³³.

On 1 January 1999, an amendment of the Criminal Code, which was necessitated in order to align the Czech drug rules with the Single Convention on Narcotic Drugs, became effective, criminalizing possession of "amount larger than small" also for personal use³⁴ while possession of small amounts for personal use became a misdemeanour³⁵. The judicial practice came to the conclusion that the "amount larger than small" must be five to ten times larger (depending on drug) than a usual single dose of an average consumer³⁶.

The Government of the Czech Republic subsequently adopted Regulation No. 467/2009³⁷ that took effect on 1 January 2010 and specified what "amount larger than small" under the Criminal Code meant, effectively taking over the amounts that were already established by the previous judicial practice. According to the regulation, a person could possess up to 15 grams of marijuana or 1.5 grams of heroin without facing criminal charges. Medical use of cannabis on prescription has been legal and regulated since 1 April, 2013³⁸.

The drug policy of the Netherlands is based on two principles namely drug use is a public health issue, not a criminal matter and existence of a distinction between *hard drugs* and *soft drugs*. Cannabis remains a controlled substance in the Netherlands and both possession and production for personal use are still misdemeanours, punishable by fine. Cannabis coffee shops are also illegal according to the statutes³⁹. However, a policy of non-enforcement has led to a situation where reliance upon non-enforcement has become common and because of this, the courts have ruled against the government when individual cases were prosecuted.

In 2001, Portugal became the first European country to abolish all criminal penalties for personal drug possession. Portugal is the first country that has decriminalized the use of all drugs, to positive results⁴⁰. Anyone caught with any type of drug in Portugal, if it is for personal consumption, will not be imprisoned. Spain and Italy have since followed Portugal's example⁴¹.

In addition, drug users were to be provided with therapy rather than prison sentences. Research commissioned by the Cato Institute and led by Glenn Greenwald found that in the five years after the start of decriminalization, illegal drug use by teenagers had declined, the rate of HIV infections among drug users had dropped, deaths related to heroin and similar drugs had been cut by more than half and the number of people seeking treatment for drug addiction had doubled⁴².

However, Peter Reuter, a Professor of Criminology and Public Policy at the University of Maryland, College Park, suggests that the heroin usage rates and related deaths may have been due to the cyclical nature of drug epidemics, but conceded that "decriminalization in Portugal has met its central goal. Drug use did not rise⁴³".

In August 2009, the Argentine Supreme Court declared in a landmark ruling that it was unconstitutional to prosecute citizens for having drugs for their personal use - "adults should be free to make

³³ Parliament of the Czech Republic (1998): *Explanatory Report to Act No. 112/1998 Coll., which amends the Act No. 140/1961 j Cjoll., the Criminal Code and the Act No. 200/1990 Coll., on misdemeanors* (in Czech), Prague "Podle čl. 36 Jednotné úmluvy o omamných látkách ze dne 31. března 1961 (č. 47/1965 Sb.) se signatáři zavazují k trestnímu postihu tam uvedených forem nakládání s drogami včetně jejich držby. Návrh upouští od dosavadní beztrestnosti držby omamných a psychotropních látek a jedů pro svoji potřebu. Dosavadní beztrestnost totiž eliminuje vs. řadě případů možnost postihu dealerů a distributorů drog."

³⁴ Article 187a of the Criminal Code.

³⁵ Article 187a of the Criminal Code.

³⁶ Supreme Court of the Czech Republic (25 February 2012), 6 Tdo 156/2010 [NS 7078/2010]

³⁷ On 14 December 2009

³⁸ "Czech Republic Pharmacies Began Selling Medical Cannabis". The420times.com. Retrieved 23 June 2013. <http://the420times.com/2013/04/czech-republic-pharmacies-began-selling-medical-cannabis/>

³⁹ <http://www.drugsweb.nl/drugsweb153.asp>

⁴⁰ Szalavitz, M. (2008): "Drugs in Portugal: Did Decriminalization Work?" Time. <http://www.time.com/time/health/article/0,8599,1893946,00.html> Retrieved 23 May 2009.

⁴¹ <http://www.scientificamerican.com/article.cfm?id=portugal-drug-decriminalization>.

⁴² Glen, G. (2009): "Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies", Cato Institute, April. http://www.cato.org/pubs/wtpapers/greenwald_whitepaper.pdf

⁴³ Szalavitz note 242.

lifestyle decisions without the intervention of the state⁴⁴. The decision affected the second paragraph of Article 14 of the country's drug control legislation⁴⁵ that punishes the possession of drugs for personal consumption with prison sentences ranging from one month to two years (although education or treatment measures can be substitute penalties). The unconstitutionality of the article concerns cases of drug possession for personal consumption that does not affect others⁴⁶.

In 2002 and 2006, Brazil went through legislative changes, resulting in a partial decriminalization of possession for personal use. Prison sentences no longer applied and were replaced by educational measures and community services⁴⁷. However, the 2006 law does not provide objective means to distinguish between users or traffickers. A disparity exists between the decriminalization of drug use and the increased penalization of selling drugs, punishable with a maximum prison sentence of 5 years for the sale of very minor quantities of drugs. Most of those incarcerated for drug trafficking are offenders caught selling small quantities of drugs, among them drug users who sell drugs to finance their drug habits⁴⁸.

Costa Rica has decriminalized drugs for personal consumption. Manufacturing or selling drugs is still a jailable offence. By the 2008 Constitution of Ecuador⁴⁹, the Ecuadorian state does not see drug consumption as a crime but only as a health concern⁵⁰. Since June 2013 the State drugs regulatory office CONSEP has published a table which establishes maximum quantities carried by persons so as to be considered in legal possession and that person as not a seller of drugs⁵¹. Ecuadorian state strongly believes that decriminalization would greatly reduce violence associated with drug trafficking as an average of 8 - 10 murders a day, with an estimated 70% being as a result of this international drug trade⁵².

In April 2009, the Mexican Congress approved changes in the General Health Law that decriminalized the possession of illegal drugs for immediate consumption and personal use, allowing a person to possess up to 5g of marijuana or 500 mg of cocaine. The only restriction is that people in possession of drugs should not be within a 300 meter radius of schools, police departments, or correctional facilities. Opium, heroin, LSD and other synthetic drugs were also decriminalized, it will not be considered as a crime as long as the dose does not exceed the limit established in the General Health Law⁵³.

Many question this, as cocaine is as much synthesized as heroin, both are produced as extracts from plants. The law establishes very low amount thresholds and strictly defines personal dosage. For those arrested with more than the threshold allowed by the law this can result in heavy prison sentences, as they will be assumed to be small traffickers even if there are no other indications that the amount was meant for selling⁵⁴.

Uruguay is one of the few countries that never criminalized the possession of drugs for personal use. Since 1974, the law establishes no quantity limits, leaving it to the judge's discretion to determine whether the

⁴⁴Jenkins, S. (2009): "The War On Drugs Is Immoral Idiocy". *We Need The Courage Of Argentina - While Latin American Countries Decriminalize Narcotics, Britain Persists In Prohibition That Causes Vast Human Suffering*. 3rd September, *the Guardian*, (London). Retrieved 5 September 2009. <http://www.guardian.co.uk/commentisfree/2009/Sep/03/drugs-prohibition-latin-america>

⁴⁵ Law Number 23,737.

⁴⁶ Argentina's Supreme Court "Arriola" ruling on the possession of drugs for personal consumption, *Intercambios*, 1 September 2009 and *Argentina: Reform on the way?*, Graciela Touzé, Series on Legislative Reform of Drug Policies Nr. 6, July 2010

⁴⁷ Drug Law Reform in Latin America (accessed 14 September 2010). http://www.druglawreform.info/index.php?option=com_flexicontent&view=category&cid=101Itemid=14&lang=en

⁴⁸ Comunidad, S. (2009): Too many in jail for drugs offenses in Brazil, 13 August.

⁴⁹ Article 364

⁵⁰"La nueva tabla para consumo de drogas es una guía para jueces" in *El Telegrafo*. <http://www.telegrafo.com.ec/noticias/judicial/item/la-nueva-table-para-consumo-de-drogas-es-una-guia-para-jueces.html>

⁵¹ "Dosis máximas de droga para consumo ya están vigentes" at *El Comercio.com.*; "Ecuador: Aprueban tenencia de drogas para consumo" at *El Nuevo Herald* and "Ecuador could regulate the drug industry" by *el telegrafo*.

⁵² (The "CONSEP established, at their latest general meeting, that the following quantities be considered the maximum consumer amounts: 10 grams of marijuana or hash, 4 grams of opiates, 100 milligrams of heroin, 5 grams of cocaine, 0.020 milligrams of LSD and 80 milligrams of methamphetamine or MDMA")

⁵³ <http://www.aljazeera.com/indepth/opinion/2012/03/2012327125714281880.html>

⁵⁴ Jorge, H. T. & Carlos, Z. A. (2009): "The Law against Small-Scale Drug Dealing", *A Doubtful Venture Series on Legislative Reform of Drug Policies*, Mexico: Nr. 3, November. http://www.druglawreform.info/index.php?option=com_flexicontent&view=item&cid=97:legislative-reform-of-drug-policies&id=220:mexico-the-law-against-small-scal-drug-dealing&Itemid=34&lang=en

intent was personal use. Once it is determined by the judge that the amount in possession was meant for personal use, there are no sanctions⁵⁵.

The cultivation of cannabis is currently illegal in Canada, with exceptions only for medical usage. However, the use of cannabis by the general public is tolerated to a certain degree and varies depending on location and jurisdiction⁵⁶ and a vigorous campaign to legalize cannabis is underway nation-wide. The sale of marijuana seeds remains legal.

Australia has one of the highest percentages of marijuana smokers in the world⁵⁷. Australians have been advocating for the legalization of cannabis since the early 1970s with the Cannabis Research Foundation of Australia in Victoria. In 2011, the Cannabis Campaign seemed to experience a renaissance in Australia, no doubt due to developments worldwide, with many new groups appearing in different states, using social media as a conduit and forum. Since 1985, the Federal Government has run a declared "War on Drugs" and while initially Australia led the world in 'harm-minimization' approach, they have since lagged. In 2012, the Think-Tank Australia 21, released a report on the decriminalization of drugs in Australia⁵⁸.

In United States, the move to decriminalize marijuana started in the late 1960s following an agitation for a reform of Federal laws that regulated marijuana use.⁵⁹ On the other hand, legalization of marijuana started in 1993 when surgeon General Elder proposed to study marijuana legalization California was the first State that passed marijuana Laws (MML) in 1996.⁶⁰

Voters in Arizona Mississi v. Montana New Jersey and South Dakota voted in November, 2020 in favour of legalizing medical and or recreational marijuana⁶¹ since that period there had been several development within the marijuana legalization world⁶²

It is noteworthy to stress here that the COVID-19 pandemic brought to a halt many state legislative efforts to legalize marijuana in 2020. However many of those efforts have been renewed in 2021. Some States have indeed commenced marijuana legalization for the first time. Mississippi and South Dakota voted in approval of marijuana legalization in November 2020⁶³

It is true that current drug policy needs to be improved and that both treatment and prevention need to play major roles in future drug policies. However, the mere fact that current policies leave much to be desired does not mean that legalization is a good idea. If currently illegal drugs were made legal, rates of use, abuse and dependence would increase along with the many related social costs including unemployment and under-employment as well as the costs of health care⁶⁴.

Despite the lofty benefits accruable from legalization policy as an alternative to the "drug war", legalization of current illicit drugs does not seem to be a viable solution to the global drug problem and would actually exacerbate the problem. The fact that supply suppression, both absolutely and as a surrogate for consumption control, seems to be a general failure at present levels of investment in drug control simply indicates a need to re-examine drug control policies but reasonably not in the direction of drug liberalization⁶⁵.

The UN Drug Conventions were adopted because of the recognition by the international community that drugs constitute or an enormous social problem and that the trade adversely affects the global economy and the viability of some countries that have become transit routes⁶⁶. The huge sums of illegal money generated by the drug trade encourage money laundering and have become inextricably linked with other international

⁵⁵ Drug Law Reform in Latin America, (accessed 14 September 2010).

⁵⁶ <http://www.sesresearch.com/library/polls/POLNAT-W03-T113.pdf>

⁵⁷ "Australians Biggest Users of Marijuana and Speed". *The Sydney Morning Herald*. <http://www.shm.com.au/national/australians-biggest-users-of-marijuana-and-speed-20120105-1pmyh.html>.

⁵⁸ http://www.australia21.org.au/our_research/illicit_drugs_download.html#a

⁵⁹ Marijuana legalization and historical trends in Marijuana Use among United State residents bmc public healthbioanedcentral/articles/10.1186/S12889-020-8254-4 available at <https://doi.org/10.1186/s.128889-020-8253-4>

⁶⁰ Ibid

⁶¹ marijuana legalization update www.mandg.com//united states/cannabis-hemp/104534 accessed on 23/3/2021

⁶² Ibid

⁶³ United State marijuana legalization update: Early 2021 legislative developments www.mondaq.com/unitedstate/canabis-hemp/1046534/marijuana-legalization accessed 23/3/2021

⁶⁴ World Health Organization (2011): Global Status Report on Alcohol and Health. Geneva, Switzerland: World Health Organization. Retrieved September 8, 2011 from http://www.who.int/substance_abuse/publications/global_alcohol_report/msbgsruprofiles.pdf

⁶⁵ United Nations Research Institute For Social Development *note* 205

⁶⁶ Institute on Global Drug Policy www.globaldrugpolicy.org.

organised criminal activities such as terrorism, human trafficking, prostitution and the arms trade. Drug Lords have subverted the democratic governments of some countries to the great detriment of law-abiding citizens⁶⁷.

Besides, there is international agreement in the UN Conventions that drugs should be produced legally under strict supervision to ensure adequate supplies only for medical and research purposes. Imperatively therefore, nations across the globe should uphold and enhance current efforts to prevent the use, cultivation, production, traffic and sale of illegal drugs⁶⁸.

Indeed, drugs legalization lacks appeals for sundry reasons for instance, only 6.1% of people globally between the ages of 15 and 64 use drugs⁶⁹. Prohibition has ensured that the total number of users is low because legal sanctions do influence people's behaviour. There is a specific obligation to protect children from the harms of drugs, as is evidenced through the ratification by the majority of United Nations Member States of the UN Convention on the Rights of the Child (CRC). Article 33 states that Member States:

Shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances⁷⁰.

Moreover, legalization sends the dangerous tacit message of approval, that drug use is acceptable and cannot be very harmful. Permissibility, availability and accessibility of dangerous drugs will result in increased consumption by many who otherwise would not consider using them. Enforcement of laws creates risks that discourage drug use. Laws clearly define what is legal and illegal and emphasize the boundaries. Legalization would not take the profit out of the drug trade as criminals will always find ways of countering legislation. They would continue their dangerous activities including creation of artificial scarcity or cutting drugs with harmful substances to maximize sales and profits. Aggressive marketing techniques, designed to promote increased sales and use, would be applied rigorously to devastating effect.

Other 'legal' drugs – alcohol and tobacco, are regularly traded on the black market and are an international smuggling problem; an estimated 600 billion cigarettes are smuggled annually⁷¹. Taxation monies raised from these products go nowhere near addressing consequential costs. The claim that alcohol and tobacco may cause more harm than some drugs is not a justification for legalizing other dangerous substances.

Furthermore, nearly every nation has signed the UN Conventions on drug control⁷². Any government or signatory countries contemplating legalization would be in breach of agreements under the UN Conventions which recognize that unity is the best approach to combating the global drug problem. The administrative burden associated with legalization would become enormous and probably unaffordable to most governments. Legalization would require a massive government commitment to production, supply, security and a bureaucracy that would necessarily increase the need for the employment at great and unaffordable cost for all of the staff necessary to facilitate that development⁷³. The drug legalization policy would constitute a threat to public health and to public safety. The unarticulated consequence of such policy is that illegal drugs would become more widely and cheaply available, inevitably leading to increased drug-caused harm⁷⁴.

Legalization could also lead to a variety of problems. Manufacturers could produce drugs in more dangerous forms⁷⁴. Street gangs could distribute the drugs legally and then use the profits for other violent

⁶⁷ World Federation Against Drugs (WFAD) www.wfad.se

⁶⁸ United Nations Office on Drugs and Crime (2011): *World Drug Report 2011*. Vienna: United Nations Office on Drugs and Crime. Retrieved September 8, 2011 from http://www.unodc.org/documents/data-and-analysis/WDR2011/World_Drug_Report_2011_ebook.pdf.

⁶⁹ UNODC (2008): "World Drug Report". http://www.unodc.org/documents/wdr/WDR_2008/WDR_2008_eng_web.pdf

⁷⁰ World Drug Report 2009.

⁷¹ INCB Annual Report (2013): Noting ballot initiatives and reiterating that legalization of cannabis for non medical and non scientific purposes would be in contravention to the provisions of the 1961 Convention as amended by the 1972 Protocol. March, at 63.

⁷² Goldschmidt, L. (2008): "Prenatal Marijuana Exposure and Intelligence Test Performance at Age 6," *Journal of the American Academy of Child & Adolescent Psychiatry*, 47(3):254-263, March.

⁷³ Sinha, J. (2001): "The History and Development of the Leading International Drug Control Conventions". *Report prepared for the Canadian Senate Special Committee on Illegal Drugs*; and William, B. M. (2000): "Drug Diplomacy in the Twentieth Century": *An International History*, Routledge.

⁷⁴ Lisa, L. (2010): "California Voters Reject Legalization of Marijuana", *Tahoe Daily Tribune*, Nov. 3. <http://www.tahoe-dailytribune.com/article/20101103/NEWS/101109891>.

activities⁷⁵. Thus, while apparently solving the drug problem, another brand of criminality will be soaring in different dimension. Also, consumption in public places and by minors could become prevalent⁷⁶.

Throughout the past few decades, drug trafficking has been a solid source of revenue for organized crime. Today, drug trafficking is linked to a variety of crimes, from assault and murder to money laundering, terrorism and smuggling. Legalization would increase demand for the drug and almost certainly exacerbate drug-related crime, as well as cause a myriad of unintended but predictable consequences. An astonishingly high percentage of criminals are drugs users⁷⁷.

An innovation of the campaign in support of drug legalization is its touting of the potential benefit of legalization to the government, in terms of additional revenues from taxing drugs consumption and savings from backing down in the “war on drugs”⁷⁸. But these projections are highly speculative and riddled with unfounded assumptions⁷⁹.

According to advocates of legalization, the government’s efforts to combat the illegal drug trade have been an expensive failure. Consequently, they argue, focusing on substance abuse and treatment would be a more effective means of combating drug abuse while reducing the violence and social ills stemming from anti-drug enforcement efforts⁸⁰. There is no doubt that if drugs were legalized, more people, including juveniles, would consume it. With increased use comes increased abuse, as the fear of arrest and embarrassment will decrease.

Advocates of the legalization or decriminalization of drugs may seem to have merit in their position as they see legalization as an opportunity to re-allocate police resources, free up prison space, reduce violent crime among drug dealers and consumers and tax the industry⁸¹. While all of these prospects are inherently part of legalization-and probably bolster this argument, the costs and benefits of legalization should be assessed on the global level, not on the purely domestic level regarding drug problems each nation inevitably faces⁸². This position seems logical as drug problem transcends local content.

Complexity may arise where some countries refuse to legalize the drug trade in their countries which development may culminate in balloon effect as traffickers will invariably relocate to such region where the profit of illicit drug trade remains high and attractive⁸³.

While the idea of legalization and decriminalization is not without some measures of appeal, it is however, doubtful whether such measures have the capacity to solve fundamental institutional problems like corruption, complicity on the part of drug policing agents and the requisite political will among others to successfully drive the legalization option⁸⁴. It is equally highly dicey whether regulated drug markets can effectively and effectually tackle the underlying drivers of drug dependence such as poverty and inequality⁸⁵.

II. CONCLUSION

From the foregoing general consideration, it is evident that the arguments for and against drug liberalization policy remain competitive and raging. However, notwithstanding the obvious drawbacks in the prohibitionist approach, it still presents a better option as against the liberalization policy in terms of immediate and remote repercussions. The huge and better source of income that productions of drugs attracts may readily become a source of temptation to farmers who hitherto have been producing food crops to shift their efforts to drugs production with the attendant food shortage thereby spiking cost of living for the citizenry. Equally, increased demand for drugs which liberalization may promote may push demands for drugs to outweigh supply

⁷⁵ Lisa note 273

⁷⁶ Calif Report (2010): “Nearly 60 Percent Voted” Nov. 2, CBS L.A., Dec. 11, 2010, <http://losangeles.cbslocal.com/2010/12/11/calif-reportnearly-60-percent-voted-nov-2/>.

⁷⁷ Office of National Drug Control Policy, What Americans Need To Know About Marijuana 3, available at http://www.ncjrs.gov/ondcppubs/publications/pdf/mj_rev.pdf.

⁷⁸ Dale, G. (2010): “Benefits of Marijuana Legalization in California”, http://www.canorml.org/background/CA_legalization2.html (last visited Aug. 30, 2010).

⁷⁹ Rosalie, L. P. (2009): “Legalizing Marijuana”: *Issues to Consider before Reforming California State Law, Testimony Before the California State Assembly Public Safety Committee* (Oct. 28), available at http://www.rand.org/pubs/testimonies/2009/RAND_CT334.pdf.

⁸⁰ Drug Abuse Warning Network (2010): <http://dawninfo.samhsa.gov/default.asp> (last visited August 31).

⁸¹ James, A. I. (1999): “The Drug Legalization Debate”. *Discussing the United States' Domestic legalization Debate at Length*.

⁸² Some overlap inevitably occurs between these two debates.

⁸³ Glen note 244.

⁸⁴ Csete, J. (2011): “From the Mountaintops: What the World Can Learn from Drug Policy Change in Switzerland”, *Open Society Foundations*.

⁸⁵ Ibid

and where this occurs, the elementary principle of economic will apply by jacking the price of drugs up which invariably translates to more income or profit for traffickers.

Where traffickers are able to amass more wealth sequel to the rise in prices of drugs, they can readily hijack the political structures of the country to the detriment of the masses through either becoming financiers to politicians or by standing for election themselves. This is more likely to happen in developing countries with nascent democracy and where the political process has been significantly monetized. Besides, they can become sponsors to insurgent groups or terrorists with their stupendous wealth thereby unleashing instability and ginger unrest in the country which ultimately affects every sphere of the country.

Given the correlation between drugs and crime, drug liberalization policy will ultimately promote acts of criminality in the society among other vices. With increased crime rate in the society, government will be constrained to expend greater resources to combat the attendant upsurge in acts of criminality. The police, the court and correctional centre may end up being stretched to the zenith in tackling the expanded waves of crimes in the society all at the expense of the government.

Moreover, those who have hitherto restrained themselves from illicit drug consumption due to the fear of sanction imposed on drug consumption; may now be tempted to freely experiment with drug consumption following the removal of drug sanction. Such individuals may invariably end up becoming drug addicts and potential criminals in the society. Eventually, prison populations would swell up when such individuals are convicted and sentenced to a term of imprisonment by the court.

The argument of the liberalization school of thought that drug legalization may provide a way of escaping poverty for producers especially in developing countries is certainly unattractive and crime promoted. Admittedly, there is a correlation between poverty and crime. However, there are numberless legitimate and dignify options through which one can earn his escape from poverty. Equally, there are preponderant majority of people who are poverty stricken and yet would not take to unlawful or crime option to tackle their besetting poverty. Therefore, indulgence in drug production under the pretext of seeking for an escape route from poverty is a choice or personal option out of several available options.

The financial gain being canvassed as a point of attraction of drug liberalization policy through taxes and the rest is a mere smokescreen as any such economic gains will be wiped off through huge expenses that the government will be plunged into in addressing the massive up surge of crime rates that drug liberty policy will precipitate.

Moreover, the argument of the advocate of drug liberalization policy that it is part of human rights of the citizens to use any drugs they deem expedient is not without reservation. Government, all over the world is obligated to protect the lives of the citizenry and an integral part of that obligation is the prevention of any harm to the lives of the people. Illicit drug consumption constitutes a potential source of harm and threat to the lives of the abusers and by extension a threat to the continued enjoyment of right to life. Indeed, no responsible government would look the other direction when the lives of its citizens are in grave danger under the guise of exercising their human right.

Imperatively therefore, a legal equilibrium must be maintained between the human right of the citizens to consume any kind of drugs as they like and the correlative jural duty of the government to guarantee and protect the lives of its citizens from any form of harm or injury. Embellishment of drug war with the provision of health care facilities to address aftermaths of illicit drug consumption will be a better approach as against drug liberalization policy with its inherent aggravating features.