

ADVANCED TOPICS IN CRIMINAL LAW : SENIOR LEGAL PAPER

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**DIFFERENT WAYS OF APPROACHING THE WAR ON DRUGS: A COMPARISON  
BETWEEN ARGENTINA AND UNITED STATES**

**1) ARGENTINE REGULATION AGAINST DRUG DEALERS**

“Argentina faces a growing problem with illegal narcotics, both in the flow of drugs through the country and in domestic consumption. The extent of drug transshipment, consumption, and money laundering is largely an unknown, reflecting a lack of strategic analysis and tactical cooperation among enforcement agencies. The government is actively opposed to drug trafficking and to the sale and consumption of illegal narcotics within the country. Argentina is a party to the 1988 UN Convention. Police and security forces are active in the fight against narcotics. In recent years, police authorities have made seizures of significantly larger drug shipments from major regional narcotics producing countries. Argentine legislation prohibits diversion of precursor chemicals, but actual controls are weak. Government counternarcotics efforts, both in law enforcement and demand reduction, are hampered by restricted budgets and institutional weaknesses. Cooperation with USG authorities continues to be excellent.”<sup>1</sup>

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<sup>1</sup> <http://www.usis.usemb.se/drugs/SAMERICA/DRGARG.HTM>

Drug dealers are prosecuted in Argentina under Narcotics Law 23.737 and under Customs Code (law number 22.415), Chapter 1 article 866, which regulates drug smuggling.

The punishment for drugs dealers is different from the punishment for drug users. Drug dealers are considered ordinary criminals - like robbers-. Drug users, on the other hand, are considered specially. They are not only seen as criminals but also as sick people with a chemical dependency.

Both crimes are federal crimes. Federal Criminal Courts have jurisdiction over both types of cases. However drug smuggling cases are different. A special court in Criminal and Financial Matters<sup>2</sup> have jurisdiction over these type of crimes.

A detailed explanation of the behaviors that will be punished is provided by Article five of Law 23.737. One can be sentenced to prison from four to fifteen years, without parole, if it is found that an individual: 1) sows or cultivates plants or keeps in his power seeds for cultivating narcotics; 2) produce narcotics<sup>3</sup>; 3) produces or sells narcotics or raw materials in order to produce narcotics or distribute them, transport them or gives narcotics as payment; and 4) sells plants or seeds in order to produce narcotics. It is interesting to note that if one gives narcotics for free possibly one could receive a lower punishment (from three to twelve years in prison)<sup>4</sup>.

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<sup>2</sup> In Spanish “Juzgados en lo Penal Económico”. There are only eight courts in the country, all of them in the city of Buenos Aires. In the rest of the country Federal Criminal Courts have jurisdiction over the drug smuggling cases, applying the rule established by law 22.415.

<sup>3</sup> Crop production and drug refining are not significant factors in Argentina. Small amounts of illicit drugs are produced in minor “kitchen” sites in the northern part of the country near the Bolivian border, as well as in the province of Buenos Aires. *Supra note 1*.

<sup>4</sup> Article 5 .e first paragraph - Law 23.737-

A person could be punished for aiding and abetting in the sell of drugs or if he/she is the financier of the drug business. These added circumstances are called an agravant and entail a fine and a prison term from eight to twenty years.

The punishment would increase from one third of the maximum to half of the minimum in the following circumstances: 1) if the crime was done against a pregnant women or retarded individual or using kids under eighteen ; 2) if the crime was done with violence or fraud; 3) if the crime was done with three or more people in conspiracy; 3) if a public officer is part of the crime; 4) if the crime was done inside or near a school or other places in which young people have sport or social activities and ; 5) if the crime was done by a teacher or someone in charge of children.<sup>5</sup>

Any behavior done in order to promote the use of drugs and the use narcotics with ostentation and public transcendence ( for example a famous person using drugs in a public place) is punishable.

The Custom Code - law 22.415, modified by the law 23.353 - provides in Article 866 that any person who does the behavior described in Articles 863 and 864, smuggling, will be punished from three to twelve years in prison if the smuggling consist of narcotics. This punishment would be increased if your behavior is one of the behaviors described in Article 865 a, b, c, d, and e, or when the quantity of goods introduced to the country is destined for sale inside or outside the national territory.<sup>6</sup>

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<sup>5</sup> Article 11, Law 23.737.

<sup>6</sup> The most common transit source of cocaine is Bolivia, with large shipments often entering the country on private aircraft that land at any of thousands of uncontrolled airfields or at one of the many small municipal airports. There

## **2) ARGENTINE REGULATIONS AGAINST DRUG USERS**

“Argentine authorities are increasingly concerned over evidence of growing domestic consumption of narcotics. As more drugs enter the country, increasing quantities are becoming available for local use. A widely held view among police, public health officials, educators, labor union leaders and others, is that drugs are readily available and their use is growing, especially among young people. Economic growth of the past several years has given some sectors of the population greatly increased disposable income, making the country an increasingly lucrative market for drug dealers.”<sup>7</sup>

Punishment against drug users is regulated by federal law 23.737. This law was promulgated on October 10, 1989. Article 14 established that the punishment for possession of narcotics would be a fine and a prison term from one to six years. The time in prison could be reduced because of the inference by the judge that the drug would be for personal use, and not for sale.<sup>8</sup>

Article 16 holds that when a defendant is convicted of any drug crime and is physically or psychically dependent on narcotics, the judge must impose a desintoxication and rehabilitation treatment (besides the prison term). This treatment would cease after a hearing with the advice of an expert.<sup>9</sup>

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are indications that large narcotics shipments leave Argentina via the port of Buenos Aires concealed in containerized cargo, bound usually for Europe and, to a lesser degree, the U.S. *supra* note 1.

<sup>7</sup> *Ib.*

<sup>8</sup> Art.14 Law 23.737: Será reprimido con prisión de 1 a 6 años y multa de ... el que tuviere en su poder estupefacientes. La pena será de 1 mes a 2 años de prisión cuando por su escasa cantidad y demas circunstancias, surgiere inequívocamente que la tenencia es para uso personal.

<sup>9</sup> Art.16 Law 23.737: Cuando el condenado por cualquier delito dependiere física o psíquicamente de estupefacientes, el juez impondrá, además de la pena, una medida de seguridad curativa que consistirá en un tratamiento de desintoxicación y rehabilitación por el tiempo necesario a estos fines, y cesará por resolución judicial, previo dictamen de peritos que así lo aconsejen.

In case that defendant proves during the trial that he/she is drug dependent, the judge could suspend the prison sentence and impose a medical treatment. This treatment must last the necessary time for obtaining desintoxication and rehabilitation of the convicted addict. If this convicted addict is not cooperative with treatment, he/she must be send to prison and continue with the rehabilitation treatment in prison. (art.17)<sup>10</sup>

Moreover this exception could be used in the pretrial, if the accused agreed to medical treatment in order to obtain his/her desintoxication and rehabilitation. In this case the trial will be suspended until the accused is fully recovered of his/her illness. If two years later the accused is not full recovered because of his/her lack of collaboration with the treatment, the trial would continue. Furthermore, the Judge after hearing experts, should distinguish between the addict and criminal who uses drugs in furtherance of his crimes. This difference is important because the judge can give different treatment to the different pathologies.

In case the accused has no physical or phsyquical dependence on drugs the judge could change the sentence for an educative sanction - for example have the accused take a course on the effect of drug on the body -. This course must last at least three months.<sup>11</sup>

Finally, once the accused fulfilled his/her treatment satisfactorily, the judge, after hearing experts could send a note to the Office of Reincidence to delete the criminal record of the

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<sup>10</sup> Art.17 Law 23.737: En el caso del art.14, segundo párrafo, si en el juicio se acreditase que la tenencia es para uso personal, declarada la culpabilidad del autor y que el mismo dependen física o psíquicamente de estupefacientes, el juez podrá dejar en suspenso la aplicación de la pena y someterlo a una medida de seguridad curativa por el tiempo necesario para su desintoxicación y rehabilitación. Acreditado el resultado satisfactorio, se lo eximirá de la aplicación de la pena. Si transcurridos dos años de tratamiento no se ha obtenido un grado aceptable de recuperación por su falta de colaboración, deberá aplicársele al pena y continuar con al medida de seguridad por el tiempo necesario o solamente esta última.

<sup>11</sup> Art.21, Law 23.737: En el caso del art.14 segundo párrafo, si el procesado no dependiera física o psíquicamente de estupefacientes por tratarse de un principiante o experimentador, el juez de la cause podrá por única vez, sustituir la pena por una medida de seguridad de seguridad educativa en la forma y modo que judicialmente se determine.... con una duración mínima de 3 meses...

accused.<sup>12</sup> In this way the accused can be fully integrated into society. If the accused is fully recovered, there is no need to stigmatized him/her with a criminal record. This policy is helpful for drug users and makes them feel more secure in their future.

### **3) UNITED STATES REGULATION AGAINST DRUG DEALERS<sup>13</sup>**

“Both valuing life too little and glamorizing drugs too much have contributed to the use and sale of illegal drugs , an alarming social problem that is commonly characterized as a war. The magnitude of the illegal drug problem has fostered robust debate about drug legalization, discriminatory enforcement of drug laws, sentencing disparity, federal funding, drug-related evictions, ..., the sitting of drug recovery homes, the correlation between drugs and crime, the relationship between gender and illegal drugs, and the erosion of constitutional rights in the prosecution of drug crimes.”<sup>14</sup>

“In almost all countries which suffer from drug problems the police and judicial authorities are forced to set priorities in the detection and prosecution of offenders who have committed drug-related crimes. Large-scale, cross-border trafficking in hard drugs has the highest priority everywhere, the lowest being assigned to small-scale trafficking in and the possession of soft drugs. This system of priorities is shared, for example, by large parts of the United States of America, Germany, the United Kingdom and France. Only rarely are people still

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<sup>12</sup> Art.22, Ley 23.737.

<sup>13</sup> In the United States each State has its own regulation. I only try in this paper to explain some differences between the argentinean and american system.

<sup>14</sup> Omar Saleem, Killing The Proverbial Two Birds With One Stone: Using Environmental Statutes And Nuisance To Combat The Crime Of Illegal Drug Trafficking ,Summer, 1996,100 Dick. L. Rev. 685, at 688.

prosecuted in these countries for the possession of small quantities of soft drugs. To all intents and purposes the possession of a few grams for personal use is no longer an offense there.”<sup>15</sup>

“Few problems affecting the health and welfare of our population, particularly our young, cause greater concern than the escalating use of controlled substances. Much of the drug traffic is highly organized and conducted by sophisticated criminal syndicates. The profits are enormous. . . . As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement.”<sup>16</sup>

These are examples of the problems which all countries face. Drug commerce is a big problem all over the world. Drugs dealers are more powerful all over the world and countries are improving the way in which they fight against narcotraffic. An interesting way of fighting narcos is by trying not only to put people in prison or rehabilitate them, but also to “cut” the drug dealers cash flow. This is an important difference between the United States and the Argentine law. Argentine statutes do not address this issue.<sup>17</sup>

“Drug forfeiture statutes authorize the states and federal government to seize real or personal property used or acquired in violation of drug laws. *Libretti v. United States*, 116 S. Ct. 356 (1995). Congress passed the Comprehensive Drug Abuse Prevention and Control Act section 881 to combat the illegal drug trade in the United States. 21 U.S.C.A. 881 (1981). Section 881(b) allows for seizure of property. Its aim is to take the profit out of illicit drug sales. See Edith A. Landman and John Hieronymus, *Civil Forfeiture of Real Property Under 21 U.S.C. 881: The "Innocent" Lienholder's Rights*, 21 Tex. Tech. L. Rev. 2127 (1990). See also William

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<sup>15</sup> <http://www.minvws.nl/drugnota/0/s11.htm#fn01>

<sup>16</sup> *United States v. Mendenhall*, 446 U.S. 544, 561-62 (1980) (Powell, J., concurring).

Carpenter, Reforming The Civil Drug Forfeiture Statutes: Analysis and Recommendations, 67 Temp. L. Rev. 1087 (1994).”<sup>18</sup>

“Throughout the 1980's, the United States government waged a full scale war on drugs. Its ammunition was enhanced sentencing for drug dealers and users,<sup>19</sup> mandatory drug testing<sup>20</sup> and restricting the flow of drugs imported into the United States.<sup>21</sup> The H-bomb in the war on drugs is the federal civil drug forfeiture statute, 21 U.S.C. @ 881,<sup>22</sup> which may be brought without securing a criminal conviction and which provides little procedural protection to

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<sup>17</sup> Anyway, usually all the elements used for committing a crime are confiscated by the state, and at the end of the trial sold in a public auction.

<sup>18</sup> Omar Saleem, *supra note 14*, at 708

<sup>19</sup> See A. Morgan Cloud, III, Cocaine, Demand, and Addiction: A Study of the Possible Convergence of Rational Theory and National Policy, 42 Vand. L. Rev. 725, 776-77 (1989) (commenting that the Anti-Drug Abuse Act of 1986 increased penalties for drug use, possession and trafficking); see also James E. Hooper, Note, Bright Lines, Dark Deeds: Counting Convictions Under the Armed Career Criminal Act, 89 Mich. L. Rev. 1951, 1956 n.23 (1991) (commenting that the Armed Career Criminal Act of 1984 enhanced the sentences of certain drug offenders); Conference on the Federal Sentencing Guidelines: Summary of Proceedings, 101 Yale L.J. 2053, 2061 (1992) (remarks of Margaret A. Grove, Yale Law Journal ed.) (arguing that one purpose of the Federal Sentencing Guidelines -- which went into effect in 1987 -- was to provide adequate sentences for drug-trafficking offenders based on the seriousness of the crime).

<sup>20</sup> See Richard Lacayo, A Threat To Freedom?; Civil Liberties Could Be A Casualty Of Bush's War On Drugs, Time, September 18, 1989, at 28 (claiming that as a result of the war on drugs, 43% of all businesses with 1000 or more employees have drug-testing programs and that President Bush was calling for even more drug-testing in a recent speech).

<sup>21</sup> See Louis Kraar, How To Win The War On Drugs, Fortune, March 12, 1990, at 70 (giving examples of the war on drugs aim of restricting imports to the United States: invading Panama in part to prosecute Noriega for crimes as a drug trafficker; stationing U.S. Marines as border patrols for the first time; and Bush's anti-drug summit to rally the governments of Colombia, Bolivia, and Peru to fight the powerful cocaine cartels).

<sup>22</sup> 21 U.S.C. @ 881 (1988) provides in relevant part: a) The following shall be subject to forfeiture to the United States and no property right shall exist in them: . . . .4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [illegal drugs and equipment used to make or deliver them] . . . . 6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter . . . . 7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment . . . . Controlled substances, their containers and equipment used to manufacture them are forfeitable under @@ 881(a)(1)(3) & (9) respectively.



defendants. Section 881 allows the government to seize an individual's property based only on the government's showing of probable cause that there is a connection between the property and the commission of a federal drug violation. The individual then bears the burden of showing, by a preponderance of the evidence, that the property was neither used, nor intended to be used, illegally or that it falls within one of the statutory exceptions. Section 881 was broadened in the 1980's to include the forfeiture of real property and, under the government's zero tolerance policy, was applied to seize large amounts of property for even the smallest violations of the drug laws. The main purpose of civil forfeiture is to deter drug dealers by confiscating their proceeds from drug sales and thereby eliminate any incentive to sell drugs. Without suppliers, the subsequent use of drugs would disappear. ...Congress intended to impose both criminal and civil remedies for violation of the drug laws through the enactment of @ 853 and @ 881. In addition, once @ 881 has been labeled as civil, it will not lose the quality of a civil action because more than the amount of damages is recovered.”<sup>23</sup>

I think this is an interesting idea. However does the system work? In fact, "the seizure of large quantities of illicit drugs has a more significant impact on the drug trafficker's cost of doing business than asset forfeitures"<sup>24</sup>, because the cost of the seized drugs is greater than the cost of any property seized. It also creates more insecurity among drugs dealers. I think that the

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<sup>23</sup> Rebecca Frank Dallet, , COMMENT: TAKING THE AMMUNITION AWAY FROM THE "WAR ON DRUGS": A DOUBLE JEOPARDY, BAR TO 21 U.S.C. @ 881 AFTER AUSTIN V. UNITED STATES ,1993, 44 Case W. Res. 235, at 236.

<sup>24</sup> See David B. Simith, Prosecution and Defense of forfeiture cases @ 1.02, at 1-25 (1992 & Supp.1993)

psychological effect of these seizures is also interesting and becomes essential in the overall analysis.<sup>25</sup>

The District of Columbia seems to have a tough law related to drug dealers. “In 1982, District of Columbia voters adopted a ballot initiative providing mandatory minimum sentences for certain drug distribution offenses. Pursuant to this initiative, it is a felony in the District of Columbia to distribute or possess with intent to distribute any quantity of a schedule I, II, or III controlled substance, or a quantity exceeding \$ 15,000 in value of a schedule IV or V substance. A single count of any of these felonies carries a mandatory minimum sentence.”<sup>26</sup>

In my point of view, this rule is right . Drug dealers deserve to be in jail. Drug dealers are the ones who contribute to expand the drug business all over the world. If any state really wants to stop the drug problem, its narcotic policy must emphasize the prosecution of drug dealers instead of drug users.

#### **4) UNITED STATES REGULATION AGAINST DRUG USERS**

“They [drugs] were the center of my life. I had gotten to the stage where everyday I used enough drugs-reefers, cocaine, or both-so that I felt above worries, any strains. If any worries did

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<sup>25</sup> Drugs are primarily a means to make vast sums of money. Gram for gram there is no more lucrative commodity than drugs. Substances that are relatively cheap to produce generate criminal revenues on a scale that has no historical precedent. At an average of one hundred dollars a gram on the streets of the US, a metric ton of cocaine is worth \$100 million if pure, double that amount if the cocaine is cut. The USG typically seizes more than 100 metric tons annually, or a quantity of drugs exceeding \$10 billion to the drug trade, as much as the gross domestic product of many countries. To put these numbers in perspective, the USG in fiscal year 1995 spent a little over \$810 million on all its international drug control activities. In quantities of cocaine, that translates into approximately eight metric tons of cocaine. Large jets flying into Mexico have carried in as much or more in one shipment., International Narcotics Control, Strategy Report, U.S. Department of State  
<http://www.usis.usemb.se/drugs/EXEC/EXXSUM.HTM>

<sup>26</sup> Benjamin J. Lambiotte. COMMENT: RETRIBUTION OR REHABILITATION? THE ADDICT EXCEPTION AND MANDATORY SENTENCING AFTER GRANT v. UNITED STATES AND THE DISTRICT OF COLUMBIA CONTROLLED SUBSTANCES AMENDMENT ACT OF 1986. 37 Cath. U.L. Rev. 733, at 736.

manage to push their way through to the surface of my consciousness, I could float them back where they came from until tomorrow, and then until the next day.”<sup>27</sup>

Usually people who use drugs do not feel good about their condition. It is very difficult for them to escape their addiction. To understand their situation and the way in which they deserve “punishment” it would be helpful to try “walking in their shoes”.

The United States has federal statutes to punish drug users and drug dealers. For example the Sentencing Reform Act of 1984 has been use mainly against drug-related violence.<sup>28</sup> This kind of statutes establish guidelines to punish people.

These guidelines provide different possibilities and describe different behaviors in order to facilitate the punishment of drug users or dealers.<sup>29</sup>

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<sup>27</sup> Malcom X, *Autobiography of Malcom X* 160 (1964).

<sup>28</sup> Beginning with this 1984 Act, the congressional response to heightened public concern about the escalating drug and violence problems developed along two tracks. One track involved providing for Sentencing Commission promulgation of detailed sentencing guidelines that would reflect multiple sentencing philosophies, but with less emphasis on rehabilitation. The second track involved the incorporation into criminal penalty statutes of an array of mandatory minimum penalties specifically targeted at drugs and violent crime, an approach through which Congress emphasized deterrence and public safety. The control of drug trafficking and violence continued to be a predominant domestic issue on the American agenda in the 1980's. Drugs entered the United States as if through a sieve across virtually all borders, while the number of homicides increased in major cities. Gang activity flourished, all too often involving drug-related violence. Congress \*307 responded with a series of crime bills enacted in 1986 and 1988 that instituted more and tougher statutory minimum penalties. Yet, during the same period, congressional awareness of the guideline system and the inherent incompatibilities between the guideline and statutory minimum approaches was growing. By decade's end, this enhanced awareness resulted in a greater use by Congress of directives to the Sentencing Commission in lieu of additional statutory minimum penalties. This approach, advocated by the Commission, offered Congress a vehicle to express its will with respect to sentencing policy in a manner more compatible with the guidelines' structure and operation. *W. Wilkins, Jr., Phyllis J. Newton, John R Steer* “A Decade of Sentencing Guidelines: Revisiting the Role of the Legislature, Competing Sentencing Policies in a “war on drugs era”. 28 *Wake Forest L. Rev.* 305 (1993) at 306.

<sup>29</sup> The guidelines prescribe sentences for offenders convicted of violating federal drug statutes in a straight-forward manner. The court locates the statute of conviction in the statutory index of the Guidelines Manual which, in turn, references the guideline appropriate to that statute. A conviction for drug distribution, for example, references section 2D1.1 of the Guidelines Manual. The drug guidelines mirror the federal drug statutes and, as such, are driven largely by drug quantity. The baseline sentence (base offense level) is determined by the type and amount of the controlled substance involved. Beyond amount, the drug trafficking guideline enhances the sentence for the presence of a dangerous weapon. General adjustments to be considered in every case include: (1) whether any victim-related adjustments such as vulnerability and restraint apply; (2) the defendant's role in the offense (for

The Anti Drug Abuse Act of 1986 is a tough statute. It provides five year mandatory minimum penalties for those involved in trafficking, no matter the quantity of drug involved.<sup>30</sup> In the Anti-Drug abuse Act of 1988 Congress “again considered enacting a number of new mandatory penalties and strengthening some that were already in place”<sup>31</sup>

Each state usually has its own law related to drug users. For example, Arizona has a rule which provides a distinction between drug users and drug dealers. However the statute held a maximum amount of drug for the distinction to be valid. “Senate Bill 1049 incorporated extensive changes to the statutes involving unlawful substances. Arizona Revised Statutes section 13-3401(28) sets threshold amounts for heroin, cocaine, crack, PCP, methamphetamine, LSD, and marijuana. These threshold amounts must be reached before a mandatory sentence is imposed and are designed to distinguish between the user, the small dealer who is trying to support his own habit, and the major dealer. Before the effective date of this legislation, only marijuana had a threshold amount, eight pounds, for imposition of a mandatory sentence. Additionally, a person charged with possession for sale of a drug other than marijuana could previously receive a mandatory sentence regardless of the quantity involved.

Senate Bill 1049 also includes a sentencing scheme (similar to the one set forth for repetitive offenders) establishing presumptive, minimum, and maximum sentences for multiple

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example, whether the defendant was a courier or an organizer of the offense); (3) whether the defendant obstructed justice; and (4) whether the defendant accepted responsibility for the criminal conduct. In addition, the guidelines factor in the defendant's past criminal record. Once the court assigns values to the offense and the defendant's record, it locates the intersection of these values on a sentencing table to determine the appropriate sentencing range. Unless the court determines that the facts of the case warrant departure, it must then impose a sentence from within the guideline range. Ranges applicable to offenses of lesser seriousness and offenders with less serious criminal histories permit the court to impose a sentence other than imprisonment. *Ib.* at 314

<sup>30</sup> 21 U.S.C. s 841(b)(1)(B) (1988 & Supp. III 1991). The legislative history suggests that the five-year mandatory minimum would apply to mid-level drug dealers (called "serious traffickers"). H.R.Rep. No. 845, 99th Cong., 2d Sess. 12, 17-18 (1986).

<sup>31</sup>W. Wilkins, Jr., Phyllis J. Newton, John R Steer, *supra* note 28, at 316

drug offenses less than or exceeding the statutory threshold amounts. For example, three or more class 2 felony offenses involving less than the statutory threshold amount results in a presumptive sentence of five years; while three or more class 2 felony drug offenses involving amounts equal to or exceeding the statutory threshold amount results in a presumptive sentence of seven years.

New language defines the weight of a substance as ‘the entire weight of any mixture or substance that contains a detectable amount of an unlawful substance.’ Section 13-3401(31) also provides that in case of a mixture, or substance containing more than one unlawful substance, the mixture or substance is treated as if made entirely of the unlawful substance carrying the greatest penalty.”<sup>32</sup>

This statute does not make a distinction between the quality of the drug seized. The only importance for conviction purposes is the weight of the drug and not the purity of it. I think that this is a mistake because it is not the same to seize 8 pounds of 95% pure cocaine than seize 8 pounds of 45% pure cocaine. In the first case you can use the drug for doing much more doses than in the second one. That, in my point of view, should make a distinction in the sentence and punishment of convicted drug dealers. The first one deserves more punishment because he/she can cause more harm. In the case of drug users I completely agree with the rule.<sup>33</sup>

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<sup>32</sup> Cami Byrd, LEGISLATIVE REVIEW: Criminal Code Revision Spring, 1994, 26 Ariz. St. L.J. 341, at 347

<sup>33</sup> Different quantities : In Amsterdam and Schleswig Holstein all dealing with up to 30 grams of cannabis, 5 grams of cocaine and amphetamine, and 1 gram of heroin is decriminalized. In other areas and countries there are different weight limits for the decriminalizing. The decriminalizing is in other words differently practiced in different countries, but different practice can also exist between different areas in the same country. The German Constitutional Court of Justice has gone farthest in Europe in decriminalizing the use of drugs. The Court of justice resolved on the 28th April 1994, to decriminalize the use, possession, sale, growth and production of cannabis for personal use. Also import of cannabis for personal use, and bringing cannabis on transit through the country was decriminalized.

<http://www.nettinfo.no/fmr/eng/eff/kap2.htm1#RTFToC36>

In some cases drug users have been “decriminalized” in the United States. This does not happen in Argentina. “As in a number of states in the United States and certain other places, the possession of a small quantity of soft drugs for personal use has been decriminalized; that is to say that it is classified as a summary offense rather than an indictable offense. The legislation thus emphasizes that the use of the criminal law to tackle the use of soft drugs should not result in the stigmatization and social marginalisation of users”.<sup>34</sup>

Another interesting rule is the “Addict exception” that Washington D.C has. The addict exemption, part of the mandatory sentencing initiative, expressly granted judicial discretion within the limited confines of mandatory minimum sentencing. If the judge concluded that an individual, convicted of manufacture, distribution, or possession with intent to distribute certain controlled substances; had no prior convictions for distributing a schedule I, II, or III controlled substance; was an “addict” at the time of the violation; and committed the offense for the primary purpose of obtaining a “narcotic drug” to support his addiction, the judge could waive the mandatory minimum sentence. Significantly, the initiative mandated no alternative punishment. The provision left disposition of an offender who met the statutory qualifications to the judge's discretion... The first prong defined an “addict” as a person who habitually used a narcotic drug so as to endanger the public morals, health, safety, or welfare. The second prong identified a person addicted to a narcotic drug to the point that he lost the power of self control over the addiction. The initiative adopted definitional language identical to that of the Dangerous Drug Act (DDA)<sup>35</sup>

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<sup>34</sup> “The History of Drugs in Netherland” <http://www.minvws.nl/drugnota/0/s11.htm#fn01>

<sup>35</sup> Benjamin J. Lambiotte, *supra* note 26, at 743

This rule, which embodies the philosophy of the Argentinean system, provides the possibility to use a “mens rea” argument. If the defendant can prove that he/she was an addict at the moment of the violation of the law, he could waive the mandatory minimum sentence. Sounds good, but what happens with drug dealers ? Could they use this “waiver” ?, Is it fair to give the same sentence to a drug user and a drug dealer only because both are “addicts” ?

One problem that this rule has is the way in which you could differentiate addict from non addict.<sup>36</sup> “In *United States v. Tuzon*,<sup>37</sup> the District of Columbia Superior Court considered an equal protection challenge to the legitimacy of the distinction made between drug dealers who are addicts and dealers who are not. The trial court convicted Tuzon of possession of phencyclidine (PCP) with intent to distribute. The defendant's substance abuse problem involved PCP, not a "narcotic" drug, making him ineligible for the addict exception. The judge first found no fundamental constitutional entitlement on the part of the defendant to choose what system of

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<sup>36</sup> **Cocaine** is a drug made from the coca plant. It is a stimulant, like amphetamine (speed), though it is much shorter acting. It produces sensations of alertness, confidence and well being. Cocaine can also lead to compulsive use or dependence. Cocaine costs £25 for half a gram. What is the difference between cocaine and crack? Cocaine hydrochloride is a white powder that can be sniffed or injected. Crack cocaine is cocaine hydrochloride that has been chemically altered to form crystals that can be smoked.

<http://www.mmm.co.uk/colin/bolton/drugs/prevent/druginfo/drugs02.html>

**Cannabis** comes from the hemp plant. Cannabis costs £7-£10 for a sixteenth of an ounce. How cannabis is used? Although cannabis can be eaten, it is usually smoked. Joints are by far the most common method of smoking, although pipes, bottles, chillums, hot knives, buckets and bongs are also used. What are the effects of cannabis? In small quantities, users find cannabis both relaxing and stimulating. The senses are enhanced and it improves the appetite. The drug is often used by a group as it enhances sociability. In larger quantities (or with stronger strains), cannabis may feel similar to LSD. Users may experience nausea, hallucinations, anxiety, panic attacks or paranoia.

<http://www.mmm.co.uk/colin/bolton/drugs/prevent/druginfo/drugs05.html>

**The Rise Of Synthetics.** A disturbing development in 1995 has been the astonishing spread of synthetic drugs, especially methamphetamine, on the illicit world drug market. Synthetics, which have been growing in popularity over the last few years, may become the drug control nightmare of the next century. As the INCSR country chapters report, the demand for methamphetamine has been increasing not only in the industrialized nations, but in most of the countries of the developing world. From the United States to Europe, from the countries of the former Soviet Union to Africa the appetite for methamphetamine and MDMA ("Ecstasy") has been on the rise. Synthetics allow trafficking organizations to control the whole process, from manufacture to sale on the street. International Narcotics Control, Strategy Report, U.S. Department of State

<http://www.usis.usemb.se/drugs/EXEC/EXXSUM.HTM>

<sup>37</sup> 113 Daily Wash. L.Rep.2025 (D.C. Super. Ct. Aug.26, 1985)

penalties the court would apply in sentencing him. This precluded invocation of a strict scrutiny standard of review. Thus, the judge framed the equal protection issue as whether the differential treatment established by the addict waiver provision bore a rational relationship to a legitimate state interest. In identifying the District of Columbia's interest, the judge stated that the addict exception reflected a societal judgment "that the actions of a drug addict are less a product of free will than the actions of others" and that an addict was therefore less culpable and in greater need of treatment than his nonaddict counterpart. As such, the statutory distinction had a rational basis, and did not deny the unaddicted dealer equal protection under the law"<sup>38</sup>.

It seems we are confronted with the same problem. Is better for the law to be an addict drug dealer instead an unaddict dealer ?

## **5) POLICIES AGAINST THE DRUG PROBLEM**

"In the 1960s and 1970s the use of drugs such as cannabis products and opiates increased considerably in Western Europe and North America and there were fears in many quarters that this would result in an explosive health problem. It was partly for this reason that new international and national policy frameworks were established during this period to combat drug abuse. Since then, levels of consumption of the various types of drugs in the countries in question have fluctuated considerably; shifts in consumption from one drug to another have also occurred. In some countries, total use has increased; in others, including the Netherlands, drug consumption appears to have stabilized at the level it reached around 1980."<sup>39</sup>

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<sup>38</sup> Benjamin J. Lambiotte, *supra* note 26, at 753

<sup>39</sup> *Supra* note 34



Statistics demonstrate the pervasiveness of illegal drug use and sales. The pervasiveness of the problem has resulted in presidential recognition of the drug problem, countless debates, and endless arrests. Yet, America is losing the war on drugs because of a lack of desire to confront the problem. Presidents Reagan, Bush, and Clinton have focused on harsher drug laws, longer prison sentences for drug offenses, and the death penalty for certain drug-related crimes. However they have neglected treatment, education, prevention and community involvement.

The drug problem is perceived as primarily confined to low-income minority communities.<sup>40</sup> This perspective is reflected in President Clinton's statement, "trafficking in crack, and the violence it fosters, has a devastating impact on communities across America, especially inner-city communities." Consequently, President Clinton signed a bill which created substantial disparity between prison sentences for crack cocaine and powder cocaine offenses. The bill punishes low-income minorities more harshly than affluent whites for consuming cocaine and reduces the war on drugs to a racial problem and ineffectively focuses on street corner drug peddlers instead of multi-billion dollar cartels."<sup>41</sup>

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<sup>40</sup> The drug problem is increasingly identified with poor, inner-city people of color who supposedly lack the moral fiber and family structure necessary to become productive members of society. Mathea Falco, *The Making of a Drug-Free America: Programs That Work* 15 (1992). However, the general drug user, according to former drug czar William Bennett, "is white, male, a high school graduate, employed full time, and living in a small metropolitan area or suburb." John A. Powell & Eileen B. Hershenov, *Hostage to The Drug War: The National Purse, the Constitution and the Black Community*, 24 U.C. Davis L. Rev. 557, 610 (1991); see also, *A New Drug Gallops Through the West-Mexicans Muscle in on Methamphetamine*, U.S. News & World Rep., Nov. 13, 1995, at 50 (the article points out that methamphetamine abusers are predominately 18 to 34 year old working-class whites). Historically, race has been linked to the American drug-related problems of crime and illegal drug usage. Sheri Lynn Johnson, *Black Innocence and the White Jury* 180 (1995). See also Sheri Lynn Johnson, *Comment, Unconscious Racism in the Criminal Law*, 73 Cornell L. Rev. 1016 (1988); Sherri Lynn Johnson, *Race and the Decision to Detain the Suspect*, 93 Yale L. J. 214 (1983).

<sup>41</sup> "The magnitude of the drug problem in the United States prompted former president Richard Nixon to proclaim, "public enemy number one in the United States is drug abuse." Approximately 20 years later former president George Bush echoed this sentiment when he stated, "All of us agree that the gravest domestic threat facing our nation today is drugs." During the Bush administration federal funds for anti-drug efforts increased exponentially. John P. Walter, *Race and the War on Drugs*, 1994 U. Chi. Legal F. 107. Efforts to combat the use and sale of illegal

“Illegal drug activities harm a community and undermine the rights of individuals to quiet enjoyment. Illegal drug activities penetrate and harm the inner core or circle of each member of a community. Whether pursuant to a statute or based on common law, nuisance actions can effectively target illegal drug activities.”<sup>42</sup>

All these things describe the problem but what are the solutions? We can look for solutions in the different policies being applied at the moment. Different countries have applied different policies with different results. Usually the countries try to ban the use and sale of drugs imposing tough sanctions. Sometimes they “legalize” some “soft drugs”<sup>43</sup> fighting only against the “hard drugs” and the dealers. I see in these policies certain hypocrisy or contradiction. Can you send to the people a “double message” - you can consume, but you can not sell or buy -. Let’s examine the policy applied in the Netherlands in which “soft drugs” are legal.

“The use of cannabis and opiates has not fallen dramatically, let alone been eradicated. For those who hoped that firm government policy would achieve this the results are disappointing. However, given previous international experience of tackling markets in illegal

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drugs has given rise to substantial federal legislation such as the Anti-Drugs Abuse Act, Pub. L. 100-690 [H.R. 5210], and the comprehensive Drug Abuse Prevention and Control

<sup>42</sup> Drug dealers are known to take food stamps from the needy in exchange for cocaine. Dozens Accused of Trafficking Food Stamps, N.Y. Times, Sept. 24, 1995, at 16 [hereinafter Food Stamps]. Crack dealers tend to be drug free and show a disdain for their victims, “One seller occasionally taunted his customers: “That’s right, mah’ man! Come on. Keep on killing yourself; bring me that money.” Ellen K. Coughlin, Understanding East Harlem’s Culture, The Chronicle of Higher Education, Dec. 8, 1995, at A8-9. A cocaine habit costs the “average” user \$ 100 a day and may reach \$ 1,000-\$ 3,000 per week. Id. The street price for cocaine ranges from: \$ 40,000 to \$ 50,000 per kilo; \$ 22,000 to \$ 26,000 per pound; \$ 18,000 to \$ 22,000 per ounce; \$ 100 to \$ 150 per gram; and \$ 35 per 1/4 gram. Lyman, *supra* note 35, at 24. In 1970 estimated thefts by drug addicts living or operating merely in Central Harlem, New York, amounted to \$ 2.3 billion. Lee. P. Brown, Causes of Crime 37, 58 (1977). Omar Saleem, *supra* note 14, at 719

<sup>43</sup> The Controlled Substances Act established five schedules of substances; the rules and regulation promulgated under the Act vary depending on the schedule in which a drug is placed. In order to fall within the schedule I, the following findings with respect to a drug or other substance are required: a) The drug or other substance has a high potential for abuse, b) The drug or other substance has no currently accepted medical use in treatment in the US, c) There is a lack of accepted safety for use of the drug or other substance under medical supervision

products or services it seemed likely that government intervention would have only a limited effect. It is partly for this reason that the policy pursued in the Netherlands has always had the more modest objective of bringing or keeping the use of dangerous drugs, as a health and social problem, under control. In terms of this objective drugs policy in the Netherlands has achieved some success. The use of the drugs in question has not become much more prevalent in the Netherlands than it was in the 1970s and from a medical point of view consumption has also not become a more serious problem. The use of nicotine and alcohol takes an incomparably higher toll on people's health in the Netherlands (as indeed it does in other parts of the Western world) than the use of all the drugs covered by the Opium Act together”<sup>44</sup>

In the United States it is estimated that in 1983 “ alcohol abuse cost the United States almost \$117 billion.... Of this amount nearly \$71 is attributed to lost employment and reduced productivity and \$15 million to health care costs”<sup>45</sup>

You can decriminalize some drugs.<sup>46</sup> “ The decriminalizing consists of two components. One component is that the police still reacts to violation of the drug legislation, but that the counsel for the prosecution and the court of justice thereafter decide withdrawal of the charge. In Great Britain the number of withdrawals of the charge have increased severely concerning cannabis offenses. Five years ago only 1 % got a withdrawal of the charge, today about 45 % are getting it in connection with cannabis offenses. The other component consists of that the police and other authorities refrain from acting on such matters. Sometimes they give oral warnings or

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<sup>44</sup> *Supra note 34*

<sup>45</sup> Secretary of Health and Human Servs., US Dep’t of Health 43 (1987)

<sup>46</sup> “Decriminalizing of certain forms of trafficking with drugs are quite common in Western Europe. Some countries have decriminalized the use and possession of smaller quantities of cannabis for personal use. Other countries have also decriminalized the use and possession of ecstasy<sup>46</sup>, and others again have decriminalized dealing with certain

confiscate the drug. Usually they neither give warnings nor confiscate the drug, at least not when it concerns only small quantities.”<sup>47 48</sup>

“To legalize drugs means to make drugs a legal trade article, and that is an important difference with the decriminalization. In the decriminalization the state said that drugs are “bad” but you would not criminalize the consumption or growing of it. Neither European country nor American “has yet gone as far as to legalize all kinds of drugs, but certain parts of the drug traffic in several West European countries is legalized. Kath for instance, is not classified as a drug in other countries than Norway, Sweden and Denmark.”<sup>49</sup>

I do not think that you can compare a “legal drug” or “medicine”, as valium or other legal amphetamines, with others drugs that in fact do not have any medical application. Anyway, in most countries you can buy these kinds of “medicine-drug” only with medical prescriptions. This is a way to avoid the “free sale” of these “medicine-drug” that sometimes could be used as “narcotics”

The most eager libertarians propose a free and unrestricted market for drugs as for any other legal trade article. Others propose that the sale should take place in Government controlled

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types of amphetamine. A few countries have even gone further, and have decriminalized more than just the possession and use of different types of drugs.” <http://www.nettinfo.no/fmr/eng/eff/kap2.html#RTFTtoC36>

<sup>47</sup> *Ib.*

<sup>48</sup> “Rational marijuana traffickers ought to fear legalization above all things, but they should regard decriminalization as an entirely good idea. An ingenious middle course, now in Alaska, allows the growing and consumption of small quantities at home for personal use. This presumably reduces the size of the commercial black market while preserving most of the potential benefits of decriminalization. In effect, decriminalization is a proposal for a redistribution of enforcement cost; it makes user-associated problems smaller and dealer-associated problems bigger. The balance of the advantage is not self evident” Mark A.R. Kleiman, Aaron J.Saiger “Drug Legalization: The importance of asking the right question”, Hofstra Law Review, Vol 18:527, 1990, at 558.

<sup>49</sup> In many of the countries amphetamine is a common ingredient in different slimming preparats, without these being classified as drugs. In Great Britain amphetamine is solely classified as a drug, class A, when it is dissolved and ready for injection. In tablet form it is classified at the same level as Valium and other tranquilizers. *Supra note*  
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shops with a special license for such trade. If this system is adopted they argued that it would be possible to maintain an age limit for the buyers, and a firm price and quality control. Some proposes salesplaces modeled after the governmental Wine Monopolies in Norway and Sweden.<sup>50</sup>

Another issue is the pricing problem and the creation of crack: “Users learned how to “freebase” - to convert cocaine to a smokable form - which gave a far more intense and short-lived drug experience. The second was a marketing innovation. Dealers learn to do a conversion from powder to “base” and to package single dose units as “crack”. The third was a collapse in black market prices, due in part of the concentration of federal enforcement resources on markedly ineffective interdiction efforts and in part to the failure of the overall enforcement effort to grow fast enough to keep pace with the growing market. These three transformations spread the use of cocaine down the socioeconomic spectrum and across the country. Economist Milton Friedman has suggested that the invention of crack was a consequence of the illegality of cocaine. But there is no reason to think that the diffusion of a new technology would have been slower, or the price collapse less precipitous, in a legal market; the converse is actually more plausible.”<sup>51</sup>. In fact Friedman argues that the crack was invented because of the high cost of illegal drugs made it profitable to provide a cheaper version.

Are drugs only an economic problem?. Yes, in part. Although this is not the only reason but is one of the most important. Drugs produce a lot of money to drug dealers. It is a profitable

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<sup>50</sup> Many proposes that the sale should take place at the common drug stores. Some of these offers that a prescription from a doctor should be needed, while others want it to be an unrestricted sale. It is a widely spread view that a free, but controlled sale will bring a lot of money to the government, as one then can add taxes to the prices. Certain debaters, on the other hand, move that the government should subsidize the drugs, and so keep the prices low. That way it will be easier to defeat the black drug market which exists today.” *Ib.*

<sup>51</sup> *Supra note 48*, at 562.

activity. However its the price is not the problem. Crack proves this. If the drugs are cheaper, and legal, more people would be inclined to try them, and that would be the start of a drug-addict society.

The legalization of drugs does not look for the disappearance of drugs. It only tries to reduce the harms that a “drug consumer society” suffer.<sup>52</sup>

We can compare alcohol and drug policies. “Without changing the legal status of alcohol, we could create a new regulatory regime to make it less widely abused and responsible for less crime. Without changing the legal status of marijuana, we could reduce enforcement costs greatly with little or no increase in abuse. Changing the legal status of cocaine and crack seems ill-advised, but that does not imply that current enforcement practices could not use dramatic reform. The challenge of drug policy is to find least cost solutions to the problem created by the age old fact that some human beings take more of various mind altering substances than is good for them or their neighbors, and by the modern fact that the variety of available psychoactives is rapidly increasing. To concentrate on changing labels from “legal” to “illegal” is to miss all of the hard work and most of the social importance that accompanies the challenge”<sup>53</sup>

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<sup>52</sup> “Very few of the social programs aimed at drug addicts have as their goal that the addict should stop using drugs. In other words: They are not primarily aiming at rehabilitation. Most of the programs aims at stabilizing the abusers' situation, and accept continued abuse of drugs. Here one can see the counterpart of the alcohol industry's motto of "sensible drinking": The users shall be trained to tackle their drug abuse, and learn to live with it. This they should do with a reduced risk, and without suffering unnecessarily great harm. It is a kind of "moderation thinking" for drug addicts. The social help programs will at their best only be a following up and support of the legal prescription, the decriminalization or the legalization programs.” *Supra note 46*.

<sup>53</sup> Mark A.R. Kleiman, Aaron J.Saiger, *supra note 48*, at 565.

Besides the “solutions” of decriminalization and legalization, the international cooperation has been suggested as a fundamental step in the war against drugs. This becomes possible as the drug problem becomes a global concern..<sup>54 55</sup>

During 1995, “was the cocaine trade that suffered most as Colombian forces arrested many of the key leaders of the Cali drug mafia, until now the most powerful of the cocaine trafficking syndicates. While the subsequent escape of Jose Santacruz Londono--who drove away in January from a Bogota prison--took some of the luster off the triumph, it was nonetheless a

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<sup>54</sup> “Drug producers pay \$12,500 for each cocaine-producing laboratory in guerrilla controlled areas and \$16,000 for the use of each airstrip. They also pay \$12.5 per hectare of coca growing land, \$25 per kilo of coca transported, and \$1 per gallon of supplies taken to the laboratories. As a result, the guerrillas receive about a third of total drug production income.... In 1984, the U.S. ambassador to Colombia, Lewis Tambs, referred to the Revolutionary Armed Forces (FARC) as "narcoguerrillas" because of their presumed link with the drug cartels. At the time, left-wingers interpreted the statement as an attempt to discredit the insurgent forces. However, 10 years later the army claims the alliance has become a recognized fact. It cites guerrilla attacks on government anti-narcotic herbicide spraying planes as evidence to support this. Drug producers were paying the rebels over \$250 for every plane shot down, the army said. Ministry of Defense information showed that 52 aircrafts were attacked in the last 28 months. Guerrilla cooperation had allegedly enabled a doubling of the acreage under drug cultivation -- coca, marijuana and opium -- to double this year from 36,000 hectares in 1993, according to police sources.”

[http://www.lead.org:80/ips/demo/archive/05\\_08\\_95/3.html](http://www.lead.org:80/ips/demo/archive/05_08_95/3.html)

COLOMBIA-DRUGS: "NARCOGUERRILLAS" SAID RAKING IN MONEY By Yadira Ferrer BOGOTA, May 8 (IPS)

<sup>55</sup> “The international drug trade had little to cheer about in 1995, as several key countries intensified their efforts against it. Though some governments acted more vigorously than others, by early 1996 there were more prominent drug figures behind bars than in any comparable period in the past few years. Drug crop eradication, a measure once fiercely resisted by many of the major drug cultivation countries, gained better acceptance as a means of limiting cocaine and opium production. National drug enforcement units, often supported by USG resources, continued to disrupt trafficking organizations, choke off key trafficking routes, destroy drug refining laboratories, and seize important quantities of cocaine and heroin. More countries enacted tougher money laundering laws and tightened restrictions on the commerce in precursor chemicals. And perhaps most importantly, governments of several countries pivotal to the drug trade found themselves obliged to confront the corruption that has given the drug trade access to the highest levels of government. These encouraging developments confirmed the overall soundness of current antidrug policies” International Narcotics Control, Strategy Report, U.S. Department of State  
<http://www.usis.usemb.se/drugs/EXEC/EXXSUM.HTM>

major achievement. Coming two years after the fragmentation of the Medellin drug cartel in 1993, the Colombian government's attack on the Cali drug cartel has sown disarray in the Colombian cocaine trade, at least for the time being.”<sup>56</sup>

The drug war is being fighting now. Many countries contribute to it, specially the United States, which is the primary consumer of drugs in the world. In 1989, the U.S. and Argentina signed a cooperation agreement against drug trafficking.<sup>57</sup>

Argentina is not among the greatest drug consumer countries in the world. Furthermore the weather conditions of the country make it almost impossible to grow the marijuana and coca plant. A very few plantations of marijuana has been discovered in the last few years. Argentina is use as a “ drug transit” country by drug dealers who introduce drugs in Argentina with the purpose to send their products to Europe or to the United States through less suspicious routes.

During the last years the consumption of drugs in Argentina has increased, particularly cocaine and ecstasy. A Criminal Court’s investigation in 1996, revealed that in the two most important discos of Buenos Aires the consumption of water was increased more than 500% percent. This is attributed to the increase in the consumption of ecstasy.

“The goal of significantly reducing the supply of illegal drugs is attainable, but not without a sustained commitment. The basic principles of supply reduction are straightforward. A

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<sup>56</sup> *Ib.*

<sup>57</sup> This agreement “which has been implemented annually through a series of memoranda of understanding. Since 1988, USG assistance to Argentina destined for anti-drug trafficking efforts has totaled approximately \$2.9 million. Just over \$2.0 million of that amount was for equipment, with the balance used for training programs for Argentine law enforcement personnel. Cooperation between USG and Argentine authorities on counternarcotics efforts continued to be excellent in 1995. The GOA has met the goals and objectives of USG-GOA bilateral narcotics agreements since 1989. The FY 1995 narcotics memorandum of understanding between the U.S. and Argentina for \$125,000 was signed in September 1995. The top USG narcotics priority is to focus the attention of Argentine officials on the transshipment of drugs through Argentina and press for GOA action on a program to determine the scope and scale of the problem. Focusing limited resources as sharply as possible, the USG intends to assist the Argentine Government in reinforcing the front-line agencies that have customs authority and port oversight. This is a long term project that will require a high-level commitment by the GOA” *supra note 1*



five-stage grower-to-user chain links the drug producer in a foreign land with the consumer in the United States. These stages are: cultivation, processing, transit, wholesale distribution, and finally retail sales on the street. The USG's international drug control programs target the first three links of this chain, cultivation, processing, and transit. Severing the chain at the source is the most cost-effective means of cutting the flow; the drugs never enter the system at all. It is analogous to removing a tumor before it metastasizes. For example, current research suggests that roughly every 200 hectares of coca eradicated potentially deprives the system of about a metric ton of finished cocaine. Given current aerial spraying capability, it would not take long to make a major dent in the cocaine supply. Aerially applied, environmentally approved herbicides could eradicate a large portion of the coca crop in a period of months. Moreover, it would take two years to replace this lost production, given the growth cycle of coca.”<sup>58</sup>

One way to help to stop the drug producers in Bolivia, Peru and Colombia is to give alternatives to the by crop substitution. The farmers in these countries usually are poor and the most profitable thing for them to do is to cultivate drugs. If they have any other product that produce more incomes they would change the production. For example instead of marijuana they could cultivate corn. In fact it is economics.

Furthermore, the drug dealers are looking everytime for new ways to increase their business. That makes it more difficult to try to control them.<sup>59</sup>

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<sup>58</sup> *Supra note 55*

<sup>59</sup> For example the Italian newspaper “Il Manifesto” , in its edition of April 23, 1995 explain that the most important drug dealers are speaking with the center of production and distribution of drugs in South America using Internet.” I maggiori trafficanti di droga internazionale starebbero dialogando con i centri di produzione e transito di cocaina in Sudamerica attraverso la reteINTERNET. Questo l allarme diffuso in questi giorni a San Paolo da dodici magistrati brasiliani, appena rientrati da un incontro negli Stati Uniti con specialisti della Dea, l agenzia governativa statunitense per la lotta agli stupefacenti. I boss del grande traffico internazionale, che da Colombia, Bolivia e Peru convogliano la cocaina, specialmente via Brasile, verso mercati del primo mondo, avrebbero trovato nell immensa

Finally, education and prevention are usually two other ways of fighting drugs. However this is not the most used policy. I think that these methods are the most important and must be increased in the next years if we want to do something meaningful.

“Following the recommendations of the Working Party on Narcotics (1972), the government of the day saw no reason to base its policy on the idea that any use of the drugs concerned in itself represented an unacceptable risk to society. Whether or not such a risk existed would depend partly on the circumstances in which the drugs were used and the extent of their use. It was in the light of these factors that the prevention and control of the risks of drug use to society and individuals were made the primary objective of policy. This drugs policy has never been amended. It means that the government's role is to prevent young people in particular from unthinkingly starting to use drugs without knowing enough about them or under the influence of other people, and to make medical and/or social assistance available to drug users with problems, in order to alleviate their plight (harm reduction).”<sup>60</sup> . If education and prevention is able to prevent young people from start to use drugs, half of the battle could be won. <sup>61</sup>.

I think this is the best way. “We have studied the medicinal use of marijuana issue, compiling information from medical experts to present to those we are sworn to protect. It is our

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rete informatica mondiale INTERNET la maniera di dribblare i suoi sofisticati marchingegni di intercettazione telefonica delle squadre narcotici dei vari paesi. Da "Il Manifesto", Domenica 23 Aprile 1995 , Il Narcotraffico fa affari su Internet.

[Http://www.gopher://ccrhp3.criai.it/00/meucci/rassegna/gennyc1](http://www.gopher://ccrhp3.criai.it/00/meucci/rassegna/gennyc1)

<sup>60</sup> *Supra note 34*

<sup>61</sup> The information programs about drugs in Western Europe, apart from Sweden, Norway, Finland and Iceland, very often include the same ideas: The drug is here to stay. Therefore it is unrealistic to go out and try to encourage the youth not to use drugs. If you do, you lose credibility and no one will be interested in what you have to say. The realistic, pragmatic and flexible way, is to inform on how to use drugs without suffering too much harm, a kind of encouragement to temperate drug use. This is tackling reality, and it does not shut its eyes to the positive sides of drug use. Such information helps reduce unnecessary fright for drugs. It is credible, and is important to those who are "just experimenting" with drugs, but do not use it on a regular basis.” *Supra note 46*. This policy sounds good but can we really say that the use of drugs in Europe, specially in the Netherlands, is decreasing?

firm belief that any movement that liberalizes or legalizes substance abuse laws would set us back to the days of the '70s, when we experienced this country's worst drug problem and the subsequent consequences. In the '80s, through the combined and concerted efforts of law enforcement and prevention and treatment professionals, illicit drug use was reduced by 50 percent. Teenagers graduating from the class of 1992 had a 50 percent lesser chance of using drugs than did those who graduated in the class of 1979.”<sup>62</sup>. This give us, at least light of hope to continue thinking that the war on drugs is not lost.

## **7) CONCLUSION**

There is no doubt about drug harmful effects over people. Drugs destroy people and the society in which they live. We have to fight against drugs, and unfortunately so far we have lost a lot of battles. However the war is not over.

The Argentinean and United States Legal Systems provide similar answers for the same problem - rehabilitation for the drug users and prison for drug dealers - but I do not think that this is the correct way, or at least the complete correct way to deal with the problem. The war on drugs will be won with two elements: education and development for the drug producer countries.

One can buy easily drug in every country. Recently I asked to a college student at Penn if it is easy to buy drug on campus and where could I buy them. She saw me as a martian and reply: "Of course, everywhere". The problem is not the legalization or the prohibition of drugs. I think that the main point here is the education. We cannot legalize the drug, or fight against drug dealers/users if we do not educate in the danger of being a drug consumer.

If the money that most countries spend in fighting drug trafficking were given to the "drug producer countries" for crop substitutes, and if this substitute crop produce more profits for them, I am almost sure we will see a great reduction in the production of drugs. With less production, less drug, less money and power to the narco-dealers. In this way I think we could reverse the situation and start to win the war on drugs

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<sup>62</sup> <http://www.geocities.com/CapitolHill/3904/>