

Good-bye to Certification

The New Focus of U.S. Drug Policy

Miguel Angel Valverde Loya*

Every year, U.S. certification of the Mexican government's fight against drugs becomes a potential source of tension and distancing in our bilateral relations. This process, however, condemned by the countries certified and questioned by the U.S. public itself, shows signs of winding down. Simultaneously, a series of possibilities have appeared that, while they would not substitute for certification, may well coexist with it in the short and medium term.

A QUESTION OF "INTERMESTIC" POLICY

Certification allows U.S. congresspersons to participate in policy making in the fight against drugs, thus responding to their constituents' concerns about the aims and control of U.S. funding to foreign governments. Drug trafficking is a matter of "intermestic" policy (where the line separating the international from the domestic is blurred): at the same time that it has an "immediate" impact on the local community, most Americans consider it one of the top priorities of foreign policy in the post-Cold War era. The intensity of the congressional debate each

year (and the drafting of motions to decertify) is linked to the specific domestic context, how to increase one's popularity with the voters by taking a "hard" line against drug trafficking or the opportunity of causing problems for a president from a rival political party by

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opposing his anti-drug strategy. The position and interests of the members of the Senate Foreign Relations Committee and the House International Relations Committee are fundamental, as are the support of the leaders of both houses.

The U.S. executive tends to emphasize the more general, strategic view in international matters, stressing global objectives and the national interest. High government officials in Washington are aware of Mexico's importance as a trade partner and its role in the

international economy. However, there are divisions within the executive branch, and important federal officials have considerable independence from the president and strong ties to the congressional committees that supervise their own spheres of activity and backed their nominations. This is why the directors of the Drug Enforcement Agency (DEA) and the Federal Bureau of Investigation (FBI) can openly disagree with the president before Congress. At the same time, General Barry R. McCaffrey, head of the Office of National Drug Control Policy (ONDCP), in charge of coordinating the executive branch's policy and who enjoys President Clinton's trust and support, has had differences over the way anti-drug policy has been implemented with former DEA Director Thomas Constantine, with the heads of other agencies and even with the Department of Defense about budget questions.

To head off a possible conflict with Congress, the White House and the Mexican government organized a series of activities to improve performance and the bilateral coordination of the fight against drugs and convince members of the U.S. Congress that their efforts have been successful. This includes announcing programs with huge budgets, daring, spectacular blows against drug trafficking—that often cause more concern than relief since they show

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just how big the problem is— and reciprocal visits of high-level officials, all on the most convenient dates.

Even when a motion is presented in Congress to decertify, denying the consideration of “national interest,” by no means is it a foregone conclusion that it will get enough votes to pass, particularly if the White House and the embassy of the country involved mount an intense lobbying campaign. Naturally, not all countries have the same priority or weight in U.S. foreign policy. For example, the Colombians, who have been decertified on a couple of occasions in recent years, complain that their only sin may well be not having a common border with the United States.

When the mood in Congress is very hostile, or someone tries to condition certification, the president first attempts to negotiate. If he is unsuccessful, he can veto the proposal, knowing that it will take a two-thirds congressional vote to override his veto. However, this whole process is very wearing and even humiliating for the countries subjected to it because it is a unilateral, extra-territorial measure. The anger that certification causes internationally, and in Latin America in particular, is evident and justified. Both the U.S. Congress and the executive understand this, as well as that the results are very questionable and it puts the good will of the governments involved at risk.

NEW ALTERNATIVES

Given this, both the U.S. government and Congress have opted for changing their strategy for dealing with drug trafficking. On the one hand, they have decided to assign substantial budget increases to the fight against drugs, which

in the fiscal year 2001 will come to U.S.\$18.9 billion. More importantly, they have decided to develop medium-term programs emphasizing prevention of consumption, particularly among U.S. teenagers, through intensive, sweeping media campaigns. The amount of resources and the effort invested in this are considerable and General McCaffrey seems to be sincerely committed to this fight. However, the balance between fighting supply and fighting demand continues to weigh in clearly in favor of the former. Law enforcement agencies receive a substantial part of the increased funding, and this year the president has request-



Mariano Herrán Salvatti, head of Mexico's anti-drug efforts.

ed a special amount, U.S.\$1.6 billion, for an aid program to Colombia, which is confronting an emergency because of increased drug production and the violence linked to drug trafficking. Paradoxically, to a great extent the problems in Colombia are the result of anti-drug policy successes in Peru and Bolivia, achieved thanks to U.S. support. Similarly, with drug transport routes closing down in the Caribbean, the flow through Mexico, and the Pacific Ocean has increased.

Another aspect of U.S. strategy consists of more effectively attacking the

money laundering that goes along with drug trafficking. With White House approval, Senator Carl Levin (D-Michigan) sent Congress a bill for the Money Laundering Abatement Act which, among other things, makes it illegal for U.S. banks to deal in funds from “questionable” sources, presumably the product not only of drug trafficking and other crimes, but also of corruption. Americans consider corruption—particularly when it happens in other countries—a serious problem that hinders the war against drugs, and fighting it has now become a foreign policy priority.

Motivated by frustration at what

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they consider meager results more than by how the certification process disturbs foreign governments, some U.S. congresspersons have also sought alternatives. The International Emergency Economic Powers Act (IEEPA) allows the Department of the Treasury to track and freeze within U.S. territory resources and assets belonging to people who in their judgement represent a threat to the national security of the United States. This legislation includes penalties to be levied on companies of any nationality that do business with the transgressors. Based on this law,

the U.S. government made up a list of Colombian drug traffickers and the companies that they allegedly use to launder their money, and since 1995 have proceeded to apply these penalties as part of a strategy to hit the traffickers “where it hurts them the most,” in their pockets.

According to some congresspersons, the “successes” of this measure in the Colombian case (freezing more than U.S.\$200 million in bank accounts and assets) justified its being applied to more countries. Last year, bills were presented to both the Senate and the House of Representatives to put drug

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traffickers from other countries and the companies they supposedly deal with on the list. This sparked a heated legislative debate and vigorous lobbying by certain foreign corporations, among them several from Mexico, that are “under scrutiny.” The Foreign Narcotics Kingpin Designation Act (FNKDA), that extends the reach of the IEEPA, was finally approved by Congress and signed into law by President Clinton in November of last year. The first lists made up under this law were to be completed in June 2000.

In theory, the FNKDA could help ease the tension caused by the certification process since now, instead of certifying an entire country or its government, the idea is to penalize only groups or specific sectors involved with drug trafficking. On the other hand, this law appeases U.S. congresspersons who want to influence anti-drug trafficking policy. However, since its discussion in Congress, the possibility existed that there could be abuses in its application based on insufficient evidence that could affect the interests of legitimate businesses. The Mexican government also has voiced its concern that the lists



General Barry R. McCaffrey.

could be made up with political criteria without a solid legal basis or be used to impose protectionist measures. The U.S. government, for its part, knows how to place the onus on Congress and this law could well become an effective instrument for pressuring the government of Mexico. In an attempt to avoid further disruption, both congresspersons and high U.S. federal officials have suggested that the Mexican government be informed and consulted before making these lists public.

Another component of U.S. anti-

drug trafficking strategy is the Clinton administration’s support for the Multilateral Evaluation Mechanism (MEM), created within the Inter-American Drug Abuse Control Commission of the Organization of American States (OAS). The MEM establishes a voluntary evaluation procedure for both consumer and producer countries and the creation of programs and funds to improve national law enforcement institutions with the coordination and cooperation of other international agencies. The idea is to emphasize shared responsibility, and results are expected by the year 2001. However, even though the drug abuse commission is a common framework that allows for a more equitable participation of Latin American countries, U.S. influence on the OAS and the fact that U.S. agencies will probably be relied upon for support in operational, information-gathering and intelligence matters will allow the United States to continue to exert enormous influence on the hemisphere’s anti-drug trafficking policy. This jibes with the general U.S. foreign policy strategy of acting in multilateral bodies with the greatest possible degree of consensus from the international community.

Latin American diplomats and U.S. officials say that, optimistically, the MEM will lessen the importance of the unilateral certification process and could even come to take its place. However, U.S. congresspersons are reluctant to see their participation in foreign policy restricted and argue that this mechanism lacks effective punitive measures for those who refuse to cooperate. Legislation on certification applies to countries outside Latin America and only Congress can revoke it. On the other hand, the FNKDA offers Congress an alternative for ensuring its participation in

the periodic evaluation of the fight against drug trafficking in other countries by giving it the right to impose sanctions. At the same time, the legislation makes it possible to at least partially contain the accusations of affected countries that certification is unilateral, thus lowering diplomatic tensions. But, for Congress to consider the elimination of certification, it must first be satisfied with the results of the combination of the multilateral evaluation and the FNKDA.

DRUG TRAFFICKING
AND MEXICAN-U.S. RELATIONS

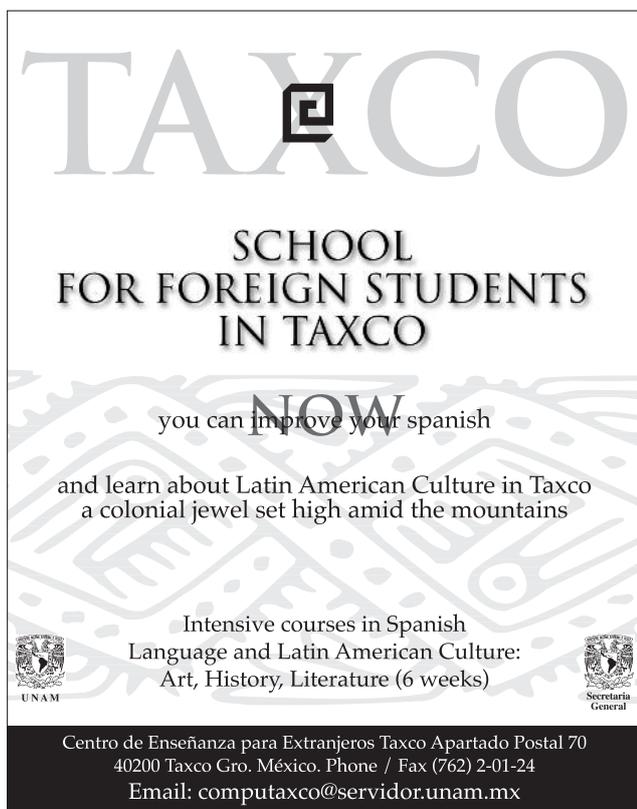
To analyze the fight against drug trafficking from the point of view of Mexican-U.S. bilateral relations, it is important to be grounded in reality and to recognize

the enormous asymmetry of power. It is hard to deny the evidence of corruption in our country and reproaching the Americans for also suffering from it is neither justification nor consolation for Mexicans. The violence linked to drug trafficking is an unhappy reality, particularly in places like Ciudad Juárez, Tijuana and Sinaloa. There is efficient and well intentioned collaboration between high government circles in Mexico and Washington, but, beyond that, there is an understandable mistrust due to both the difficulties in keeping drug traffickers from penetrating Mexican organizations and the abuses committed by U.S. agencies.

The defense of the principles of sovereignty is always important, but so is implementing a pragmatic foreign policy that makes it possible to defend

democratic values and take maximum advantage of the benefits of international cooperation. The troublesome certification process should be eliminated, but it is also important to understand the logic behind the U.S. strategy. U.S. domestic legislation should be understood in the U.S. domestic framework, seeking allies and getting backing from the legal system.

It is in Mexico's best interest to encourage both bilateral and multilateral programs aimed at curbing consumption, training and support for law enforcement agents, as well as making it possible to obtain equipment and technology. International bodies, despite their limitations, can be useful instruments, not for confrontation, but to curtail international pressure and channel it to our advantage. **MM**



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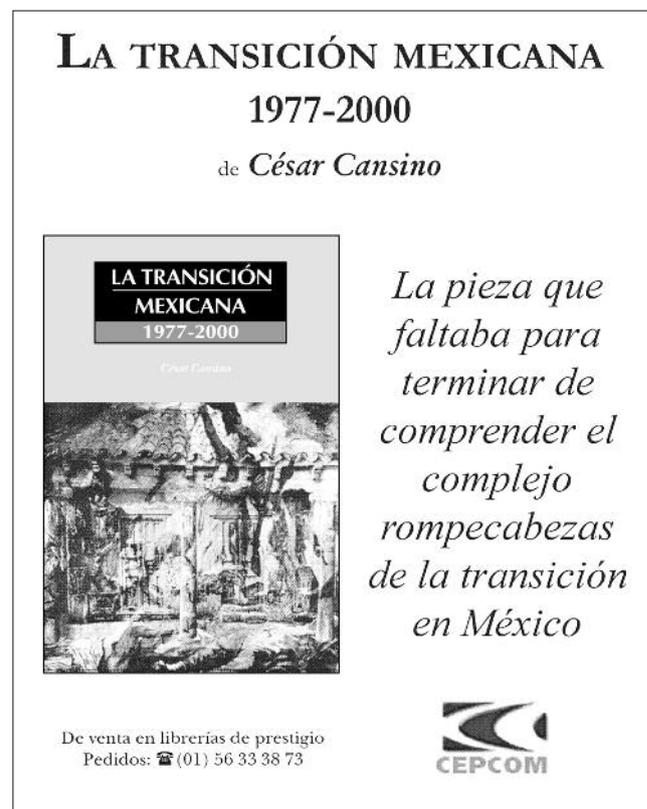
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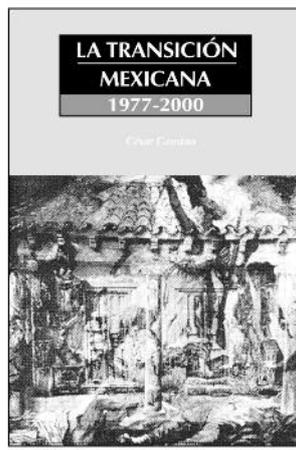
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