Ensuring Public Health and Safety while Guaranteeing Individual Rights

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A New Balanced Approach

The balanced approach between supply and demand reduction is based on a false dichotomy. What is needed is a fair balance between the demands of the general interest of the community and the protection of the individual's fundamental rights. Balancing supply reduction with demand reduction efforts is the result of a political process to bring about more attention and funds to deal with the health and social consequences of illicit drug use and interdiction. It was a political compromise between different ideologies and geopolitical interests brokered in the diplomatic sphere, and achieving more coherence between drug policy aspects was not the aim. While the "balanced approach between supply and demand reduction" brought more political prominence to the health-related aspects of the world drug problem, it manifested tensions between supply side advocates and supporters of demand reduction.

History and Origin of the Balanced Approach in Drug Policy

Some attribute the concept of the balanced approach to United States' President Richard Nixon, who reduced federal criminal penalties for marijuana possession, repealing mandatory minimums in the Comprehensive Drug Abuse Prevention and Control Act of 1970, and furthermore launched the largest expansion of drug addiction treatment in U.S. history to this day (Gill, 2008). Others attribute its origins to the 1987 International Conference on Drug Abuse and Illicit Trafficking, which explicitly called for a balanced approach between supply and demand reduction (United Nations Office on Drugs and Crime [UNODC], 1987). Through this, the reduction of demand for illicit drugs was meant to be given the same importance as the reduction of supply and trafficking (United Nations General Assembly, 1987). However, many saw a continued imbalance in drug policies in favour of supply reduction.

In 1993 the issue of a balanced approach was prominently put forward on the international policy agenda by the Mexican government. Mexico put the view forward that both supply and trafficking can be reduced by the "gradual reduction in current and future drug consumption" (Jelsma, 2003). This led to the concept of the balanced approach being formally debated on the UN Commission on Narcotic Drugs (CND) floor.

In 1994, proposals emerged to create a fourth convention on demand reduction in an effort to balance the conventions focusing on supply reduction. However, the proposal was not supported by the International Narcotics Control Board (INCB) arguing that specific, universally binding treaty provisions on demand reduction would most likely not be agreed upon (International Narcotics Control Board [INCB], 1995). In addition, the Board also believed that such a treaty would not be a practical means for dealing with demand reduction. With such vast differences in beliefs, only one truly attainable consensus between UN member States could be made, which was that demand reduction was a national task that might require international support in the case of some countries.

During this time the widespread realisation emerged that in addition to being out-of-balance, the drug control efforts had been proven to be disturbingly ineffective. This in turn gave rise to increasing doubts about the prohibitionist nature of the system, not only among activists but in government circles as well. As a consequence, several countries started to call for an evaluation of then existing drug control approaches and responses, including the issue of harm reduction, in a balanced and open-minded

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manner based on impartial research. For the first time the effectiveness of prohibition was also called into question in a more balanced and evidence-based debate.

The Mexican UN initiative of 1993 is seen today by many as the starting point where the 'balanced approach' was truly taken seriously. The initiative was an international call to adopt a balanced approach in the fight against drugs, which included both supply control measures and demand reduction. This can be illustrated through the UN General Assembly Special Session on Drugs (UNGASS) from 1998, where the five key elements (demand reduction, money laundering, chemical precursors, synthetic drugs and more funding for alternative development) were prominently discussed. These very same elements were mentioned by some countries only 5 years earlier as necessary to correct imbalances (United Nations General Assembly, 1998). Although this discussion actually lead to concrete results, for many it still was not sufficient to reach more effective responses to the world drug problem.

During the same UNGASS, the international community adopted for the first time the Guiding Principles of Drug Demand Reduction. These principles assisted in shifting the attention towards treatment and harm reduction. Along with the Mexican initiative of 1993, the newfound pressure of the HIV/AIDS epidemic during the time also contributed to further promoting this issue.

Further Development of the Concept

Approximately 15 years later, around the year 2008, the balanced approach had become a cornerstone of international cooperation in drug policy and paved the way for future integrated drug policies. While most policy stakeholders at the time saw the concept of the balanced approach as the turning point for increased attention to demand reduction and the possibility to promote harm reduction, many today attempt to interpret the balanced approach more widely and see it instead as a gateway to bring human rights to the forefront of drug policies. Despite scientific evidence demonstrating the effectiveness of harm reduction measures and substitution treatment, the binary approach of supply and demand reduction underlying drug policies was seen as standing in the way of policy advancement.

Furthermore, this binary approach has led to a competition between different professional groups on either side of the demand and supply paradigm. This competition is fuelled by conflicting interests over access to resources, with arguments focusing on resource allocation rather than focusing on needs-based investments. In this respect, the idea behind the balanced approach has led to quite a static debate, as allocations based on the realities of varying drug related situations are oftentimes ignored.

In the meantime, the key underlying dichotomy of any drug policy remained in the margins of the discussions. The governments' real challenge is to ensure that their drug policies are effective in meeting the aim of reducing drug problems while effectively guaranteeing both human and civil rights. It is an obligation for governments to balance these two policy aims as they stem from international commitments, one being the UN Conventions governing drug policies, and the other being the legal instruments that force governments to guarantee the rights of individuals.

Re-Thinking Interdiction

Between both the diminishing of public funds and the growing dissatisfaction with the War on Drugs, many European countries began to search for a middle path between interdiction and legalization. This came at a time when the United States' government itself started questioning the War on Drugs as well. Former Commissioner of the U.S. Customs and Border Control, Gil Kerlikowske, signalled the end of use of the term War on Drugs, calling it counterproductive to the overall goal (Tanden, 2012). However, Kerlikowske stood firm on reinforcing the U.S. stance on a zero-tolerance, tough policy. The War on Drugs appeared to have reached its conclusion during the 2016 UNGASS, in which the debate about legalization was opened. Legalization was still highly controversial and not an option for most countries since substances continued to be illegal under the UN Convention. Leaving the UN convention system was not seen as politically expedient for most governments. At the same time, the willingness to punish both people with addiction problems and occasional drug users with the full force of the criminal justice system waned. This was particularly poignant, since this approach had been applied for decades and had led to almost no reduction in drug use.

Similarly to Australia, New Zealand and Canada, European drug policies at this time changed priorities and took on an approach that focused primarily on public health. The positive outcomes seen with harm reduction measures gave rise to a further discussion: if harm reduction is effective both for improving drug users' health and steering them towards treatment and recovery, then by default this should justify re-thinking the punitive approach of interdiction that had little to no results. The surrounding intended and unintended consequences of various drug policy options also became increasingly clear. Both previous and newer policies were examined and assessed in terms of how they not only affected the concerning individual, but also the society at large. These assessments included the effect of such policies on financial, social and human dimensions, and were backed

by the Pompidou Group and the European Monitoring Centre for Drugs and Drug Addiction. From this extensive research, the conclusion was reached that human rights were indeed of significance.

Along with this research, the importance of considering human rights in such situations became evident. This was quite clearly exemplified in both Greece and Romania during the financial crises from 2007-2008, during which time both countries saw an influx in drug use. Greece saw an increase in antipsychotic, benzodiazepine, and antidepressant use during the crisis (Gammon, 2012). Romania, on the other hand, saw a rise in cannabis use, among other substances (European Monitoring Centre for Drugs and Drug Addiction [EMCDDA], 2017).

The financial crises limited the resources available for combatting addiction and demonstrated just how detrimental neglecting the human rights dimension in drug policy in favour of financial economies could be. In certain countries, harm reduction and treatment programs were discontinued as a consequence, which lead to a rapid increase in Human Immunodeficiency Virus (HIV) and Tuberculosis (TBC) infections at unprecedented levels.

The Dimensions of Human Rights

Aside from the aforementioned events, human rights within drug policies have become increasingly prominent due in large part to at least three main developments: the attention given to drug use and related harm in relation to the obligation to the right to the highest attainable standard of health, the evidence of negative human rights implications and consequences of drug enforcement (including issues of policing and sentencing, in particular the death penalty), and the international funding of drug enforcement in poorly documented human rights records (Barret, 2018).

There are important, universal legal instruments and conventions that define a series of fundamental rights, as well as standards on health and health-related issues. These are of great relevance to drug policy and related issues. In this context, it needs to be recalled that States have obligations under both the international and national legal instruments to safeguard fundamental standards of human rights and the rule of law. For Europe, primary importance lies within the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which guarantees the right to life from which flows the right to protection of health (Art. 2), the prohibition of inhuman or degrading treatment (Art. 3), as well as the right to non-discrimination (Additional Protocol No. 12) (Council of Europe, 1953).

Signatory States are required, as a matter of policy priority, to identify and provide equitable medical care and social assistance to all in need, particularly to vulnerable individuals and groups facing exclusion. The challenge for signatory States is to ensure that their drug policies are effective in guaranteeing the fundamental rights outlined above and in controlling and reducing harmful drug use.

Proportionality

Implementing concurrent drug control and human rights obligations involves a fair balance between the demands of the general interest of the community and the protection of the individual's fundamental rights (Arai-Takahashi, 2013). It is inevitable that drug control will engage fundamental rights and freedoms given that a range of behaviours will be banned and law enforcement measures will be taken. Such restrictions are not ostensibly precluded, however. Some rights within the European Convention may be restricted if the measure is:

- Prescribed by law,
- Pursuant to a legitimate aim,
- Necessary in a democratic society for the achievement of that aim.

In relation to drug control, the measures are usually prescribed by law in some way and can easily be seen to pursue the legitimate aim of protecting health, public order or the rights of others. The key question is about whether the means adopted pass the third step, which can be decided by the following:

States must investigate whether there were no less restrictive means available to achieve the aim in question. Crucially, the burden of proof is on the State to demonstrate the proportionality of the restriction. How this can then be applied in practice is best illustrated by looking at the Right to Health (Barret, 2018).

The Right to Health

Pursuant to the Right to Health, the 3AQ Model (Available, Accessible, Acceptable and Quality) framework has been developed based on the ECHR and related case laws. It is a compilation of indicators that sets out the requirements for health services to be in conformity with the Right to Health:

- Availability: existence in sufficient quantity of health services
- Accessibility: ability for people to benefit from services. This includes geographical and economic accessibility, as well as the need to account for the specific needs of certain groups (non-discrimination)
- Acceptability: ethically appropriate and human rights compliant services. Acceptability also refers to the need to take into account cultural appropriateness and gender considerations

- Quality: based on medical and scientific evidence and not arbitrary. This relates to the right to benefit from scientific progress and its applications under Article 15 of the Covenant on Economic, Social and Cultural Rights

Principle of Equivalence of Care

Another means of testing under the Right to Health is the principle of equivalence of care. This term applies to those under the care of the state and is of key relevance for those incarcerated. Equivalence of care in prison medicine is the idea by which prison health services are obliged to provide prisoners with care of a quality equivalent to that provided for the general public in the same country; this is cited in numerous national and international directives and recommendations. The justification for this is based on the fact that detention is the punishment for the crime committed, not the worsening of health. A person should not leave State custody in worse health than before he or she entered prison due to poor conditions or State neglect. This is a generally accepted principle in Europe and internationally, though its implementation falls short for many reasons.

Measuring Policy Coherence

It is certainly of interest to any country to understand the degree of coherence of existing policies on psychoactive substances. It is important to analyse this element when a country wants to move towards more policy coherence, and it is also a meaningful tool to identify where different policies affect each other in counterproductive ways or are even contradictory with regards to aims and pursuits. Understanding the state of policy coherence can be of great help to use resources in a more efficient and effective manner.

For the assessment of policy impact, as well as effective resource allocation, analysing the degree of policy coherence constitutes an important mean (Muscat et al., 2014). After several years of work on the subject, a Pompidou Group's expert group has identified six markers (indicators) that allow analysing coherence levels between different policies related to the use of licit and illicit psychoactive substances:

1. Conceptualisation of the problems: how are the problems associated with different psychoactive substances, illicit drugs, alcohol and tobacco described? How do research evidence, media coverage, cultural mores, social, economic and political considerations shape the nature of the 'problem'? To what extent do these elements converge?
2. Policy context: where are psychoactive substances policies located within the overall policy document? For example, within the criminal justice or in the medical context, or within the context of a value set such as social inclusion, human rights or equality? To what extent is there a consistent approach across different psychoactive substances?
3. Legislative/regulatory framework: how are various psychoactive substances controlled and regulated? To what extent are they complementary and supportive of the desired outcome?
4. Strategic framework: what are the goals, aspirations and objectives of drug, alcohol and tobacco policies? To what degree do they overlap with one another?
5. Responses/interventions: are interventions logically consistent and mutually supportive?
6. Structures and resources: to what extent do the organisation of structures and resourcing support the co-ordination and/or integration of drug, alcohol and tobacco policies?

Civil Society Involvement

Balancing these interests between those who believe that harm reduction minimizes the risks associated with drug consumption and those who believe that supply reduction decreases drug availability and production, requires an on-going dynamic process that follows the evolution of drug situations and their societal context. Assessing policy-coherence and proportionality in the choice of policy options requires new indicators and dynamic input mechanisms. Civil society has the capability to play an important role in this. The participation of civil society is in general an important element of the democratic process of the development and implementation of policies, programs, projects and activities. As such, the concept of civil society participation is enshrined in the European Convention of Human Rights which guarantees the freedom of expression (Art. 10) and the freedom of assembly and association (Art. 11) (Council of Europe [COE], 1950). According to these, all citizens have the right to make their opinions known and are allowed to form, support and join political parties and pressure movements to effectively enjoy to their rights to make their political views known.

Therefore, civil society involvement in policy planning and delivery is an obligation in a democratic society. This is to ensure influence, relevance, added value and practical applicability in policy planning and delivery, which in turn benefits all stakeholders: the civil society actors themselves, the policy makers and society as a whole. With this, it is extremely necessary to define

the opportunities, levels and means of participation. This applies to all policy areas, including drug policy (Pompidou Group, 2017).

In terms of this expected participation, the cooperation of civil societies can be broken down into four distinct categories: information, consultation, dialogue and partnership. Civil societies have the responsibility to both provide and receive information from public authorities in an effort to form a mutual partnership between the two organizations. Consultation comes into action when public authorities ask civil societies for their opinion in relation to the topic in question. This can occur through a variety of methods, such as informing those on policy developments, and asking for feedback on such developments.

Civil societies can also enact consultation by hosting hearings or conferences in which public authorities can participate. Dialogue can also occur in this format, and it can also be enacted by either public authorities or civil societies. Unlike consultation, however, it is built upon a mutual interest and strives to ensure a regular exchange of views. This ultimately creates a partnership between the two organizations. This element of participation implies shared responsibilities in the entire process of the policy agenda. Although it is the most intensive form of participation, it also yields the most results. For those within the drug policy making process, this can be further divided into other opportunities.

Agenda setting is one opportunity that allows both organizations to collaborate on policies, with civil societies playing a fairly important role. In this regard, civil societies are able to demonstrate their differing views in a way that relates to the policy at hand, thus helping to shape strategic approaches. Civil societies can also engage in the drug policy process through decision making, in which consultation plays a key role. Although typically the final decision will be made by those in public authoritative positions, civil societies can have a role if a public vote or referendum is enacted. Among others activities, monitoring and reformulation can further act as a means of engagement in this process. This involves civil societies assessing the effectiveness of the implemented policy. This method of engagement is incredibly important, as it allows for policy reformulation if needed, from sources that are thoroughly engaged in the matter.

Despite these seemingly effective opportunities, there are several challenges that will ultimately manifest themselves. These can include barriers such as short-term, ineffective partnerships between the organizations, structural incompatibilities, inflexible regulations for smooth functioning, as well as the underestimation of time involvement to create such cooperation between civil societies and public authorities. Thus, the organizations must be acutely aware of such challenges and work towards overcoming such barriers in order to make an effective partnership. To do so, organizations can apply the following solutions:

- Identifying common perspectives and aims
- Accepting each other's different roles
- Setting guidelines for partnerships
- Setting standards for cooperation
- Implementing confidence building measures
- Accepting transparency and openness
- Ensuring consistency and reliability, particularly in communication
- Providing training to create competence to cooperate
- Agreeing on dispute resolution mechanisms, procedures and resources

Although this will surely not overcome each challenge, such steps can greatly assist in the overall barriers that affect the goal of partnership between both civil societies and public authorities. It should be noted that such partnerships, as stated earlier, are important and provide immense support in the drug policy process. Furthermore, they are an obligation to a democratic society and overall benefit the society as a whole.

Concluding Remarks and Future Perspectives

The fundamental mistake in putting the balance between supply and demand reductions at the heart of drug policy creates a false dichotomy. It suggests that supply and demand reduction are in opposition to each other, when in reality they are only two aspects in drug policy which should be in coherence, not in competition with other aspects of drug policy.

The real challenge for governments is to ensure that their drug policies are effective in reducing drug problems while still effectively guaranteeing human and civil rights. It is an obligation for governments to balance these two policy aims, as they stem from international commitments, one within the UN Conventions governing drug policies and the other being the legal instruments that oblige governments to guarantee the rights of individuals.

This task, albeit difficult at times, is dependent on the evolution of drug situations and their societal context. This comes from the constant assessment of policy-coherence and proportionality, in which civil societies can play an important role.

Such organizations have an obligation to participate within this policy-planning process as a part of a truly democratic society. Through this participation with public authorities, civil societies are able to provide influence, relevance, added value and practical applicability in policy planning, which benefits all members involved in this process, including society as a whole. This is ultimately the goal in which the concept of

the new balanced approach finds itself; in providing drug policies that are able to offer fundamental rights while meeting the aim of controlling and reducing harmful drug use.

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