

# **The Western Hemisphere Drug Policy Commission: Charting a New Path Forward**

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Congress created the Western Hemisphere Drug Policy Commission (WHDPC) to address a dilemma that has long plagued US policymakers: why, despite aggressive enforcement, have illicit drugs remained plentiful and increasingly potent while drug trafficking organizations have grown stronger and more violent?

The failure to control drug abuse and drug trafficking has exacted an enormous human toll. In the United States, more than 500,000 people have died from overdoses during the past decade, soaring to an unprecedented 71,000 deaths in 2019.<sup>1</sup> Latin American countries not only face growing drug usage but also epidemics of criminal violence that are taking many more lives.<sup>2</sup>

The illicit drug industry has evolved far more rapidly than our efforts to contain it. Traditional dichotomies no longer apply. Developed nations both manufacture and abuse synthetic opioids; developing countries both produce and consume dangerously addictive plant-based substances. Throughout our hemisphere, the poor suffer most: those who are socially and economically marginalized are more likely to develop drug use disorders and more likely to be victimized by criminal gangs.

Organized crime – powered largely but not exclusively by illegal drug trafficking – also threatens the region’s still fragile democracies. The most extreme example is Venezuela, a democracy that has devolved into dictatorship, defying financial sanctions with the help not only of other unfriendly states, such as Cuba, Russia, and Iran, but also of transnational criminal organizations, including illegal drug and gold smugglers.

An increasingly complex threat requires a more agile, adaptive long-term strategy. We need smarter international policies within an interagency effort led by the State Department. This over-all effort should focus on accomplishing a fundamental foreign policy goal: reducing the supply of dangerous drugs by helping partner governments in

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<sup>1</sup> National Center for Health Statistics, “[Drug Overdose Deaths in the United States, 1999-2016](#),” NCHS Data Brief No. 295, December 2017; National Center for health Statistics, “Drug Overdose Deaths in the United States 1999-2018,” [NCHS Data Brief No. 356](#), January 2020.; Brianna Ehley, “[Fatal overdoses climbed to record high in 2019, reversing historic progress](#),” Politico, July 15, 2020.

<sup>2</sup> See [Citizen Security in Latin America: Facts and Figures](#), Igarapé Institute, Strategic Paper 33, April 2018, p. 2, 8; [Global Study on Homicides 2019: Understanding homicide](#), (Vienna, Austria: United Nations Office on Drugs and Crime, 2019), pp. 44-63.

Latin America counter vicious transnational criminal organizations.

This interagency effort must also address the challenge of money laundering. US policymakers need to develop data-driven tools to detect and block the flow of illicit funds using new techniques, such as cryptocurrencies and complex cross-border financial transactions.

The White House Office of National Drug Control Policy should ensure that these policies are cost effective, providing the executive branch with research-based analysis and performance evaluations that measure both the positive and negative impacts of law enforcement and foreign assistance.

No diplomatic challenge in the Western Hemisphere looms larger than Venezuela’s descent into political and economic turmoil. A thorough evaluation of US and regional efforts to resolve the Venezuelan crisis was beyond the scope of the Commission’s report. The WHDPC recognizes, however, that the United States and its partners cannot control the flow of illicit drugs from South America without halting the political and economic meltdown in Venezuela and encouraging an orderly transition to stable, accountable, democratic rule.

#### *US counternarcotics policies*

The Commission’s evaluation of US policy in the region shows promising results: our assistance programs in Colombia are providing licit livelihoods in coca-growing regions; our capacity building in Mexico has strengthened criminal justice reforms; and our police reform, anti-corruption, and violence prevention efforts have helped the troubled nations of Central America’s Northern Triangle – El Salvador, Guatemala, and Honduras – make progress – albeit unevenly – toward more effective governance.

The United States and its partners have also strengthened anti-money laundering regulations, collecting data that can potentially be used to uncover the financial networks that perpetuate organized crime, corruption, and terrorism.

The shortcomings of US counternarcotics policies are obvious, however. Drug production remains at historically high levels in Latin America as do drug overdoses (most of which involve powerful synthetic drugs) in the United States.<sup>3</sup>

US-supported counternarcotics policies can also cause considerable harm, complicating rather than curbing drug trafficking and drug-related crimes. Coca eradication has moved illicit crops to marginal regions, threatening vulnerable communities. Kingpin targeting has fractured drug cartels, heightening inter- and intra-gang violence. Anti-money

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<sup>3</sup> Office of National Drug Control Policy (ONDCP), “New Annual Data Released by White House Office of National Drug Control Policy Shows Poppy Cultivation and Potential Heroin Production Remain at Record-High Levels in Mexico,” Press release, (June 14, 2019); Office of National Drug Control Policy, “ONDCP Reports Cocaine Production in Colombia is Leveling Off,” Briefing statement, (June 26, 2019).

laundering efforts have spurred black and grey market innovations as traffickers and their financial enablers move from bulk cash smuggling into elaborate trade-based schemes and digital transactions.

### *Supply and demand*

Two truisms about counternarcotics policy bear repeating: we cannot control the supply of dangerous drugs without also reducing demand and we cannot curb demand without also limiting supply. We may never end illegal drug trafficking, just as we cannot eliminate substance abuse. But we can better manage these deadly problems with a comprehensive strategy designed to address underlying causes and conditions, carefully measure progress, and eliminate or mitigate adverse consequences.

US policy to reduce drug demand has evolved in recent years. Since 2010, Congress has increased spending on treatment and prevention significantly, appropriating nearly double the amount spent during the previous decade. Though funding remains inadequate, policymakers understand the need for science-based approaches that treat substance abuse as a disease, not simply a crime or moral failing.

Supply-side policies have changed little, however. The 2020 National Drug Control Strategy still focuses on reducing potential drug production in Latin America and increasing drug removals in the transit zones, despite little evidence that these outputs will impact the desired outcome, i.e. increasing the price and purity of drugs available in the United States.<sup>4</sup>

Amid the economic havoc wreaked by COVID-19, it is more important than ever for the US government to spend its counternarcotics budget effectively. The pandemic has exacerbated conditions that are fuelling our ongoing opioid crisis, such as lack of adequate treatment, economic distress, and social isolation. It is also likely to further weaken security and justice institutions in the Latin American countries that produce drugs or lie along drug transit routes.

### *Multi-faceted strategy*

The Commission understands there are no quick fixes. The United States needs a long-term strategy linked to its strategic objective: “drastically reducing the number of Americans losing their lives to drug addiction.”<sup>5</sup>

The federal government should apply the same scientific rigor to foreign supply-reduction efforts: designing and implementing a cost-effective, interagency strategy with carefully targeted policies to curb the flow of dangerous drugs into the United States while

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<sup>4</sup> See NDCS: Performance Reporting System 2020, pp. 21-28.

<sup>5</sup> 2020 NDCS, p. 4.

addressing institutional weaknesses in drug producing and transit countries that allow transnational criminal organizations to flourish.

Drug trafficking and drug abuse are complex problems that require a multi-faceted, long-term strategy that addresses not only demand and supply reduction, but also the broader problems created by transnational organized crime, such as violence and corruption. To deal with these issues effectively, a comprehensive strategy should be:

- **Balanced.** US efforts should address the supply and the demand for illicit drugs, both at home and abroad.
- **Shared.** Transnational crime requires transnational solutions, with the US and its partners jointly responsible for stopping trafficking, reducing corruption, and addressing illicit drug consumption.
- **Flexible.** US agencies should have the authorities and the resources to respond quickly to changing patterns of drug use and drug trafficking, collaborating with our partners on country-led reforms to address country-specific challenges.
- **Sustainable.** US initiatives should be cost-effective with relevant long-term goals, including measurable benchmarks to assess progress.
- **Holistic.** US policymakers should address drug trafficking as a subset of the many illicit activities carried out by transnational criminal organizations that threaten citizen security, foster corruption, and undermine US interests throughout the hemisphere.
- **Humane.** US policies should above all promote public health, public security, and human rights throughout the hemisphere. This means that policymakers need to assess the harms of supply reduction policies when evaluating results.

### *The State Department*

The State Department should be responsible for developing and coordinating interagency policy to counter transnational organized crime. As the lead agency, the State Department should prepare a whole-of-government strategy with three fundamental goals: 1) reducing and interdicting the flow of drugs into the United States; 2) helping partner governments in the hemisphere build effective, legitimate criminal justice systems; and, 3) curbing the global demand for illicit drugs by leading an international effort to prevent and treat substance use disorders with evidence-based public health policies.

Congress should provide flexible, multi-year funding streams for counternarcotics and counter-transnational organized crime efforts, which can be re-allocated in response to periodic evaluations conducted by field-based staff and independent experts.

The State Department also needs the authority to disburse emergency funds. Drug trafficking is dynamic: in response to enforcement, traffickers can quickly move

production, adjust trafficking routes, develop new smuggling vehicles or methods, and create new, more dangerous, products. The US government needs to become equally agile in its response.

To implement this strategy, the Secretary of State should:

- **Make the Undersecretary for Political Affairs responsible for coordinating a whole-of-government effort to counter transnational organized crime.** The Undersecretary for Political Affairs should oversee the Bureau of International Narcotics and Law Enforcement Affairs (INL) while working with all relevant departments and agencies, including USAID, federal law enforcement agencies, the US Treasury, and the Department of Defense to develop and implement coherent regional strategies to reduce illicit drug trafficking, disrupt criminal networks, and discourage money laundering.

Moving INL into Political Affairs (P), which manages overall regional and bilateral issues, would increase organizational efficiency and ensure that these efforts receive the high-level attention they deserve, both within the federal government and partner governments.

The Undersecretary for Political Affairs should:

- **Develop a five-year international drug control strategy** with defined annual goals in coordination with partner governments. This should include regional and/or bilateral strategies for strengthening police and justice institutions and promoting citizen security with clearly defined goals and benchmarks based on both qualitative and quantitative evaluations.
- **Work with the Office of Management and Budget (OMB)** to prepare an interagency drug control/law enforcement budget for interdiction and foreign assistance programs.
- **Work with Congress on long-term, flexible funding authorities.** The State Department also needs long-term funding and the authority to disburse emergency funds. State should work with OMB and Congress to create a drawdown counternarcotics account (similar to the Emergency Refugee and Migration Assistance fund), which would permit INL to provide targeted assistance so that partner governments can prevent or contain emerging threats.<sup>6</sup>
- **Replace the drug certification and designation process** with more effective tools to assess country efforts to counter transnational crime and sanction those who fail to act. The current certification process offends our partners and does little to deter corrupt practices in unfriendly nations. Instead INL should produce a global report reviewing country efforts to counter trafficking and other

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<sup>6</sup> Bill Frelick, “Trump’s Budget Would Cut Crucial Emergency Aid,” *Huffington Post*, March 21, 2017.; United States Conference of Catholic Bishops. “Funding the Refugee Program,” 2011.

transnational crimes, including US policies. This report should also assess whether US sanctions, such as the Kingpin Act, effectively target the most dangerous criminal organizations, especially those responsible for trafficking or producing fentanyl and other highly toxic substances.

- **Negotiate compact-based assistance programs** based on the model pioneered by the Millennium Challenge Corporation. The Undersecretary should empower US ambassadors to work with partner governments on agreements that identify shared goals for combatting organized crime, strengthening criminal justice institutions, and protecting citizen security and human rights. The agreements should specify the roles and responsibilities of both the US and host governments, as well as civil society stakeholders.

This country-led process should bring the US government and other donors together with political leaders and security officials to identify an appropriate, cost-effective reform agenda. The resulting agreements should be made as public as possible and include robust, transparent monitoring and evaluation mechanisms, based on quantitative and qualitative indicators collected by both program implementers and independent experts. These agreements should also include commitments by host governments to implement vigorous anti-corruption mechanisms and ensure transparency.

Congress should provide State with multiyear funding authorities for these compacts, giving it the flexibility to tailor bilateral assistance to each country’s commitments, needs, and capacities. It should also provide State with emergency funds to help partner governments deal with emerging threats, particularly from new psychoactive substances, such as fentanyl.

- **Prioritize global efforts to treat and prevent drug abuse.** The US government should work with partners to establish a global fund to fight substance use disorders. This is especially urgent amid the Covid-19 pandemic, which is amplifying risk factors associated with drug abuse while limiting access to treatment. Supply and demand reduction measures are mutually reinforcing; the United States cannot limit the international supply of illicit drugs without simultaneously reducing international demand.

USAID’s Bureau for Global Health should lead this effort, working within the framework of the successful Global Fund to Fight AIDS, Tuberculosis, and Malaria. The stigma attached to drug abuse often prevents addicts from seeking treatment, just as stigma used to prevent HIV/AIDS sufferers from receiving treatment. A global effort could help eliminate these barriers while promoting cost-effective medication-assisted treatments.

*The White House Office of National Drug Control Policy (ONDCP)*

Congress established the ONDCP in 1988 to develop an interagency counternarcotics strategy and oversee drug-control budgets. The law specified that the ONDCP’s strategy should include “comprehensive, research-based, long-range goals for reducing drug abuse” along with “short-term, measurable” objectives.<sup>7</sup> It is the White House office that bridges foreign and domestic counternarcotics policies, including both supply- and demand-control efforts.

The ONDCP has rarely lived up to expectations, however. Its ability to coordinate and implement a national drug control strategy hinges on its authority to decertify agency budgets, a power it has exercised only once.<sup>8</sup> Compared to the Office of Management and Budget (OMB), the ultimate enforcer of presidential priorities, the ONDCP’s influence over White House domestic and foreign policies has been minimal.

The Commission recommends that the ONDCP function instead as the president’s chief advisor on counternarcotics, providing objective, reliable information about which policies are most effective. It should also serve as the president’s forum for managing both supply-reduction and demand-reduction policies, ensuring that options are fully analyzed before reaching the White House. It should evaluate ongoing efforts and monitor trends to anticipate drug risks before they become full-blown epidemics.

The ONDCP needs to develop more effective measures of supply-control policies, most of which still focus on plant-based drugs. While demand-side efforts have benefitted from public health research, there is a dearth of research on supply-side measures. For example, the 2020 National Drug Control Strategy (NDCS) focuses on reducing drug availability as reflected by purity-adjusted prices, although the impact of supply interventions (such as eradication and interdiction) on these prices, which have fallen or remained stable over the past decade, remains unclear.<sup>9</sup>

Moreover, the ONDCP’s long-standing goal of reducing purity-adjusted prices does not address the problem of heroin or cocaine adulterated with fentanyl and other psychoactive substances. A more appropriate goal may be to reduce drug toxicity by focusing law enforcement on disrupting fentanyl supply chains.<sup>10</sup>

The ONDCP should also consider the harm caused by law enforcement efforts both abroad and at home. Performance measures should include indicators that measure both the costs and benefits of law enforcement strategies, such as whether crop eradication, drug interdiction, and kingpin targeting outweigh the social, economic, and political costs to our partners.

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<sup>7</sup> H.R.5210 - Anti-Drug Abuse Act of 1988.

<sup>8</sup> The ONDCP has publicly decertified an agency budget only once: in 1997 Barry McCaffrey instructed the Defense Department to resubmit a larger anti-drug budget to the OMB. President Clinton increased the military counternarcotics budget, though not as much as the ONDCP had requested. See “The General and the “War” on Drugs: Barry McCaffrey and the Office of National Drug Control Policy,” Kennedy School of Government Case Program, Harvard University, 1998.

<sup>9</sup> Bryce Pardo, “Considering the Harms: Drug Supply Indicators,” April 2020, white paper prepared for the WHDPC, p. 20.

<sup>10</sup> Pardo and Reuter, p. 3.

To make the ONDCP more effective, the President should:

- **Require the ONDCP to develop new supply control performance measures.** The ONDCP should support the State Department by convening an interagency task force to develop new long-, medium-, and short-term metrics. The supply-control indicators in the 2020 NDCS – potential production of plant-based drugs (cocaine and heroin), cocaine removals in the transit zone, and drug seizures at the US border and points of entry – focus principally on plant-based drugs.<sup>11</sup> The ONDCP needs to work with implementing agencies to develop and test new performance measures linked to its primary objective: saving lives. This means measuring not just the price and purity of illicit drugs, but also their toxicity.
- **Incorporate cost-benefit analysis into drug control strategy.** The ONDCP should work with implementing agencies and partner governments to evaluate the second and third-order effects associated with both drug trafficking and law enforcement efforts at each point in the drug supply chain.<sup>12</sup> A cost-benefit analysis should weigh the ecological and social harm caused by both coca cultivation and crop eradication in Colombia; evaluate the impact of interdiction on drug flows, and explore the relationship between kingpin targeting and criminal violence in Mexico.
- **Direct the ONDCP to work with the interagency to collect timely data on emerging drug trends.** The ONDCP cannot develop proactive, evidence-based metrics without real-time data, especially on highly toxic synthetics. The ONDCP should take the lead on assessing technologies, such as wastewater testing, to monitor the spread of synthetic drugs to new markets. It should work with both law enforcement and public health authorities to find more effective ways to share intelligence and toxicology data from postmortems or hospital emergency departments. It should also assess whether US law enforcement and foreign partners are effectively targeting fentanyl trafficking networks.
- **Provide the ONDCP with discretionary funding for research to counter regional illicit drug networks.** Congress should give the ONDCP additional resources for research grants to study the impact of law enforcement efforts both at home and abroad. These grants could be used to apply innovative law enforcement practices to counternarcotics policy.<sup>13</sup> For example, focused deterrence, which has been used successfully in the United States to prevent gang violence, could also be

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<sup>11</sup> *National Drug Control Strategy: Performance Reporting System 2020* (Washington, DC: Office of National Drug Control Policy, February 2020), pp. 21-22.

<sup>12</sup> See Bryce Pardo, “Considering the Harms: Drug Supply Indicators,” April 2020, white paper prepared for the WHDPC.

<sup>13</sup> On focused deterrence see the Rand Corporation’s “Focused Deterrence Strategy Guide.” On how this strategy could be used to deter fentanyl trafficking, see Bryce Pardo and Peter Reuter, *Enforcement Strategies for fentanyl and other synthetic opioids* (Washington, DC: Brookings Institution, June 2020).



applied in cooperation with Mexican state and local law enforcement to deter fentanyl production.

### *Anti-Money Laundering/Counter-Terrorism Financing*

Money laundering requires at least as much ingenuity and innovation as smuggling itself, using methods that range from simple bulk cash smuggling to complex foreign trade-based transactions to digital mechanisms such as cryptocurrencies. And it requires legions of enablers or gatekeepers to the legal economy. Just as cartels employ mules to carry drugs, engineers to build tunnels, and hitmen to eliminate rivals or informants, they also hire accountants, lawyers, real estate brokers, auditors, and other financial agents to move and hide their profits.

Criminal organizations, rebel groups, and terrorists thrive in similar contexts: countries where the state is fragile and easily corrupted, where there are vast ungoverned spaces, or whose citizens suffer from high rates of poverty and inequality, exacerbated by racial or ethnic tensions.

Where trafficking and armed political groups coincide, the combination is especially dangerous. The Tri-Border Area (where Argentina, Brazil, and Paraguay meet) has long been a smuggling hub, which provides money laundering opportunities for a variety of criminal groups, including drug traffickers and international terrorist groups, such as Hezbollah.<sup>14</sup> In Colombia, dissident elements of the Revolutionary Armed Forces of Colombia (FARC) and the Army of National Liberation (ELN) not only smuggle cocaine but also engage in illegal gold mining.<sup>15</sup> Venezuela provides a haven for these groups, while its leaders profit from drug and gold smuggling.

### *High costs, low results*

Anti-Money Laundering/Combating the Financing of Terrorism (AML/CTF) laws have grown increasingly robust. They also entail considerable costs to business. A 2016 study estimates that compliance costs US companies anywhere from \$4.8 billion to \$8 billion per year.<sup>16</sup> There is an incentive to overreport: failure to file suspicious activity reports can result in both substantial financial penalties and damage to the bank’s reputation.

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<sup>14</sup> See Iran in Latin America: Threat or ‘Axis of Annoyance,’ The Woodrow Wilson Center, Eds. Cynthia Arnson, Haleh Esfandiari, and Adam Stubits, 2008; “Is the Trump Administration Exaggerating the Threat of Hezbollah in South America?” *World Politics Review*, Sept. 5, 2019. Critics contend the region’s importance to Hezbollah is exaggerated.

<sup>15</sup> For more on official support for Colombian drug traffickers, see Evan Ellis, “Venezuela: Pandemic and Foreign Intervention in a Collapsing Narcostate,” Center for Strategic and International Studies (CSIS), Aug. 5, 2020; “Containing the Border Fallout of Colombia’s New Guerrilla Schism,” *International Crisis Group*, Sept. 20, 2019; and, Javier Corrales, “Authoritarian Survival: Why Maduro Hasn’t Fallen,” *Journal of Democracy*, vol. 31, no. 3, July 2020, pp. 39-53.

<sup>16</sup> David R. Burton and Norbert J. Michael, “[Financial Privacy in a Free Society](#),” Backgrounder, The Heritage Foundation, September 23, 2016.

Given the enormous amount of dirty money circulating in the global economy and the variety of businesses and institutions involved in laundering it, enforcement is remarkably lax.<sup>17</sup> Successful money laundering prosecutions, which can be extremely complex and time-consuming, remain relatively rare. The value of illicit proceeds seized or frozen is minuscule in comparison to the magnitude of money laundering within the international financial system.

The federal government spends very little to analyze and operationalize financial intelligence. In FY 2020, the US Treasury’s Financial Crimes Enforcement Network – FinCEN – had a budget of about \$126 million and a staff of 300.<sup>18</sup>

Congress should provide the US Treasury Department with additional resources to:

- **Strengthen FinCEN:** The US government has increased AML/CTF regulations, collecting enormous amounts of data, but the system is under-resourced and overwhelmed. FinCEN’s small staff lacks the capacity to analyze existing intelligence or to anticipate new and emerging threats. Providing FinCEN with the leadership and resources needed to gather, protect, and analyze financial intelligence should be a priority.
- **Use research to improve regulations and facilitate investigations.** Establish a database of money-laundering cases that can be shared among law enforcement agencies, describing prices and methods along with the predicate crimes involved.<sup>19</sup> This would allow regulators and investigators to make better use of existing data, especially the information generated by suspicious activity reports.
- **Promote innovation in both the public and private sector:** Regulators should work with financial institutions to make anti-money laundering reports more effective and efficient by encouraging innovative practices and sharing best practices. The US government should also encourage the private sector to improve the quality of reporting by focusing on priority risks and by providing up-to-date information about newly identified threats and vulnerabilities.

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<sup>17</sup> Illicit financial flows include the proceeds of all illegal activities, including drugs, arms and human trafficking as well as bribery, tax evasion and other forms of corruption. They also include funds used to commit crimes, such as terrorist attacks.

<sup>18</sup> US Department of the Treasury, Financial Crimes Enforcement Network Congressional Budget Justification and Annual Performance Plan and Report FY 2021, p. 4.

<sup>19</sup> See Reuter and Truman, *Chasing Dirty Money*, p. 8.