

DRUG TRAFFIC, LAW AND INTERNATIONAL RELATIONS¹

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SUMMARY: *Introduction. Drug dealing as a hemispheric problem, 1-5. The nefarious drug dealing, 6-9. To extradite or not to extradite, 10-16. The Alvarez Machain controversy, 17-23. The United States Supreme Court decision, 24-25. Mexican antidrug legislation, 26-29. Conclusions and recommendations.*

INTRODUCTION

Opium addiction became for the first time in modern times a serious social problem in the XIXth century.² The British had profitably devoted themselves since the previous century to import Indian opium into China, a practice that Imperial China attempted to stop about 1839. Hence the 1839-1842 so called "Opium War". After a second such war, the British and the French forced China into the Tienstsin Treaty (1858) whereby the latter obligated herself to open 11 ports for said trade, allow the establishment of foreign legations and religious missionaries in Pekin, and the legalization of the opium trade.

Opium was cultivated for the first time in the United States in the XIXth century, along with its importation. While opiates were necessary for medical reasons, some addictions appeared. Simultaneously with this increased consumption in the United States, marginal production was begun in Colombia, Bolivia, and Peru, within a trade

¹ Both my research assistants, Pedro Reynaga Estrada and Guadalupe del Pino, B. A. Ecs., enthusiastically collaborated in this project. A special recognition is gladly made of my former assistant, friend, and present official of the General Students Directorate of the University of Guanajuato, Mr. Martín Muñoz-Ledo, Esq. and Law Graduate of the University of Guanajuato.

² KAPLAN, *Aspectos sociopolíticos del narcotráfico*, México, INACIPE, 1989, pp. 15, 19, 57.

dominated by British and Dutch companies. When instances of serious abuse became evident, consumption decreased, and predominant attitudes and values became more rigid and severe. The United States Pure Food Drug Act (1960) forbids the sale and use of cocaine as an ingredient of food products.

The 1919 United States Supreme Court prohibition of the prescription to addicts and the sale of narcotics spurned a growing clandestine trade originated in Asian and Latin American sources.³

More recently, narcotics sale in the United States can be attributed to different factors, including the Viet Nam war, the youth movements, the need in middle and higher income groups to increase productivity, and the alleged boost to creativity among artists and intellectuals.

In the 1980s, marihuana was overcome by cocaine. Marihuana production, at least in Latin America, would have multiplying effects on labor and income, and a wider distribution of both. Cocaine employs less people, requires more capital, industrial techniques and imported chemical products. On the other hand, it yields better profits than marihuana, which it directs with more sophisticated and complex financial techniques. Cocaine also encourages organizations that are more vertically integrated, with greater hierarchy and greater proclivity toward violence, than marihuana. Somehow dealers in cocaine have become more aware of the fact that co-operation leads to greater profits and security.⁴

The official United States policies against drugs have manifestly not been entirely successful, due at least in part to a false or inadequate diagnosis of the causes, tendencies and consequences of drug dealing. Emphasis has been placed on the offer, rather than the demand and consumption; producers have been condemned, rather than search "self-critically for the United States and other developed countries responsibilities".

The social effect of drug dealing in Latin America is devastating. The consequences for the standing of the United States in Latin America of her armed intervention in South America and her arrogant disregard for Mexican sovereignty in the Álvarez Machain case are not yet fully present, but present serious threats. A better understand-

³ There is a curious parallel here in time and regrettable effects of the proscription of alcohol, clearly another drug, that may lend credence to Costa Rican proposal to legalize in a certain as yet undefined way the consumption and sale of other drugs. See below.

⁴ KAPLAN, *op. cit.*, 35, 54.

ing of her neighbors sensitivities is essential. Eventually, the only beginning of a solution to the drug problem appears to be the legalization of its trade, as proposed by Costa Rican authorities. Such an action, of course, needs to be accompanied by huge preventive mental and physical health care, and proper and adequate treatment facilities for drug addicts.

DRUG DEALING AS A HEMISPHERIC PROBLEM

1. The respected Mexican author we have been following⁵ has also written that drug traffic, abandoned by the industrial nations, was taken over by producers, poor countries and regions of Asia, Italy and France. South American countries specialized, in cocaine, with a rising demand curve in the 1960s and 1970s. Thus,

The high and growing presence of drug consumption in the United States and parts of Western Europe [attract] offers the supply of [from] Bolivia, Peru, Colombia and other Latin American countries, as producers, suppliers or transit points.

Drug dealing is the quickest and more sustained growth industry in the world. Besides, it has become the only Latin American multinational enterprise of great push and size, economically, culturally and politically successful.⁶

2. In Colombia, the increase in drug dealing is rooted in "prevailing, socio-political traditions and patterns", including widespread and endemic violence. The cases of Antioquia and Medellín may be symptomatic.⁷

⁵ KAPLAN, *op. cit.*, 18-20.

⁶ KAPLAN, *op. cit.*, 58.

⁷ Beginning in the XVIII century, a culture appeared in Antioquia that was "strongly pragmatic and utilitaria, privileged monetary success" and despises poverty. After the second decade of the XXth century, a strong entrepreneur group with certain qualities of innovation. Manufacturing companies appear in textil, tobacco, chocolate and beer, with strong banking and commercial support. However, the entrepreneurial dynamics and the economic growth of Medellín/Antioquia began losing strength and falling into a crisis in the 1970s, with the abandonment of coffee plantation and a brake on industrial development. There is much unemployment, a high population increase and the fall of real salaries. Insecurity, violence, and crime set in. In contraband of good, and out contraband of drug then set in. "At least two groups are benefitted: the growers that received advanced payment without need for bank or mortgage credit, and a considerable number of people involved in outgoing operations: an effective income distribution downward generates a new social stratum". KAPLAN, *op. cit.*, 27-32.

In Colombia, since the late 1980s, there has been a process of bribery, corruption, violence, murder, terror, general fear and increased number of victims. This process may make Colombia, "but evidently other Latin American countries, into the base, hostage and object of unrestricted domination and exploitation" by the drug cartels.⁸

In spite of the statistical difficulties, drug dealing is said⁹ to be a major economic factor in Colombia: some 1.2 billion dollars, or 3.3% of the national income. Such a large amount may have been a factor in "Colombia's small miracle", and in the absence of crisis such as those of Argentina, Peru, Venezuela, or (even) Mexico.

President Gaviria was highly criticized July, 1992, for ordering a "state of commotion" as "lack of foresight, improvisation and violation of the constitutional order". This *de facto* state of emergency was ordered through a

decree that avoided the liberation of several drug dealers benefited by the application of an article of the new Penal Code, under which provisional freedom is granted those accused who have been detained without trial longer than 180 days.¹⁰

Simultaneously, one of the apparent heirs of the Medellin cartel was murdered. Galeano "had been kidnapped last June 3 along other 14 alleged chieftains of the organization, as a result of an apparent internal war". Another unsupported version claims that the kidnapping may have involved DEA agents.¹¹

According to Colombia's Attorney General,¹² the drug dealing *capos* that turned in themselves voluntarily for the first year, would be willing to "negotiate a reduction in their prison terms, in exchange for different charges", under Article 37 of the Penal Procedure Code. This may be done "in order to save the wear on society of a protracted trial". The reduction, subject to the trial judge, would be of one-sixth of the original time (where, for instance, a major figure in the cartel, sentenced for murder while in the process of drug dealing

⁸ KAPLAN, *op. cit.*, p. 52.

⁹ KAPLAN, *op. cit.*, 68-69. The major drug dealers have been twice reported as having gone as far as to offer to pay for Colombia's foreign debt of around 11 million dollars!

¹⁰ *La Jornada* (Mexico City), 12 Jul. 92, p. 43.

¹¹ *Siglo XXI* (Guadalajara), 11 Jul. 92, p. 26.

¹² *Siglo XXI* (Guadalajara), 18 Jul. 92, p. 26.

would normally receive thirty years imprisonment, might get away with eight or ten).

In a different context, the Colombian Secretary of Foreign Affairs declared that two Colombian citizens were kidnapped in Venezuela by order of the United States Federal Bureau of Investigations.

3. According to the Bolivian government's secretary general,¹³ President Jaime Paz Zamora would seek at the Iberoamerican Conference in Madrid in the last week of July, 1992, support for his proposal to internationally depenalize coca leaves, of which his country is the second world producer. At the same time, the Conference is expected to approve his 1990 proposal for an Indian development fund (on the additional argument that coca being their major if not only produce, they should have economic incentives to abolish or diminish its production).

The United Nations International Drug Board outlawed coca and its derivatives because of their being used for the production of cocaine, the most fought against drug today. Instead, the secretary general claims that "the coca leaf is healthy, good, does not harm", and prejudices against this need to be erased.

The Costa Rica Minister of Justice declared¹⁴ that "now more than ever we must admit that we are losing the fight against drugs"; it is not through repressive measures that we should deal with this problem, and that therefore drugs should be depenalized.

4. At any rate, drug dealing causes at least two types of war: internal between dealers, and of the respective national government against the former. Unfortunately,¹⁵

Governments such as those of Colombia or Peru lack a definitive strategy (on drug dealing), of a strong and logical policy, and of appropriate resources, trained and equipped personnel, and social and political support. This has permitted dealers to acquire growing influence not only in economics and society, but also in political terms, which may

lead to destabilization and a growing paralyzsis in some of the countries involved.

¹³ *Siglo XXI*, 20 Jul. 92, p. 29.

¹⁴ *Siglo XXI*, 22 Jul. 92, p. 27.

¹⁵ KAPLAN, *op. cit.*, 56-57.

5. Recent Latin American history seems to have been impressed, if ye too not widely recognized so, by a "criminal economy".¹⁶ Such economy does back to colonial and early independent lives (privateers, Negro traffic and Indian exploitation, various contrabands, outlaws, political power abuse, financial manipulations and frauds). Drugs did not appear in Latin American society yesterday. For instances, there are news of cocaine in Colombia since at least 1567. Yet Indians appear to have planted coca more for cultural and social than commercial reasons, and so were tolerated to continue doing so in minor quantities by the Spanish authorities.

THE NEFARIOUS DRUG DEALING

6. I have spoken elsewhere¹⁷ of the pervading corruption that is one of the least attractive features of Mexican society today. This corruption has been a major element that has favored, in the last decade or two, a highly threatening increase in drug consumption and, especially, drug traffic in the country, mostly for the large United States market. The closeness to that profitable market and the difficult economic conditions in Mexico, including of late a lowering in the living standards of those dependant on fixed, already low salaries (not to speak of the jobless, who now may be without exaggeration counted as legion), provide a large economic incentive, in spite of the evident risks involved, to many people who I am unable to attribute too much more moral condemnation than, say, to those involved in the production or sale of the potentially harmful alcohol or cigarettes. In order to reach its present proportions, including its admittedly more immediate health and wellbeing of a large number of people, the traffic must have counted with at least the tolerance of a number of public officials. Among those involved, at least at the press level and in varying and not quite clear terms, reports have involved many members of a wide spectrum of institutions, including high level police-

¹⁶ Or "proliferation and emerging constellation of an ample range of criminal phenomena and processes, such as drug dealing, other illicit traffic (luxury goods, currencies, arms), and white collar crime". KAPLAN, *op. cit.*, 9.

¹⁷ "Mexican Law as Is and as Should Be", in Mexican Law, with Prof. William MacPherson (to be published by the University of New Mexico in 1993-1994).

men,¹⁸ at least middle level politicians,¹⁹ and army and naval officers.²⁰ Most of these three groups, however, can stake a much lesser claim to the justifications of poverty and ignorance. Only minor public officers have been imprisoned.²¹

7. Drug traffic involves the problem for those who engage in it of how to dispose of the large profits involved. In Mexico, the pur-

¹⁸ One of the most notorious of which was President López Portillo's Chief of Mexico City's Police, General Arturo Durazo Moreno. Former brother-in-law of an important figure in the drug traffic, Arturo Izquierdo Hebrard (AIH) (see below), Durazo was a youth friend of López Portillo, whose Presidency he barely (if notoriously profitably) survived. Detained July 20, 1984 in Puerto Rico's San Juan International Airport when he arrived from Brasil on a plane owned by AIH, he was extradicted to Mexico on April 2, 1984. Sentenced to seventeen and a half years for the relatively minor crimes of illegal possession of arms, and accomplished threats to extort, he was released earlier this year under the parole rules (*Ley de Normas Mínimas para la Readaptación de Sentenciados*). RAMÍREZ, Ignacio, "Otra película sobre el Negro Durazo..." in *Proceso* (México City, Dec. 9, 1992, p. 29).

¹⁹ AIH was suspected of organizing the operations that led to the tragic events of last year at La Vibora, Veracruz (see below). One of his "friends" is alleged to be the Mayor of the important city and port of Veracruz, who had managed AIH's ranch in the state of Veracruz which was one of the seven ranches expropriated from Guadalajara's *capo* Miguel Angel Félix Gallardo, sentenced for drug related crimes in April, 1989. Said Mayor is believed a cousin of a former Secretary of Defense, in turn accused by the press of having protected the traffic; and also of a former member of a ruling family who was found murdered after apparently having been tortured. The journalists include other allegations of at least suspect connections of the Mayor Homero Campa and Ricardo Rabelo, "Funcionarios veracruzanos, ligados estrechamente con narcotraficantes" (*Proceso*, núm. 788, 9 Dec. 1991, 12).

²⁰ Early in the morning of November 7, 1991, several federal drug agents were murdered in a clandestine landing strip in the Ejido La Vibora, Tlaxicoyan County, Veracruz State. The drug peddlers, on board two small planes, escaped. Eventually, the head of the regional military zone, a four-star general, was dismissed, as well lesser officers. The Secretariat of Defense strenuously denied complicity with the drug traffic generally, although in this instance the present garrison did start the shooting that killed the agents while unable to detain the traffickers. An obscure civilian accepted, apparently without the usual violent means of obtaining confessions, his participation in the provision of special gasoline. Unfortunately for the law, he was detained by military, and not regular police. The National Commission of Human Rights did recommend further investigation of the incident since, beyond the "confusion" caused by the lack of sufficient distinguishing marks on the plans and uniforms of the federal drug agents, the army personnel present "incurred in actions and omission that violat military legislation and discipline". (Various articles, *Proceso*, *id.*).

²¹ For instance, a captain in the elite Presidential Guards and a second lieutenant of Military Industry have been accused and condemned for cocaine and traffic illegal trade in combination with the Cali, Colombia, cartel, (RAMÍREZ, Ignacio, "Dos militares capturados con narcos en Salina Cruz", *Proceso*, 788, 9 dec. 92, 8).

chase of ranches is a frequent way, as hinted above.²² The Governor of the State of Nayarit complained that

the geographic situation of the State has been very difficult, and that is why in the last three or four years drug traffic has attempted to seize lands, action that the state and the federal governments have resolutely fought.²³

The Governor acknowledged the "decisive" and positive participation of the Army in that struggle. Somewhat piously, the Governor concluded that "however, it is necessary to renew efforts in order to guarantee a lasting peace, and that drug traffic ceases to be a reason for fear for the inhabitants of Nayarit".

In the view of the Under Secretary for Procedures of the Federal General Attorney's Office, to catch and punish those "drug entrepreneurs" who have made a large business of laundering drug money, and live "in the midst of luxury and power", is difficult in Mexico for "lack of appropriate legal instruments". Neither have we been capable of identifying such entrepreneurs or stop the impact of their activities on the national economy. Consultations are being carried out in order to prepare the appropriate legislation, and the President of the Republic declared also that "an act is under considerations whereby goods and states originating in drug traffic may be impounded"; this would be achieved "without affecting individual and social protective guarantees".²⁴

At an "International Seminar on 'drug currency' held in Caracas in July, 1992,²⁵ United States and Latin American experts proposed "global" actions to fight the laundering of dollars originating in drug traffic. According to the FBI,

²² For instance, an uncle of Rafael Caro Quintero of Camarena fame, was imprisoned for among other thing, allegedly killing five people in his ranch. He and other relatives are said to have purchased ranches and restaurants in the State of Jalisco for the laundering of drug money. (*La Jornada*, Mexico City, 19 Jul. 92, p. 21).

²³ The declarations were provoked by the news of a bloody arrest that took place at a ranch in the state owned by Rafael Caro Quintero, alleged intellectual murderer of U. S. drug agent Camarena, and currently imprisoned in Mexico City. GUERRERO BENÍTEZ, Arturo, "Ante la difícil situación...", (*8 Columnas*, Guadaluajara rather sensationalist newspaper, 12 Jul. 92).

²⁴ *Siglo XXI*, 23 Jun. 92, p. 11. More recently (September, 1992), a scandal broke out in the State of Guanajuato when its attorney general accused hotel and shoe businessmen, among others, of covering up drug money laundering.

²⁵ *La Jornada*, 12 Jul. 92, p. 12.

dollar laundering through financial institutions reached 100 billion U. S. dollars a year, to which must be added another 200 billion for activities such as extortion, tax frauds, and sale of arms.

A United States 1986 Act would "order financial institutions to report [only] operations for more than ten thousand dollars". Apparently, an order from a Federal Court in Atlanta orders United States banks to freeze fund originating in drugs found in their foreign branches, and to return such funds to the United States for civil litigation.²⁶

In Colombia, drug money laundering has developed a number of interconnected means, including the infamous "dark counter" at the National Bank,²⁷ the use of Colombian banks, and in tax haven countries.²⁸ Real estate speculation (and consequent inflation) by drug dealers has extended to urban and rural property.

Through a complicated use of modern technology, drug dealers are said to have turned Great Britain and Switzerland into a "paradise for the hiding of resources". Beyond this, the dealers hope to turn more and more to legal enterprises, and to be considered as legitimate investors.

8. Of course, the problem of disposing of the proceeds originates in the enormous profits to be had from drug dealing. It entices a large number of the most different sectors of society to become associated with such traffic.²⁹ A peasant may possibly obtain in a year of coca planting more than he would otherwise make in his whole lifetime. The fabulous drug earnings permit such generous payments to the producers, and to "cover transport costs, pay a numerous and diver-

²⁶ *Excelsior* (Mexico City), quoted in KAPLAN, *infra* Note 19.

²⁷ Here millions of dollars from the marijuana trade merge with the coffee boom, contraband, income from foreign workers, tourism and other services. Other outlets include numerous real estate companies, money exchanges, credit companies, "under the protection of highly flexible norms and officials". Broadly, the major outside agencies of Colombian banks are in Panamá, Bahamas, Cayman Islands, Miami, and also New York, Santiago, Buenos Aires and Lima. In all of them there is some presence of drug dollars. Money orders and traveler cheques are popular instruments, "because of the almost complete lack of regulation (of them) in Panama and Colombia". KAPLAN, Marcos, *op. cit.*, 70-75.

²⁸ Apparently, in Panamá there was at least in the late 1980s, a "tacit agreement between drug dealers and the government, the first do not receive interests or income from the deposit they make in Panamanian banks, in exchange for protection of such funds, and a guarantee of bank secrecy". KAPLAN, *op. cit.*, 72.

²⁹ KAPLAN, *op. cit.*, 39, 42, 60.

sified personnel, give direct and indirect bribery, and the availability of efficacious and complex equipment". However, it must not be forgotten that all of this is possible because of a "fantastic" growth in demand and consumption, especially in the United States and other developed countries.

9. Future high drug dealers or *capos* are generally originated in middle and high income families, perhaps with original respectability but slipping, and socially repected. (At a lower level, there are whites, mestizos, and Blacks, as well as their multiple combinations.) Neither groups is often tied with legal industries or trade. Their activities, if successful, would allow them to have cash readiness, and the chance to preside over numerous marginal and delinquent people. Many such activities are carried out in *barrios* (neighborhoods) inhabited by the unemployed, the marginal and the petty delinquents, easy prey for a new and lucrative business.³⁰

TO EXTRADITE OR NOT TO EXTRADITE

10. According to a press version,³¹ after a popular referendum (1991), extradition is constitutionally forbidden in Colombia.

11. The President of the National Commission on Human Rights of México³² requested the Governor of Illinois to allow the return to Mexico of young Manuel Salazar who, having been accused of murdering a police officer, was interned in a high security prison in the American state and is now awaiting execution. Considering that the death penalty is "irreversible and contemptible, and violates fundamental human rights, Dr. Carpizo appealed to the sentivity and moral and political qualities" of the Governor.

In another context, President Salinas declared³³ to a Spanish weekly that "we are not inclined to facilitate things for anyone prosecuted for criminal doings in Spain". With respect to ETA (Basque nationalist—or terrorists) members already living in Mexico, "the Mexican government is willing to act, at the request of the Spanish executive, provided that such petitions are based on the principle that the extradited suspect is guilty of criminal or blood crimes". Negotiations

³⁰ *Id.*, p. 36.

³¹ *Siglo XXI* (Guadalajara), 11 Jul. 92, 26.

³² Dr. Jorge Carpizo, the widely respected former Justice of the Supreme Court, President of the National Autonomous University, and Head of its Legal Research Department.

³³ *Siglo XXI*, 6 Jul. 92, p. 13.

toward that end would have begun with the May, 1992, visit of the Mexican General Attorney to Madrid, addressed principally to a closer drug cooperation between the two countries. According to that Attorney General, "extraditions are considered on an individual basis; first, the accused crime must be such in both countries, and, secondly, that it not be a 'crime of conscience'."

12. The State Attorney for the State of Saltillo, Mexico, declared³⁴ that Mexico does comply with its international duties with respect to extradition. As an example, he refers to the pending return of a United States citizen detained in 1987, condemned to seven years imprisonment for drug traffic. Jerry Lee Massey was placed in the care of the Mexican Foreign Ministry, by order of the Second District Judge, who ruled in favor of the extradition petition. In the United States, the crime would be, according to the cited sources, for "conspiracy to distribute cocaine and marihuana".

13. Ms. Beatriz Asunta Roca Suarez, 33 year-old sister of the alleged drug traficker Jorge Roca, known as "Techo de Paja", and currently being tried in California, would be the first Bolivian citizen to be extradited to the United States on drug charges. Early in July, 1992, a DEA plane would have taken her to the United States, in spite of her protests of innocence and a dramatic scene involving her daughters. Ms. Roca was taken to the airport from a police "clinic", and her lawyer declared that the action was not "extradition but kidnapping".³⁵

The exit of Mrs. Roca caused a number of critical opinions against the Government, the Supreme Court and the U. S. Ambassador, who confirmed that "his government has requested other extraditions". A trade union leader declared that the extradition was an imposition by the "arrogant" American imperialism. Catholic Church authorities recalled "military molestation of Bolivian clerics" in the Department of Beni, "hidding place of the major drug merchants of the country". A former Secretary of Foreign Affairs of Bolivia declared that the extradition, claimed on the basis of a 1900 Treaty and the global Convention Against Drugs, nonetheless proved the signature of an update treaty, since it violated human rights, and national and international legality". Finally, the President of the Constitutional Committee of the Chamber of Deputies considered Ms. Roca's extradition

³⁴ *Siglo XXI*, July 5, 1992, p. 14.

³⁵ *La Jornada*, 12 Jul. 92, p. 24.

"a grave precedent which could be followed in other extraditions". Other voices within Bolivia requested the expulsion of the U. S. Ambassador there for alleged "interference with Bolivian internal affairs".³⁶

A particularly bitter opposition may have come from the military and police officers in Bolivia. Thus, the Head of the Armed forces declared³⁷ that "Bolivia has enough legal instruments and institutions to pursue such matters". Apparently, earlier accords between President Paz Zamora and the United States permitted several accused of drug trade or mafia chiefs to be sent for trial to the United States. According to this high officer, since the Military Penal Code includes more serious sanctions for uniformed personnel who engage in the production and trade of drugs, there is "no need for foreign courts to take over the trial of the Bolivian accused". On his part, the Chief of Bolivia's Police said that his institution "does not accept the extradition of policemen to the United States or any other country for trial on drug charges, and recalled that, according to him, "there is no current extradition treaty or formal accord between the two nations (see above).³⁸

14. Also in Bolivia, it was published that the government demand the extradition of a former DEA agency in that country. During

³⁶ *Id.*, 12 Jul. 92, p. 12. This animosity against the United States is reflected in declarations in Madrid by the well-known author Carlos Fuentes, for whom "once the Cold War is over, the brilliant leaders of progress have devised another enemy in order to continue to grow [...] The new United States and Europe enemy are drugs, so the Big Chief takes out from his sleeve antidrug crusades, and provides malfeasances like the one that cost Panama its President [Noriega]" (see below). While the entire world will continue to oppose the alleged right of the United States to kidnap foreigners in their own home, it may not succeed much longer, since it is already no longer as powerful as before.

³⁷ *Siglo XXI*, 5 Jul. 92, p. 20.

³⁸ Perhaps as a result of this dissatisfaction, after the end of July, 1992, military personnel will no longer participate in the fight against drugs, President Paz Zamora is said to have decided, thus complicating the alleged perennial intention of the United States to militarize drug combat, Bolivia's Interior Minister attempted to disassociate his country from Peru and Colombia, since according to him in the former there is neither insurgent nor institutionalized violence. A new regulation for foreign drug agents is expected in thirty days "to achieve a better coordination, as well as to avoid abuses of power buy the parties". (*Siglo XXI*, Guadalajara, 19 Jul. 92, pp. 22). Since May, 1990, through an agreement with the United States, the two armies have been joined against drug production and traffic. Allegedly the United States would go ahead in building an "operations center" in the Beni large, desolate Department, in spite of bitter opposition by minority parties in the country. (*Siglo XXI*, 22 Jul. 92, p. 24).

Bolivian Interior Minister, July visit to the United States, he would have received assurances from the head of DEA that the case of Bryan Donaldson³⁹ "would be minutely examined, and the resulting guilty duly punished".⁴⁰

15. In July, 1992, the sentence on general Manuel Antonio Noriega was finally passed.⁴¹ The judge imposed on him a 40 year imprisonment for "participating in drug traffic and for protecting criminal organizations while he was Panama's strong man". The jury found Noriega "guilty of making Panama a stopping point (for that traffic), a center for laundering of drug money (see below) and hiding place for members of the Medellin cartel".⁴² According to the newspaper, Noriega could be considered a prisoner of war (since he was captured during the United States invasion of Panama). To the judge Noriega is reported to have told: "Since you were unable to kill me during the invasion, you brought me here that I may do you the favor of killing me alive". On his turn, the current and disputed President Endara found himself "greatly relieved" by the sentence passed on Noriega, which "ends a painful chapter in the history of our country".

16. According to Kaplan,⁴³ since the 1960s and the 1970s, Colombia begun to develop the model and the scenario of a large, aggressive, and extraordinarily successful criminal organization which eventually was to control a large part of the Latin American drug traffic. Many factors combined, of course, to produce the favorable circumstances for such development, including the availability of land ideally situated

³⁹ Bryan Donaldson was involved in a bar fight where he injured a Bolivian citizen. The United States embassy arranged, apparently with some local police authorities, to spirit Donaldson away to Miami where he was said to be awaiting trial. Nonetheless, the Bolivian authorities announced their own trial and that, if the accused does not appear voluntarily, an extradition order will be requested from the United States. In case the American citizen is returned to Bolivia, it would be the second case since 1990, after the Roca case, see above, under the agreement reached that year between the Bolivian and the American authorities. (*Siglo XXI*, Guadalajara, 16 Jul. 92, p. 27).

⁴⁰ *Supra* note 22.

⁴¹ *Siglo XXI*, 11 Jul. 92, p. 23.

⁴² The use of the term "cartel" for the organizations dealing in drugs, especially those of Medellin and Antioquia, may be more metaphoric than precise. In fact, drug dealing organizations have not achieved, at least so far, a completely formal organization, but seem to be, instead, "a lax coalition of criminal groups, differentiated and often in conflict with each other, based on close relationship (by blood, marriage, or friendship), who cooperate in certain operations and against common enemies". (KAPLAN, *op. cit.*, p. 50).

⁴³ KAPLAN, *op. cit.*, 13, 21, 51 and ff.

for that kind of agriculture; a location ideally suited for contraband; a weak and corruptible State; and a peculiar mix of entrepreneurial, delinquent, and violent sociopolitical traditions.

Simultaneously, the Colombian government's struggle against drug traffic would have been slow, insufficient and limited by slow perception of the gravity of the trade; lack of help from public opinion and other Latin American countries; lack of political will; poor use of the few resources in fact available to the government; poorly rewarded, and thus subject to temptation, personnel; a wide net of public and private complicity; and by bureaucratic struggles. The governments of Turbay, Betancourt, and Barco were characterized by "the war on drugs, under the incitement and with the cooperation and efforts at control by the United States". Such a war was crucially dependent on two extradition treaties signed by Colombia and the United States on September 14, 1979, in Washington. Those agreements include besides extradition, the exchange of judicial information. Simultaneously, the United States began providing Colombia with financial, managerial, and operative aid.

Drug dealers move their enormous resources in this war, particularly opposing extradition.

Much agitation to the country was brought by the announcement by President Gaviria that leading drug dealer Pablo Escobar Gaviria was missing from the high security prison where he was placed after voluntarily giving himself up about a year ago, allegedly in secret agreement with the Colombia government that he be not extradited to the United States.⁴⁴ The last days of July, 1992, have been enlivened with tall tales of an all too real escape by Escobar from prison.

THE ÁLVAREZ MACHAIN CONTROVERSY

17. Late in June, 1992, it became known in Mexico that the United States Supreme Court had refused to approve the request for extradition to Mexico of Mexican physician Humberto Alvarez Machain, kidnapped by Mexican citizenas with at least the knowledge, if not the active financial support, from the United States Enforcement Agency (DEA), and finally tried in the State of California.⁴⁵ Accord-

⁴⁴ *Siglo XXI* (Guadalajara), 23 Jul. 92, p. 24. For a sympathetic biography of Escobar, emphasizing the strong popular support he has gained through his personality and philanthropies, see same issue, p. 40.

⁴⁵ For a discussion of the decision, see below #s 24-26.

ing to former DEA Director James Kuykendal,⁴⁶ the kidnapping resulted from the lack of cooperation of the Mexican authorities on the torture and death of United States agent Enrique Camarena Salazar:

Mexico has received many requests for extradition of criminal who have violated United States law, but it has always refused to cooperate [...] This lack of cooperation [...] constituted a frustration for the United States and what is now happening to the Mexican doctors is part of it.

18. Cooperative or not, the refusal of extradition of Alvarez Machain caused very strong public reaction in Mexico. The Foreign Ministry announced (and revoked less than twenty-four hours later)⁴⁷ the Mexican decision to suspend cooperation between the two agencies involved. On its part, the Office of the Attorney General recognized⁴⁸ that "Mexico cannot go alone in the struggle against drug dealing, and it is necessary to engage in international agreements, but always within internal and international limitations.

19. Protracted and apparently not entirely successful negotiations occurred at the Mexican Foreign Ministry. President Bush sent a letter to President Salinas, assuring "that in the future his government shall neither conduct, encourage, or permit"⁴⁹ actions such as the kidnapping of Alvarez Machain and Rene Verdugo Urquidez. According to the United States Ambassador, that statement "speaks for itself", while qualified observers deny it any legal value. Further, according to the Ambassador, there were "no winners of losers" in the negotiations. He explained the refusal to return Alvarez Machain on the alleged burden that would place on the other 102 extradition treaties signed by the United States.⁵⁰ President Bush's assurances

⁴⁶ *Siglo XXI* (Guadalajara), 2 Jul. 92, 12.

⁴⁷ Perhaps reflecting a popular view of the decreased importance of the Ministry in international matters and the corresponding increase in influence of the Presidential Office, particularly its General Secretary.

⁴⁸ *Siglo XXI* (Guadalajara), 17 Jul. 92, 16.

⁴⁹ HERNÁNDEZ, Evangelina, "En las negociaciones no hay ganadores ni perdedores: Negroponte", in *La Jornada* (Mexico City), 2 Jul. 92, 18.

⁵⁰ However, according to García Moreno, a Mexican law professor and Justice of the Permanent Court of Justice, President Bush does have the possibility of returning Alvarez Machain, as stated in the next to last paragraph of the Supreme Court decision itself, to the effect that such return could be effected outside of the extradition treaty. Another Mexican jurist alleges that the decision also finds de kidnapping "scandalous, and a violation of the general principles of inter-

were said to have been reiterated in an exchange of diplomatic notes; in the future, such actions by "reward seekers" would constitute an extraditable crime. This would show the respect the United States has for Mexican sovereignty.⁵¹ Thus, according to Negroponte, after the incident relations between the two countries, which are "rich and complex", are back to "excellent": the Alvarez Machain case must be considered "in its context".

20. At the end of the negotiations, Mexico declared that it would take the case up to international organizations such as the United Nations or the World Court, because "moral and legal reasons" support it. A decision had not been reached as to the definitive forum chosen for this.⁵² Foreign Minister Solana would not consider "satisfied" a proper term to describe the Mexican attitude at the end of the talks; that Bush's letter does not carry "all political and legal weight"; that the negotiations had been "complex, difficult, and long"; and that he hoped that further discussions would not "contaminate" other areas of bilateral concern.⁵³

One such application to international recourses may be found, although not forming the main body of the speech, in Mexico's Ambassador to the United Nations Economic and Social meeting reported

national law", apparently referring to the dissenting opinions, both experts find the decision a "political" rather than a "legal" one. This would be particularly so, since the Justices apparently overlooked the express admission of the DEA as having participated in the promotion, execution, and payment of the kidnapping. (*Siglo XXI*, Guadalajara, 21 Jul. 1992, 13).

⁵¹ This use of the word was probably meant for the popular perception in Mexico of the country. There are here others, however, who may have a more sophisticated view of "sovereignty". Thus, the wellknown labor specialist and occasional newspaper commentator Nestor de Buen compares unfavorably the recent Maastricht Accord that is generally believed to continue the road toward European unification (and its necessary renunciation of sovereignty), with what the writer considers unbecoming presences of the past in Mexico's legal and social practice, including the prohibition of access to the Presidency to any non Mexican by birth, and the also the child of Mexican citizens. DE BUEN, Nestor, "Soberanía, esa vieja historia..." in *La Jornada* (Mexico City), 12 Jul. 1992.

⁵² *Siglo XXI* (Guadalajara), 7 Jul. 92, 13. As late as middle September, 1992 there have been reports of a certain doubts from the Ministry of Foreign Affairs of pursuing these tactics because "the conditions do not seem favorable".

⁵³ Reflecting a general if unspoken feeling in Mexico, this country's relatively mild and at least temporarily accommodating attitude about the Alvarez Machain case is part of an overall political concern (which some call excessive) with an eventual signature of the Free Trade Agreement, at almost a cost. (See Governor of California Ruffos's declaration, quoted by Mireya Cuellar and Miguel Angel Rueda, *Siglo XXI*, Guadalajara, 2 Jul. 1992, 17).

in middle July, 1992.⁵⁴ Ambassador Montaña was generally critical of what he considered an unequal treatment of human rights considerations in the North and in the South. He condemned as an "inexcusable violation of international law" the kidnapping of Alvarez Machain, and added that Mexico has seen with concern how drug dealing is "utilized as an excuse" to develop new means of violating human rights and fundamental freedoms.

The attitude of the United States Supreme Court was also condemned by six Latin American countries (Argentina, Brazil, Chile, Paraguay and Uruguay) meeting in Las Leñas, Argentina. As a result, the Permanent Council of the Organization of American States (OAS) decided, against the opinion of the United States Representative, to instruct its Interamerican Legal Committee to review with priority the legality of the United States Supreme Court, at its regular August 5-28 meeting. The unsuccessful American argument at the OAS was that the question was an internal one.⁵⁵

In another newspaper's estimate,⁵⁶ while the Committee's opinion had "no legal force" with respect to the United States Supreme Court, a contrary stand may have "moral" value, and influence future United States actions.

Mexican sources said that it was "probable" that Mexico would take up the case at the forthcoming Madrid Iberoamerican meeting.⁵⁷

21. The Mexican President, to wide general approval,⁵⁸ sent Congress and the latter quickly passed, legislation defining as a

crime against the homeland for Mexican citizens to collaborate or participate in the kidnapping of persons within the national territory for the purpose of their being delivered to foreign authorities.

Foreigners participating in such activities are now subject to immediate expulsion.

⁵⁴ *Siglo XXI* (Guadalajara), 16 Jul. 1992, 15.

⁵⁵ This was eventually rejected also by the Legal Committee of the OAS, which unequivocally rejected said Supreme Court decision.

⁵⁶ Quoting "diplomatic sources", *Siglo XXI*, 16 Jul. 1992, 16.

⁵⁷ *Siglo XXI* (Guadalajara), 16 Jul. 1992, 16.

⁵⁸ For example, see the editorial of *La Jornada* (not known as a pro-Salinas publication), Mexico City, 2 Jul. 1992.

Also, the Mexican Federal Executive issued a seven pages, eight sections Decree on Rules for the Temporary Stay of Foreign Agencies Representatives.⁵⁹ Such agents

may only serve as liason with the Mexican government for the purpose of sharing information; their stay in the country shall be temporary; they are compelled to "observe strictly applicable Mexican legislation"; and at no time may they engage in functions "expressly assigned to Mexican authorities".⁶⁰

Agents shall be accredited before the Ministry of Foreign Affairs and registered before the Ministries of the Interior, and the Office of the Attorney General. They will not be immune from penal codes. They may not have contacts with other authorities than those specified in the Decree.

The information obtained by foreign agents must be shared "immediately" with their Mexican counterparts. Should the former engage in the promotion or the "incitement" of others in the kidnapping of Mexican nationals to another country, such foreign agents shall be expelled "automatically" from the country, the respective cooperation accord shall be "immediately suspended", and the responsible foreign nation will be prevented from engaging in any further such activity in Mexico.

22. Nonetheless, the President also announced that he had accepted President Bush's invitation to meet with him on July 14 in San Diego, California, to confer and watch a baseball game.⁶¹

At the close of the Salinas-Bush San Diego meeting, the first issued⁶² a strong public statement to the effect that

(1) Mexico rejects as invalid the decision of the Supreme Court, about the detentions of nationals by foreign policemen, and contrary to international law; (2) the Mexican government insists upon the return of Alvarez Machain; (3) Mexico forbids the

⁵⁹ *Acuerdo sobre normas que regularán la estancia temporal de agentes representantes de entidades de gobiernos extranjeros*, *Diario Oficial*, 3 Jul. 1992. (*Siglo XXI*, Guadalajara, 3 Jul. 1992, 12).

⁶⁰ Of course, neither may they incur in illicit detentions, kidnapping, forced confessions, unauthorized searches, taking of private property, "or any other action" forbidden by the Constitution or lesser, applicable acts or codes.

⁶¹ HERNÁNDEZ, *supra* Note 24.

⁶² *Siglo XXI* (Guadalajara), 15 Jul. 1992, 12.

operations of foreign agents in its territory, and allows their presence only for drug information purposes; (4) the question of the extradition treaty shall be discussed in the next Binational Meeting; and (5) Mexico will act strongly against whoever engages in violations of the pertinent law.

23. It was announced⁶³ about the same time, that is after the negotiations in Mexico City and before the July 14 Bush-Salinas meeting, that the Subcommittee for Civil and Constitutional Rights of the Judiciary Committee of the United States Senate had postponed until July 21 the second of its audiences on the Supreme Court Alvarez Machain decision. Speculations were expressed that this was decided hoping to have then the presence of both Secretary of State Baker and Attorney General Barr. There has been at least concern in the Congress about the possibility of future kidnappings that could involve the United States in similar international controversies in the future.⁶⁴

THE UNITED STATES SUPREME COURT DECISION

24. From the Syllabus of United States Supreme Court Opinion No. 91-712⁶⁵ it appears that the District Court (California) concluded that the DEA agentes were responsible for the abduction and dismissed the indictment of Alvarez Machain on the ground that it violated the Extradition Treaty between the United States and Mexico. The Court of Appeals affirmed because the United States had authorized the abduction and since the Mexican government had protested the Treaty violation, jurisdiction was improper.

The Supreme Court held that "the fact of responsible's forcible abduction does not prohibit trial in a United States court for violation of this country criminal laws".

a. While recognizing that a defendant may not be prosecuted in violation of an extradition treaty, when a treaty has not been invoked, a court may properly exercise jurisdiction even though the defendant's presence is procured by means of a forcible abduction.

⁶³ *Siglo XXI* (Guadalajara), 9 Jul. 1992, 9.

⁶⁴ Without clarifying who was to pay and to whom, an indemnization was believed by a "former legal counsel of the State Department" to be due to symbolize the "gravity and inacceptability of such behaviour as led to the forced entry of Alvarez Machain in the United States. (*Siglo XXI*, Guadalajara, 14 Jul. 1992, 15).

⁶⁵ *United States, petitioner v. Humberto Alvarez Machain*, 60 LW 4523 (1992).

b. The Extradition Treaty does not (expressly) forbid such an abduction.

c. "While respondent may be correct that his abduction was "shocking" and in violation of general international law principles [this is a] matter for the Executive Branch".

25. This majority view written by Chief Justice Renquist, joined by Justices White, Scalia, Kennedy, Souter, and Thomas, was a matter of an eloquent and correct dissent by Justice Stevens, joined by Justices Blackmun and O'Connor, in my view, and certainly that of Mexico and, at least the leading countries of Latin America. In the view of the dissenters,

a. If the Extradition Treaty would not cover (and condemn) abductions, its provisions would be "little more than verbiage"; such provisions would be "utterly frustrated" (Court of Appeals); and could be extended to the absurd of permitting also the torture or execution of a person.

b. The *Rauscher* precedent supporting a covenant not to prosecute for an offense different from that for which extradition was granted, is far weaker than a rule against the invasion of the territorial integrity of a treaty partner, as Mexico correctly claimed in this case.

c. The court failed to differentiate between private abductions and official invasions of another sovereign's territory as here.

d. The decision should not have been influenced by possible inaction or action by the Executive.

MEXICAN ANTIDRUG LEGISLATION

26. The present Mexican constitution charges the Federal Congress to legislate "on the general health of the Republic". Article 73, Section XVI. There shall be a National Health Council which may organize "campaigns against alcoholism and the sale of substances that poison the individual and degenerate the human species". First Paragraph. Such a Council depends directly on the President of the Republic and thus independent from any Department of government; its rules are obligatory in the entire Republic.⁶⁶

Said Section of article 73 rules the penal regime of drugs, through

⁶⁶ TENA RAMÍREZ, Felipe, *Derecho constitucional mexicano*. See also *General Health Act (Ley General de Salud)*, articles 235 and 245, 4th ed. México, Porrúa, 1990, Col. Leyes y Códigos de México.

the Federal Penal Code and the General Health Act. Therefore, the state legislatures may not regulate any conduct related to drugs.⁶⁷

27. In turn, the Federal Penal Code defines drugs by reference to the General Health Act.⁶⁸

The Federal Penal Code, considering the "evident cultural backwardness, the social isolation, and the extreme need" of peasants usually dedicated to field activities, would limit their penalty for growing marijuana to imprisonment from two to eight years. Article 195. Provided he or she is not a member of a criminal organization, transport of marijuana for one instance, and provided it does not exceed one hundred grams, is punishable with the same penalty. Article 196. In an all-encompassing definition, virtually anyone else connected with drug traffic in Mexico may receive a prison sentence from between ten and twenty-five years, and a fine of five-hundred minimum daily wages.⁶⁹ A slightly smaller sanction of ten to twenty years imprisonment and a fine of from one hundred to five hundred minimum daily wages is imposed on whoever, even temporarily, imports or imports drugs from the country. Article 197, Section II. A similar penalty would be due to whoever finances directly or indirectly drug crimes, or who publicizes or induces in any way the consumption of such drugs. Article 197, Sections III and IV. Possession of said drugs is punishable with from seven to twenty-five years. Article 193, Section V.

All the above penalties shall be doubled if the convicted criminals had been charged with the prevention or investigation of crimes

⁶⁷ GARCÍA RAMÍREZ, Sergio, *Delitos en materia de estupefacientes (Drug Crimes)*, México, Trillas, 1980, p. 42. The author has been Mexico's Attorney General, a member of the Legal Research Institute of the National Autonomous University of Mexico, and currently heads the newly-enacted Agrarian Tribunal, one that has more advisory than adjudicatory roles and was devised along with President Salinas decision to privatize the rural areas, as opposed to the cooperative schemes of the ejido and the communities.

⁶⁸ Drugs, also known as controlled substances, are "those determined by the General Health Act, international compulsory treaties, and other health provisions that conform with the General Health Act"; and "substances and plants designated in articles 237, 245 (Sections 1-3), and 248 of the General Health Act". *Código penal para el Distrito Federal en materia del fuero común y penal para toda la República en materia de fuero federal (Federal District Common Crimes and Federal Crimes Code)*, 3rd ed., México, Delma, 1990, p. 67.

⁶⁹ That is, "whoever plants, cultivates, crops, produces, manufactures, elaborates, prepares, acondition, transport, sells, buys, acquires, engineers, or traffics, trades, provides event at no cost, one of the plants or substances" declared under control in the General Health Act. Article 197, Section 1.

against health; when the victim was underage or incapacitated; or if committed in school, public assistance, or prison institutions or their proximity; when there is criminal conspiracy; where minors or the incapacitated were utilized; when committed by professionals or other personnel related to the health sciences; when family ascendancy was employed; or by the employer. Article 198, Sections I-VIII.

Drugs involved in drug-related crimes shall be, in principle, turned over to federal health authorities for their disposal. Attorneys-General (*agentes del Ministerio Público*) shall be in charge of the respective investigations. Such officers may request the suspension of agrarian rights, where justifiable. Article 199.

28. The General Health Act lists over 109 substances considered by law to be under control. The list, subject to additions, shall be published in the *Diario Oficial de la Federación*. There is a safety clause for any additional, immediately needed classification of drugs as subject to control. Article 234. These drugs may not be "planted, cultivated, subject to crop, elaboration, preparation, acquisition, possession, trade, any kind of transportation, use, supply, or consumption". Article 235. A sole exception would be drugs for scientific research under a permit by the Health Secretariat. Article 238. The Health Secretariat shall determine the requirements for the legal trade in drugs, and issue the corresponding permits. Article 236. Within legal limitations, drugs may be prescribed by physicians or interns, veterinarians, and dentists, in their respective specialties. Article 240. In any case, a special prescription is required and described. Article 241. Only designated establishment may dispense drugs, shall collect each prescription, and register the sale in the appropriate book. Article 242. There are industrial-use, dangerous drugs. Article 1157. Controlled drugs may not be issued as medical propaganda. Article 1158. Proper packaging is detailed in Article 210.

Import and export of drugs are under the control of the Health Secretariat, which shall specify amounts and ports of entry or exit, with a certain role for Mexican Consulates abroad. Article 289-292.

There are also administrative sanctions. Articles 416-425.

29. The fundamental principles of extradition in Mexico are found in the Federal Constitution, international treaties, and the Extradition Act of December, 1975.⁷⁰ An extradition procedure is that in which

⁷⁰ GARCÍA RAMÍREZ, Eduardo, *Derecho procesal penal*, 5a. ed. México, Porrúa, 1989.

it is requested that a person or persons accused of a crime is or are requested by some foreign nation or the Mexican government participates.

Constitutionally, it is provided that proper authorities are under strict obligation to deliver foreign prisoners to the authorities who request them. Article 119. However, no extradition treaties may be signed involving the extradition of those granted political asylum of those common criminals having the status of slaves in the requesting country, and no agreements can be signed diminishing the fundamental freedoms guaranteed by the Constitution. Article 15.

The International Extradition Act is applicable in the absence of an international extradition treaty (and therefore, presumably not in the case of the Mexico and the United States). It is especially useful for inter-state extradition within the country. However, it does establish a procedure to be followed to request the extradition of a Mexican citizen from a foreign country. Article 3. The conducts are the Ministry of Foreign Affairs and the Attorney General's Office. Mexico would grant extradition if the offense is punishable in both countries; if the contemplated sentence averages at least one-year imprisonment; there is a complaint; and no pardon has ensued.

In the view of García Ramírez, extradition is an exceptional procedure, subject to the Executive and, with respect to nationalized foreigners applicable only if the citizenship was acquired by the accused prior to the facts in question. If a crime has been also committed in Mexican territory, the corresponding penalty must be covered in Mexico first. Where several countries request extradition of a foreigner, preference shall be given to that with which Mexico has signed a convention; or failing that, by order of petition or detention of the accused.

Many detailed provisions exist in the Act with regard to the proper extradition proceedings.

There are other interesting provisions in the Mexican law with respect to drugs. In spite of a claimed "benevolence toward the ill", treatment for drug addicts/drug delinquents must be given along with the prison sentence.⁷¹ However, the Supreme Court found since the late nineteen fifties and early nineteen sixties that a "drug addict" may not be subject to trial, provided there is a medical certificate that the drug found in his or her possession was for his or her personal

⁷¹ GARCÍA RAMÍREZ, *supra* Note 67.

use. Thus, an action may not be initiated against anyone merely subject to the illness of drug addiction.

The By-laws of the General Health Act contain further detailed consideration of what are to be considered toxic, illicit drugs.

Unfortunately, drug-related accidents appear not to be considered professional risks by the Social Security Institute.

There may be civil penalties for drugs production and trade, in addition to the criminal ones we have already pointed out: relative nullity of marriage, impediment to contract marriage, and cause for divorce.

Except by doctor's prescription timely disclosed to the employer, an employee may be dismissed for drug consumption on the premises.

The Supreme Court has also found (1973, 1977) that mere possession of an illicit drug constitutes a crime against health.⁷² It has defined the "crime against health" as the legal protection of human health, through preventive and remedial actions. Foreigners may be denied entry to Mexico if proven to be drug addicts, or expelled if found guilty of a crime against health.

CONCLUSION AND RECOMMENDATIONS

1. Drug dealing was begun by the industrial countries, and after taken over by less-developed ones, constituting today the only Latin American multinational enterprise. Unless and until the various countries in Latin American are able to sustain a sufficient and equitable development, the possibilities of lessening the fatal traffic are very small.

2. For example, drug dealing in Colombia grew in a context of violence, inequality, and corruption which, to be sure, it has helped to deepen.

3. Bolivia as unsuccessfully suggest the legalization of drugs, joined by Costa Rica. It also would be this author's recommendation.⁷³

4. The costs of not only drug traffic prevention, but to the very fabric of societies involved are enormous, far —and long— reaching.

5. Drug dealing effectively occupies much of the population that has been displaced by neo-liberal economies, which in my opinion need

⁷² DÍAZ DE LEÓN, Marco Antonio, *Código federal de procedimientos penales*, México, Porrúa, 1989.

⁷³ As was also that of at least three California judges, according to recent press reports.

urgently to revise their true effects on the majority, not to speak of the marginal, of the less-developed countries.

6. Drug dealing has been helped by and in turn increased the all-too-pervading corruption. Only very minor officials have been imprisoned in Mexico, and catching major drug dealers only seems to increase new aspirants in the nefarious activity.

7-8. The laundering of the illegal proceeds of drug dealing have found many legitimate fronts. Mexico has not escaped this process.⁷⁴ Again, this might be prevented by the legalization advocated in conclusion 3. above.

9. Drug traffic has also served as a quick, however dangerous and illicit, road to social mobility.

10-13. Extradition of those accused of drug-dealing has been an unwise choice of policy by the United States. While a respectable and human avenue for most criminals, it has proven ineffective and, because of national sensitivities, harmful in the case of crimes against health. These crimes are or should be recognized as the concern of the entire societies, and a matter for them alone to punish. Mexico's position continues to be that of studying each extradition request on its individual merits. The extradition of Mrs. Roca caused disproportionate internal political unrest.

14-15. The popular sentiment against the imprisonment of Panama's General Noriega could hardly be suppressed by a government unpopular in itself, as the result of United States open intervention.

16. Drug-traffic in Colombia has led to a most dangerous internal situation that may well be duplicated throughout Latin America.

17-20. Doctor Alvarez Machain's kidnapping with at least the passive support of the United States' DEA has been explained as an act of frustration of the latter. Whether true or not, the fact caused the strongest popular condemnation in Mexico and forced an all-too-short energetic act by the Foreign Ministry Negotiations with the United States were equivocal and unsatisfactory, possibly because Mexico did not wish to pursue strongly enough the matter in the light of, principally, the economic negotiations of the trilateral trade agreement. Mexico announced that it would seek international support for its position, but has done so only on a limited scale. Major Latin

⁷⁴ Brazil was publicized late in September as the major Latin American harbor for illegal drug money.

American countries showed their verbal support of Mexico. The Interamerican Legal Committee of the OAS unequivocally condemned the kidnapping.

21. President Salinas of Mexico had Congress rewrite the internal rules for foreign drug agents and strengthen penalties against local collaboration with future kidnappings.

22. Mexico's position was re-stated after the San Diego Salinas-Bush presidential meeting, but had no effect on the requested return of the Mexican doctor.

23. The United States Congress also could not or would not take effective action on the matter.

24-25. The United States Supreme Court decision on the Alvarez Machain was legally wrong, politically insensitive, and internationally embarrassing for United States friends.

26-29. Mexican antidrug legislation is sufficient if imperfectly enforced.

There must be a certain degree of understanding between some high elements of government and drug dealers, one more example of generalized corruption. However, the most important factor (still) is in the United States consumption of drugs, not in their illegal cultivation mostly in South America and their trade through Mexico. The present economic policies of the Mexican government do not seem to ensure a long-lasting solution to the inequalities within the country. The problem is one of economic justice, political true democratization, and enormous efforts of a preventive, educational nature, rather than its symptom of illegal trade.

The partial abandonment of Mexico's international policy in favor of a closer alliance with her northern neighbors, exemplified among other things in the insufficient response to the attack on her sovereignty represented by the Alvarez Machain kidnapping and the United States authorities failure to extradite him, may lead to more harmful effects. While traditional sovereignty is irretrievably lost, it has to be replaced by world, rather than regional, integration.