

This war is lost, but a new one will need to be waged

During the first regional conference on illicit drugs in Latin America, which took place in Buenos Aires on 6-7 August, a few ideas reoccurred like a refrain in the presentations of almost all of the few dozen speakers that took the floor.

Firstly, the global policy of the war on drugs, based on non-differentiated and absolute abstinence and repression, applied under the patronage of the UN and the umbrella of the three drug conventions, has failed.

Global production and consumption of cocaine, heroin and other hard drugs have not diminished. Instead, the number of this war's casualties has increased beyond measure. As argued by Anibal Fernandez, Chief of the Cabinet of the President of Argentina, in the last 10 years, 30,000 people have died in Latin America. Juan Machín Ramírez from Mexico, representing the American Network of Interventions in Situations of Social Suffering (RAISS), added that in the last two and a half years, the war with drug cartels has claimed the lives of over 13,000 people in Mexico alone.

Repressions have also caused the prison population to grow in all countries where drug possession, consumption and trade are prosecuted. And these repressions are least felt by those who have the highest place in the hierarchy, who earn real heaps of money and are also largely responsible for the whole drug business and its ruthless brutality. Most repressive measures strike the weakest links, i.e. drug users and low-level dealers selling retail amounts of drugs. This is confirmed by the fragmentary data on the application and effects of non-differentiated repression, cited by Pablo Teixeira - a Brazilian MP and co-author of the first legal act introducing the principle of harm reduction. In 2009, out of almost 400 sentences given in Rio de Janeiro, 56 % of people were convicted for the first time, 91 % were arrested *in flagranti*, over half of those sentenced possessed less than 100 g of marijuana, over 60 % were alone during the arrest and did not belong to any organisation, and only 14 % had weapons on them. Socially speaking, the vast majority of those sentenced were poor drug users from the Rio de Janeiro favelas. The network of dealer gangs, operating on a large scale outside the favelas, escapes police raids and

prosecution by the judicial system.

The host of the conference - the civil association Intercambios - quoted similar data with reference to Argentina, as did Michel Artieda from Ecuador, talking about the consequences of the application of the Act of 1992 penalizing possession and use of drugs. In 2008, 4,500 out of 14,500 persons arrested in Ecuador for criminal offences were somehow related to drugs, however these were most often users and “mulas”, i.e. couriers transporting or carrying small amounts of drugs. In the same year, Ecuador gave amnesty to 1,500 drug mules for the first time in history. Teixeira’s conclusion was categorical: the war on drugs based upon current principles increases and aggravates social harms related to the drug trade.

The Argentinean hosts of the conference referred to ideological and political sources of the repression strategy, which they attributed to the US policy under Richard Nixon’s presidency and the anti-communist doctrine of national security imposed on Latin American states at that time. Anibal Fernandez and Monica Cunarro demonstrated that in the 70s and 80s, almost all countries of the region, apart from Uruguay, had adopted repressive drug legislation, based upon the principle: drug user = rebel. They urged that the cultural identity of the region should now help those countries to overcome this legacy. Ideological threads in the presentations of drug law reform supporters did not dominate the discussion during the conference. And this is fortunate, as otherwise controversies would have surfaced over the instrumental and ideological treatment of the drug trade and of the war against it in certain countries. Some governments (such as Venezuela or Ecuador) treat, for example, the Colombian guerrillas FARC, which owes its whole military power to cocaine and its smuggling, as an ideological ally. The populist leaders of Venezuela and Ecuador, Hugo Chavez and Rafael Correa, perceive Colombia as an instrument of American imperialism in the region. Many activists striving to change drug policy also view Colombia as an outpost of the war-on-drugs policy to date, inspired and supported by the United States. They do not appreciate the experiences of Colombia which, for a few decades, has been waging the civil war on two fronts, a war whose main fuel and financial motive is cocaine, the narco-business. They do not fully see that the government

of Colombia cannot stop this war but, by contrast, it has to win it so as to eliminate, or at least limit, the drug trade and the paramilitary terrorist armies that engage in it. Nothing is real unless it happens to you. Local nationalism, political rivalry and its ideological disguises donned by certain governments, complicate the picture of a region united in the great cause of drug policy reform; they inhibit and will certainly continue to inhibit the adoption of a common standpoint. However, this topic was not discussed during the conference; a conviction of common good will to conduct necessary changes dominated.

The second refrain of the conference was the conclusion that there is a need to change international drug policy, whose keynote should be the pragmatic principle of harm reduction. As it proved impossible to create a drug-free world, proclaimed for ten years by the UN, despite the billions of dollars spent on the war against drugs, and the hundreds of thousands of sentences and tens of thousands of deaths, it is time to come to terms with a world with drugs, in which the devastation done by drugs can and must be reduced, and in which only those who are really guilty of this devastation should be punished. Users and people dependent on drugs should not be treated as criminals, as the easiest victims of repression, but as patients of the public health care system. The policy of repression should be aimed at organized crime, i.e. at big drug cartels or mafia, and not at users and low-level retailers.

Thirdly, due to the resistance or inertia of the political establishment globally, in Latin America, and also in particular states, the principal role in creating a “critical mass” that can bring a breakthrough in the social and political attitude towards the problem of drugs and in the new forms desired for controlling drugs, must be played by civil society and its organizations. Gabriela Touze from the Argentinean Intercambios showed that the only way to achieve this aim is by conducting research on the destructive results of the policy of the absolute war, the effects of different types of drugs, the good results of harm reduction policy which is already applied in many states, and publishing the results; influencing public opinion through the media, as well as pressing politicians and forcing them to introduce changes in national, regional, and – subsequently – international legislation.

Many conference participants complained about the weak political impact of dozens of non-governmental organizations, which strive to end the repressive policy of the absolute war on drugs in Latin America. Joao Pedro Padua from Brazil directly said that the way towards a new policy was not only blocked by social superstitions or unreflectively assumed taboos, such as the one that drugs equal evil which has to be categorically eradicated. These superstitions are, besides, paradoxically strengthened in the region not only by governments or politicians, but also by hosts of protestant theologians from the United States, who in recent years have significantly extended their missionary activities, among others in Brazil. Namely, Padua also attributes the reasons for doctrinal adherence to repressions to the ongoing fragility of democratic tradition and to a lack of public debate culture on social issues in Latin America. “This is the underdevelopment of civil society in the whole Latin America. But it is this society itself that can overcome the impasse where politicians talk exclusively about the numbers of police that need to be sent against drugs, and define supporters of the public debate on changes as lunatics or junkies. Angela Tello from Colombia spoke about how much good can be done by acting in local communities where dependent persons or low-level sellers come from. There it is easier to convince (public authorities) to integrate the marginalized, public education or prevention. She argued that at this level co-operation with churches and religious groups, as well as with the middle grade of administration, is better than at the level of national policy.

Nevertheless, just a couple of weeks after the conference in Buenos Aires ended, a few breakthrough events took place; developments which indicate progress towards the postulates of the conference. Two weeks ago, Mexico – though it wages the most horrifying, next to Columbia, war against drug cartels – abolished penalties for the possession of 5 g of marijuana, 500 mg of cocaine, 2 g of opium and 50 mg of heroin.

And one week later, the Supreme Court of Argentina recognized the provision penalizing the possession of small amounts of marijuana as unconstitutional. The court examined the case of five people arrested in 2006 while in possession of few marijuana joints, and sentenced to one month of imprisonment. The court eventually decided that these people had not committed an offence, as the article on the basis of which they had been sentenced

was contradictory to the constitution. It was not possible, the court decided, to prohibit the possession or consumption of drugs by adult persons, if they do it “in a private sphere, without conspicuousness and incitement or harm to third parties.” Such application of the prohibition of possession of drugs “violates the right of the individual to decide about possessing drugs or using them.”

The decision of the Argentinean court had long been awaited by the government of Argentina, the actual co-host of the conference in Buenos Aires held in the parliament’s building. Anibal Fernandez and Monica Cunarro, a judge and member of the scientific committee which advises the government on drug issues, promised that once the decision was taken, the government should draft a completely new drug act and send it to parliament. The chief of the cabinet of the President of Argentina announced that the new act would break with the false identification: young man using drugs=criminal and stop the penalization of personal consumption and possession of small amounts of drugs. Drug users would be covered by medical care, types of psychoactive substances differentiated according to their harmfulness, and the whole repression would be directed against drug trade organizations and money laundering.

A very similar act is being prepared by the Brazilian government headed by Inacio Lula de Silva, as Pablo Teixeira announced in Buenos Aires. The new law, following the Portuguese example, shall lift penalties for the possession and consumption of small amounts of drugs, differentiate penalties for trade in small amounts of soft and hard drugs, distinguish customer from dealer, create special care units for dependent persons (including prescription of substitution medicines, syringe exchange etc.), and legalise the therapeutic use and sale of marijuana, as well as its cultivation for personal use. The act is to be sent to parliament in October.

The voice of the Argentinean judge of the Supreme Court, Eugenio Raul Zaffaroni, stood out from the chorus of supporters of the new policy. For 30 years, Zaffaroni has supported the depenalization of drug use. In the last vote in the Supreme Court, mentioned here, he decided against the article of the present law that punishes the possession of any amount of drugs. “Such a policy makes a criminal problem out of a health one”, he said.

Judge Zaffaroni believes that the state must fight with the drug trade, including trade in cocaine paste, the most popular drug among young Argentines. His opinion sounded different to the opinions of the majority, because Zaffaroni is not optimistic that the state will cope with the big drug business: “There is a terrible contradiction in what we are doing. There is no organized crime without its inseparable spouse, that is state corruption. Prohibiting, we are only winding up the prices. The increase of the price allows to accumulate such large, illegal capital that it is able to break institutional barriers. If we limit the supply only and leave the demand intact, we just increase the profitability of the drug business and the temptation of corruption. And this business is of a global character. This way the vicious circle closes.”

The dominating view was that progress had been made. Graciela Touzé of Intercambios rejoiced that “it is probably the first time that we can say that the wind of change is felt in our region. May it be the start of improving our communities’ lives and of changing drug policy.”

The main aims of international drug policy reforms do not differ from Latin America’s postulates. At the end, they were presented in their full complexity by Martin Jelsma from Transnational Institute (TNI) from the Netherlands. They include implementing harm reduction policy already applied in many European countries, depenalizing the possession and consumption of small amounts of drugs and low-level trade, decriminalizing marijuana, and removing the coca leaf from the list of drugs prohibited by international law.

Martin Jelsma has no delusions that it will be easy. These reforms demand years of work and exertions, among other reasons because they require changes in the international drug conventions that are so far treated as inviolable in the UN. Also they require the consent of many powerful states, such as the USA, China and Russia, which to date have not wanted to hear about abandoning categorical prohibition and repressions.

Maciej Stasiński