The Crime-Terrorism Nexus: How does it really work?

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United Nations Perspective[1]

Paper by Dr. Sandro Calvani
- Representative, United Office on Drugs and Crime in Colombia[2] -

I. United Nations Perspective

Issues related to terrorism and international criminal organizations have been part of the United Nations agenda for over forty years. Indeed, there are twelve universal conventions and protocols developed under the auspices of the United Nations between 1963 and 1999. Ten of them are penal in nature with a common format. Typically the instruments:[3]

1) Define a particular type of terrorist violence as an offence under the convention;
2) Require State parties to penalize that behaviour in their domestic law;
3) Identify certain bases upon which the Parties are required to establish jurisdiction over the defined offence, such as registration, territoriality or nationality;
4) Create an obligation on the State in which a suspect is found to establish jurisdiction over the convention offence for prosecution if the Party does not extradite pursuant to other provisions of the convention. This last element is commonly known as the principle of "no safe haven for terrorists." It has been stressed by the Security Council in Resolution 1373 of 28 September 2001 as an essential anti-terrorist obligation of Member States.

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[1] The views presented in this paper do not necessarily represent those of the United Nations, only those of its author.
[2] Mr Francisco Thoumi and Mr kristian Hölge co-authored this paper. UNODC Colleagues in Vienna, Mr Jean Francois Laborde, Mr Michael de Feo have contributed with some concepts.
[3]The United Nations Office of Drugs and Crime publication Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols (2003) presents a detailed description and analysis of the Conventions, Protocols and the legislation required to implement them.

The 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection is regulatory in nature and contains no penal provisions. The 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft only requires State Parties to establish penal jurisdiction over offences committed on-board its registered aircrafts in flight, without specifying how they should be penalized.

The first offences covered by the conventions were related to civil aviation. These conventions progressed incrementally in the development of instruments in reaction to terrorist acts. Further terrorist developments induced the United Nations to deal with offences based on the status of the victim. Thus, the Internationally Protected Persons Convention was developed in 1973 to protect senior government officials and diplomats and hostages. Further offences related to dangerous materials, vessels and fixed platforms, and the financing of terrorism were the object of more recent conventions.

The anti-terrorism conventions have other core elements. The first one relates to the establishment of jurisdiction over the offence and it aims to ensure that there shall be no safe haven for terrorists. Once jurisdiction is established by a country, it has an obligation to conduct an inquiry, to report findings and to advise of intent to exercise jurisdiction. The conventions also require that a State party where the alleged offender is present shall, if it does not extradite him, without exception, submit the case for prosecution.

Other elements include knowledge and intent. Two crucial issues are the degree of knowledge or intent required for criminalization of an offence and the extent of knowing participation that justifies the imposition of criminal liability. "The 1997 Terrorist Bombings Convention requires the criminalization of unlawful and intentional conduct which 'in any other way contributes to the commission of one or more offences….by a group of persons acting with a common purpose" (United Nations Office on Drugs and Crime, 2003). A related issue is the extent of participation that justifies the imposition of criminal liability.

The conventions also require that parties afford assistance in criminal proceedings. This is an important element because the increased importance of trans-national organized crime requires

close cooperation among various governments. Extradition provisions are a corollary of the need for international assistance and cooperation.

The two most recent instruments, the 1997 International Convention for the Suppression of Terrorist Bombings and the 1999 International Convention for the Suppression of Terrorist Financing do not allow for exceptions to extradition or mutual legal assistance based upon political grounds, and require that State Parties ensure that ,in their domestic law, offences under those conventions ". . . are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".

Finally, the conventions also deal with the rights of the alleged offenders to communicate and to fair treatment.

Terrorism is not easy to define. In 1984 Dr. Alexander Schmid, now a Senior C rime Prevention and Criminal Justice Officer of the UNODC, authored a text in which he identified and analyzed 109 definitions of terrorism. As subsequently noted by Laquer in a 1999 work, no particular definition has yet gained widespread approval.[4] Indeed, different cultures and societies have different views about what constitutes terrorism and the United Nations has not adopted a general definition. The conventions and protocols have instead focussed on specific criminal acts that can be defined individually. These acts target non-combatants or expose them to indiscriminate violence and aim to generate fear and terror among the general population.

Because of these conceptual difficulties, the United Nations conventions and protocols that have been developed in response to terrorist actions aim to protect the civil population and non-combatant government officials from violent acts that would harm them or put them at risk of harm. They reflect the core values of the United Nations that seek to promote universal human rights and peaceful resolutions of international conflicts. United Nations Secretary General Kofi Annan (2001) has put it clearly: "Terrorism strikes at the very hearth of everything the United

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[4] Schmid, Alex P., "Political Terrorism", North-Holland Publishing Company - Amsterdam, Transaction Books, New Brunswick (USA) for the Western Hemisphere, 1984.

Nations stands for. It presents a global threat to democracy, the rule of law, human rights and stability".

The United Nations has been well aware of the crime-terror nexus for a long time and all over the world. In the Middle East, the Bekka Vallaey has been a base of operations for Hizbullah to export narcotics. Following the break-up of the Soviet Union, organized crime groups have become politically and economically influential in some of the Central Asian Republics and drugs are likely to be the a significant source of financing of terrorism in the region. In South Asia, Maoist insurgents in Nepal have turned to drug trafficking for funding. In South America, the Revolutionary Armed Forces of Colombia (FARC) have taken a more in-depth role in drug trafficking by becoming middlemen between the farmers and the cocaine processing laboratories owned by the traffickers[5].

Despite these examples or lessons, the 9/11 attacks changed the world's perspective on peace and security changed. Globalization has meant an increase in the complexity of terrorist acts. Terrorist groups now have access to more sophisticated technologies, more diverse weapons, and can collaborate with allies in many parts of the world. United Nations resolution 1373 of 28 September 2001 noted the close connection between international terrorism, organized crime, arms and drug trafficking, money laundering and the smuggling of deadly materials. Another element in the changing picture of terrorism is the internationalisation of formerly domestic terrorist groups and activities. Globalization has encouraged exchanges of information, weapons and technical assistance among various terrorist groups and has extended the possibilities of funding for local ones. Indeed, it has internationalised several local terrorist groups. For example, the FARC that profit from illegal drug exports, is alleged to have received technical assistance from foreign terrorist groups, and purchased weapons from other international organized criminal organizations.

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[5] The RAND Corporation gives an account of the situation in "Mitigating the Effects of Illicit Drugs on Development" (Potential Roles for the World Bank), 2004.

In order to conduct an in-depth review of the situation, the United Nations resolution 1373 of 2001 established a Counter-Terrorism Committee (CTC). A few months later, acting on the recommendation on the Vienna Symposium on Terrorism and the guidance of the Crime Commission, UNODC established a Global Programme against Terrorism (GPAT) whose mandate has been defined by subsequent General Assembly Resolutions. The GPAT has concentrated its initial activities on promoting the ratification and effective implementation of the universal anti-terrorism instruments through legislation, and training.

The GPAT acknowledges that the development of legislation should be the initial practical step for States to be able to comply with resolution 1373 of 2001 and ratify the global anti-terrorist conventions. Therefore, one of the main activities of the GPAT has been providing assistance to States that are in the process of formulating and implementing anti-terrorist legislation. This pre-ratification assistance includes:

1) Reviewing domestic legislation and providing advice on drafting enabling laws.
2) Facilitating and providing training to national administrations with regard to new legislation.
3) Providing in-depth assistance on the implementation of the new legislation against terrorism with the mentorship program.
4) Maintaining developing an experts roster to supplement specific expertise where required.

The national administration measures envision the creation of mentorship programs for capacity-building, collection of best-practices on international cooperation, promoting counter money-laundering structures and combating the financing of terrorism, international cooperation for common border-control, technical assistance for capacity-building for international criminal justice cooperation, establishment of coordinating agencies, and provision of early warning check-lists.

As terrorism, organized crime, drugs and other types of crime become increasingly intertwined, the United Nations programs on illegal drugs, crime prevention and against money laundering will become increasingly interrelated and with the GPAT. At the same time, the United Nations

continues formulating consultative tools to build consensus and resolutions, and developing a diverse set of activities that respond to the changing nature of terrorist acts and that promote the deeply held United Nations values of diversity and peaceful coexistence.

One such action was the meeting of experts at the Institute for Security Studies in Cape Town, South Africa, from 24 to 27 February 2004. The group of twenty experts included representatives from international and regional organizations and national governments. Based on its findings, in particular with regard to the involvement of terrorist groups in various other forms of crime, the expert group drafted ten guidelines reflecting new and extended parameters for technical assistance to be provided within the framework of international cooperation in criminal matters. It recommended, inter-alia, new methods of delivering technical assistance, such as mentoring for criminal justice officials, so as to enable requesting countries to make better use of existing instruments for mutual legal assistance and extradition. The expert group also pointed out that, where there are links between terrorism and other forms of crime, full use should be made of appropriate tools contained in all relevant international conventions and protocols, including the Palermo Convention on Transnational Organized Crime. The UNODC will present the analysis and a summary of the responses from Member States to an ODC questionnaire pursuant to G.A Resolution 58/136,on the links between terrorism and organized crime, along with the report of the expert group to the 13th session of the Commission on Crime Prevention and Criminal Justice in May 2004.

II. The Drug-Terrorism Nexus in the Andes

A. Drugs and Terrorism in Colombia[6]

1. The 1970s and 1980s

Colombia is the country where illegal drugs and terrorism have been most closely related. The illegal drugs industry started to grow in the late 1960s with the establishment of marijuana production mostly exported to the American market. During the early 1970s this illegal industry

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[6] Thoumi (2003) presents an extensive analysis of this phenomenon.

flourished. Colombians started mainly involved in marijuana growing, but soon became active smugglers and international traffickers. By the late 1970s they had already developed significant trafficking networks and had diversified into cocaine manufacturing and trafficking. Cocaine was produced primarily using coca grown in Bolivia and Peru where it was processed into coca paste or cocaine base. Colombians imported paste or base and refined it into cocaine that was exported mainly to the United States where it was distributed by a complex underground network that included some Colombians.

During the 1970s a new kind of marijuana, which was hydro phonically cultivated with a higher TBC (tetrahidrocannabinol) content, had been developed in the United States and Europe and the international demand for the Colombian product had declined although it remained at low levels. By the early 1980s the Colombian illegal drug industry was concentrated on cocaine that was more profitable and easier to smuggle. By then, coca plantings began to grow in Colombia as a "backward linkage" of the cocaine industry.

The illegal industry's survival requires a social support network of politicians, lawyers, law-enforcers, and other professionals and service providers. Colombia is a country with a diverse and rugged geography in which the central government has never been able to exercise real control over the territory. Not surprisingly, the Colombian national identity has been wanting and many Colombians have strong local loyalties but weak feelings towards the central State. The abundance of ports and isolated jungles allowed the illegal industry to operate based on local networks. Traffickers gained influence over local politicians and authorities in many regions where they could operate successfully.

In the late 1970s some Colombian government officials and the United States government coincided on the need to confront the growing illegal drug industry. This led to the elaboration and signing of an extradition treaty between the two countries, ratified in the early 1980s.[7] By this time some actors in the illegal drugs industry had become extremely rich and felt a need to

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[7] It is commonly believed that this treaty was the result of strong American government pressures on Colombia. Recent work by Guáqueta (2004) clearly shows that important sectors of Colombian society and government coincided with the United States government on the need for extradition as a deterrent against the growing illegal industry.

acquire political influence to protect their illegal activities and assets. They financed political campaigns at all levels, threatened judges, policemen and other law enforcement agents and sought to repeal the extradition treaty. Furthermore, drug trafficking organizations had become quite sophisticated, becoming the large "cartels" concentrated in Medellín and Cali, and had developed strong capabilities to use violence to achieve their goals. Terrorist strategies and acts became weapons of choice of the main "cartels". A large number of judges, policemen, journalists, and other critics of the illegal industry were assassinated. On April 30, 1994, Justice Minister Rodrigo Lara Bonilla was murdered and the government declared a war on narco-terrorism and proceeded with the first extraditions.

For a long time the violence in the Colombian society has been at a level had significantly above average. Indeed, the Colombian institutions have not been able to provide effective peaceful conflict resolution systems and Colombians frequently take matters into their own hands to solve conflicts. The illegal drugs industry acted as a catalyst that resulted in a large increase of homicides throughout the 1980s. By the end of the decade the homicide rate in Colombia was about 90 per 100,000 inhabitants, a rate comparable to the violent deaths experienced by countries at war.

At the end of the 1980s the government convened a Constitutional Assembly to draft a new constitution. To convince Colombians of the convenience of declaring extradition unconstitutional the illegal drugs industry undertook a violent terrorist campaign. Large bomb explosions in crowded places became common and assassinations of politicians and law-enforcers that supported extradition increased. Public opinion was swayed and the 1991 Constitution included a clause declaring extradition unconstitutional.

2. The 1990s and early 2000s

The 1990s saw dramatic changes in the Colombian illegal drugs industry. After President Gaviria took office in August 1990 he offered to negotiate with the main drug traffickers. He offered reduced sentences to traffickers who confessed to crime and turned themselves in. Many of the members of the Medellín "cartel" took this offer. Others like Pablo Escobar negotiated further

and agreed to be confined to a jail whose construction he had funded, where he had control over the appointment of his own jail guards and managers. When the government tried to gain control over the jail, Escobar fled. After over a year of efforts, government forces found and killed him in a gun battle. A similar fate was confronted by Rodríguez-Gacha and other leaders of the Medellín "cartel" that had not turned themselves in.

In the meantime the Cali "cartel", led by the Rodríguez-Orejuela brothers had gained market share. They had followed a low-profile strategy that used less violence. The Cali "cartel" made very large contributions to the 1994 presidential campaign of Ernesto Samper. After these were disclosed, the United States government pressured Samper and actually "decertified" Colombia on two consecutive years, a process meaning that financial aid was reduced. Samper was cornered and responded by going after the Cali "cartel", managing to jail or kill most of its leaders. The demise of the two main "cartels" led to a fragmentation of the trafficking organizations. Police reports indicate that Colombia has today around three-hundred small so-called "cartelitos".

Since 1990 the illegal drugs industry has experienced other important changes. During the 1980s many drug traffickers invested in rural real estate. They purchased large tracks of land, many of which were in areas with guerrilla presence. After those purchases they joined with older landlords and formed self-defence paramilitary groups that have become an important rural force. While the paramilitaries' origin is related to guerrilla abuses, they have become a main source of human rights' violations and have frequently used terrorist tactics. Indeed, after accusing many peasants of complicity with guerrilla groups they massacred them. During the last five years they have been responsible for about 80 percent of all massacres in the Colombian countryside. Paramilitary groups argue that these are only attacks on camouflaged guerrillas, but in reality, they have been used to expel peasants from their lands.

The fragmentation of the trafficking organizations generated incentives for the development of coca plantings in Colombia since small trafficking groups prefer to purchase coca paste and cocaine base in Colombia. Indeed, these small organizations rather pay higher prices in Colombia and set up small cells in the United States and Europe to sell cocaine in smaller quantities at

much higher prices than to send their members to Bolivia and Peru to buy inputs at lower prices. The collapse of the socialist block also created some incentives to grow coca in Colombia because Colombian guerrillas lost the "foreign aid" they were used to receive and sought other sources of funds. A further incentive was created by the collapse of international coffee prices after Vietnam became a large cheap producer. The conjunction of these events led to an explosion in the area of coca plantings in Colombia. In the early 1990s Colombia was the largest cocaine manufacturer in the world and a distant third coca grower. By the late 1990s Colombia had also become the largest coca grower in the world.

The development of the opium-heroin branch was another development of the illegal industry. The fragmentation of the large "cartels" also contributed to this change since smaller groups with limited ability to smuggle large volumes prefer to smuggle a product that yields more profit per kilogram.

The 1990s also saw the Colombian trafficking organizations lose market share in the United States illegal market, particularly in the American West Coast. After the collapse of the large "cartels" Colombian traffickers followed a lower key strategy and many simply sold cocaine to Mexicans who had developed distribution networks in the United States.

By the end of the 1990s the illegal drugs industry in Colombia was a great deal more complex than 10 years earlier. First, there were more kinds of actors. In 1990 there had been some "cartels" that controlled a large part of the industry that was concentrated on cocaine refining and trafficking. By 2000 the trafficking organizations were a lot smaller and their number much larger, coca plantings had become a main feature of the industry. These included a myriad of peasants and a large contingent of coca pickers, many with urban roots. The main violent actors in the Colombian conflict had become main participants in the illegal industry: both guerrilla and paramilitary organizations obtained a large share of their funding from "taxes" on coca and poppy plantings and drug trafficking. Terrorist strategies had become a feature of these organizations.

Colombia is of course well or best known for its illegal drug industry, but this is not the only important illegal economic activity in the country. Once a large illegal industry is established, the development of similar activities becomes likely. Today Colombia is the country where most of the world's reported kidnappings occur, it is the largest producer of counterfeited United States dollars, the first or second Latin American exporter of prostitutes for the European market. Colombia is also a large producer of pirated software and CDs. Some of these activities are included in the common definitions of terrorism while others are not. They are, however, all related as part of an illegal culture in which people do not have internalized limits on their own actions.

During the 2000s illegal drugs have provided guerrilla and paramilitary groups with the foreign exchange necessary to purchase weapons in the international market. Ties have been established between the Colombian violent actors, international organized crime and other terrorist groups.

The Colombian armed conflict has a very long history. FARC was formally established in 1964 after more than fifteen years of violence. The conflict was overt at times, but it simmered during long periods in which the guerrillas controlled areas of the country in which the government was not present. The development of the illegal drugs industry and the availability of drug funds changed that. They made the guerrillas more powerful, induced the formation of paramilitary groups, and led to the involvement of international organized crime, other terrorist organizations and foreign countries. In other words, it internationalized the old Colombian conflict. Today the United States and some European governments have the guerrilla and paramilitary in their lists of terrorist organizations.

The Colombian underground economy has become increasingly more complex. Peasants who cultivate illegal crops realize for the first time in the country's history that they have some political clout and can use illegal crops as a weapon to attract the interest of the government to their problems. The involvement of violent actors in the drug trade has contributed to an increased depoliticization of both guerrillas and paramilitary groups that increasingly look more like common criminal organizations than politically motivated groups. Illegal drugs have strengthened those groups militarily, but have weakened them politically. Their terrorist

capabilities have been magnified by drug monies, but their social support has almost disappeared among most of the urban citizenry while many peasants must express support because of fear.

The long-term effects of the illegal drugs industry as a catalyst for crime, corruption, and violent actors have been very costly to the Colombian economy. During the 1970s most Colombian perceived the illegal drugs industry as beneficial to the economy and society. They witnessed a large influx of wealth and foreign exchange, a real-estate boom in the cities where traffickers concentrated, and an overall increase in income. The negative effects of the illegal industry were seen as or to be small in light of such great benefits. The negative effects of the illegal drugs industry, however, are cumulative and end up exceeding whatever positive economic effects one might estimate. These negative effects are not directly related to the size of the illegal industry's income, but rather to the structure of the industry and the way its income is incorporated through time into the country's economy. In other words, they depend on history and institutions. For example, from the late 1970s through 1998 the illegal drugs industry generated a larger percentage of the Gross National Product in Bolivia and Peru than in Colombia. Besides, in all three countries that share declined significantly from around 1980 and on. Yet, there is a consensus that the negative effects of the industry have been stronger in Colombia than in the other two countries and that by the early 2000s they were more important in Colombia than when the industry was larger. Indeed, currently the illegal industry is funding wealth destruction by guerrilla and paramilitary groups rather than wealth creation. Drugs have proven to be like a mermaid that attracts the gullible and weak and then drowns them.

B. Terrorism in Peru: Shinning Path and Drugs[8]

Terrorism and drugs have also been linked in Peru. In the 1980s and until the late 1990s Peru was the largest coca producer in the world. In the 1980s two guerrilla organizations had sprouted in that country: the Shinning Path (SL) and the Revolutionary Movement Tupac Amaru (MRTA). Both movements were active in the main illegal coca areas, the Upper Huallaga Valley and the Ene Valley, and competed for the peasants' loyalties. The larger SL prevailed in those regions and established a system to regulate the coca market setting minimum prices to protect the

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[8] The interested reader may consult Steinitz (2002) and Thoumi (2003).

peasants. In exchange, it taxed coca, coca paste and cocaine base production and imposed fees to each flight leaving the area with drugs.

The government realized it had two enemies, drugs and guerrillas that had a symbiotic relationship. To fight them successfully it had to make hard choices. In 1984 the government decided to send the army into the coca growing areas to attack the guerrillas, but not the illegal drugs industry. This was done to neutralize peasant support to the subversive groups. While the government succeed in its fight against the guerrillas, coca production exploded in the Upper Huallaga Valley and "the more powerful traffickers, without the strong presence of the SL in its role as intermediary, began to pay lower prices for coca leaf" (Steinitz, 2002). Furthermore, alarmed by the surge in coca trade, the government renewed anti-drug operations. This opened an opportunity for SL to come back to Valley where it joined forces with the traffickers and in March 1989 a combined force of traffickers, SL and peasants overran a police outpost in the Upper Huallaga which led to the resignation of the Interior Minister.

A month later the government appointed a new army commander for the region who repeated the earlier strategy of attacking SL and leaving drugs alone which again produced setbacks for the SL and increases in coca output. After a few months the commander was replaced with "relatively passive commanders and SL quickly regained its strength in the area" (Ibid).

When President Fujimori took office in 1992 he again attacked SL, leaving coca growers more or less alone. However, this time the government launched a major interdiction program against planes that carried cocaine base out of the coca growing areas.

During the 1990s Peru's coca crop fell sharply as coca prices collapsed and Colombia became the main coca producer. The official Peruvian explanation is based on the success of the air interdiction program. However, evidence obtained after the ouster of the Fujimori regime indicates otherwise. The air interdiction program started in 1991, but coca prices in the Upper Huallaga Valley remained stable at relatively high levels until the second semester of 1995 when they fell. This event coincides with the demise of the Cali "cartel" that led to a decline in Colombian purchasers in Peru and the earlier growth in the Colombian coca crop.

Recent reports indicate that coca prices and coca production in Peru have been increasing and that SL might also be coming back. There are also reports of a possible FARC-SL link as the Colombian guerrilla might be providing "technical assistance" to SL. These events appear related to the aggressive aerial-spraying of coca and poppy fields in Colombia. One issue to be resolved is to what extent the Peruvian government succeeded in permanently breaking the SL-drugs link.

III. Conclusion

There is no question that illegal drugs have been an attractive source of funding for Andean terrorist groups. They have used those funds to purchase weapons. Besides, those groups have also provided protection to peasants and illegal actors and have used those relations to develop a political base. Their relationship rests on an economic, social and political base which should be countered more aggressively by investing in sustainable development and poverty reduction. The United Nations does just that through heavy investments in, for instance, alternative development. The last few years have witnessed an increase in the number of actors in the illegal industry and in the complexity of their relationships. The links between international organized crime, common criminal groups, subversive organizations and terrorism is increasingly complex. These include arms and drug traffickers, money launderers, terrorist organizations, peasants, and a myriad of other actors. Because of illegal drugs, the domestic conflicts of Colombia and Peru have become internationalized. Organizations like FARC that for several decades only controlled isolated unpopulated areas in the middle of the jungle, today are in the international limelight. Foreign governments and civil society groups have become involved in the Andean conflicts. The war on terrorism and the fight against illegal drugs have become intertwined and the line that divides them harder to draw. The increased complexity presents new challenges to the Andean governments and to the international community. It is necessary to understand it in order to formulate effective polices and to improve current ones.

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