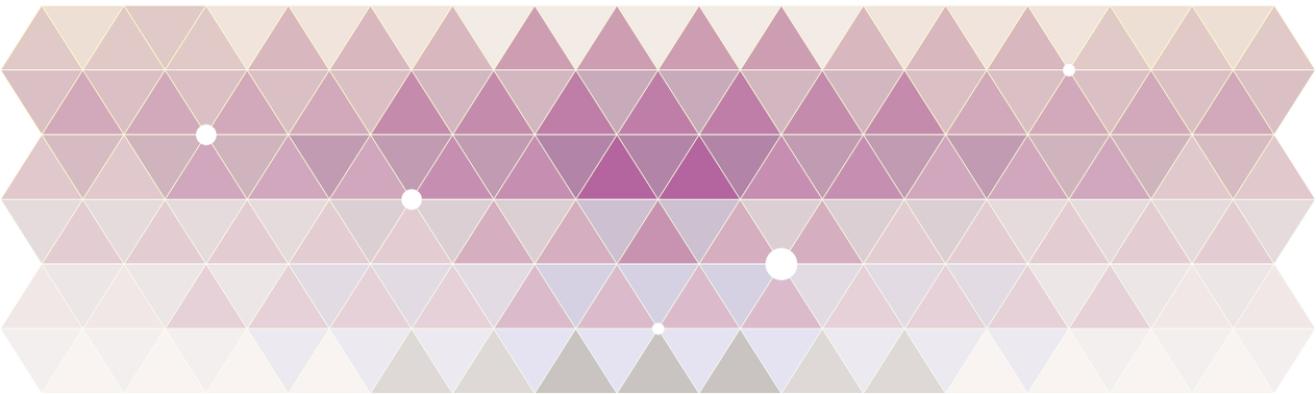


# GUIDELINES FOR DEBATE

DRUG JARGON: FIVE TERMS THAT MUST BE DEFINED





BY LISA SÁNCHEZ

This edition of *Guidelines for Debate* intends to define the most important terms of the international drug policy debate in order to improve their understanding and promote their proper use. Rather than serving as a glossary, this text aims to introduce non-expert audiences to the complex and specialised language of drugs, by encouraging the understanding of the subtle differences between concepts and the political implications of using one over the other.

**The aim of the series *GUIDELINES FOR DEBATE* is to influence the formulation, implementation and evaluation of programs and policies through guidelines that foster the debate of ideas from a progressive approach. The collection features a cool exchange of data and theoretical and methodological tools for analysis and action aimed at emerging political generations.**



# OFF WE GO

In order to provide the reader with a better understanding of the selected terms, we have created a list of definitions that intend to shatter prejudice and avoid the interchangeable use of terms that are not synonyms. In addition, this guide pretends to help the reader to identify him/herself within the wide spectrum of positions that are discussed and defended in the public sphere –from supporters of prohibition to advocates of liberalisation, through to those who propose, in turn, the legal regulation of drugs.

As in most -serious- debates regarding public policy, the debate on drugs is a diverse, complex, and intellectual one. It is not because “us” reformers advocate for the “legalization of marihuana” or the “decriminalization of cocaine use” that we cease to be professionals, dedicated to the study of public policies, programmes, and governmental feats. In the same sense, and despite the growing “normalisation” of a discussion that was once taboo, the debate on drugs is neither unscientific, nor one of personal perceptions or singular and monolithic approaches. On the contrary, the drug policy debate is one in which a series of opinions and nuances are expressed and, although, sometimes complementary, such approaches will often remain different.

But before formally broaching the subject, and with no intention to carry out an exhaustive revision of the genesis of the discussion or the different views that have existed throughout history, it is important to first specify that drug policy

as it stands now-a-days is just that: a political option that, ever since the end of the 19th Century, became an important component of the international agenda with the objective of controlling a range of economic and geopolitical interests of much wider capacities than drugs themselves.

It is also worth to specify that, from the second half of the 20th Century and once the contemporary international bureaucracy consolidated, the global discussion on drugs moved its way up to the United Nations as a newly transformed field of legitimate State action. The justification being “to tend to governments’ worries to protect public health as consumption of narcotics and its associated risks continued to increase”. Since 1961, this drug discussion also became a matter of public international law by inspiring the creation of a series of international treaties of which the Single Convention on Narcotic Drugs is the cornerstone.

After five decades of implementation, the international drug control regime not only managed to create its own institutional scaffolding –UNODC, CND, INCB¹– but also its own ideological control mechanisms. Through the consolidation of such mechanisms, the initial concern of preserving public health soon became a moral crusade that declared war on the production, trafficking, sale, and consumption of now illicit drugs.

It is precisely within this historical context of growing and unsustainable repression that different opinions, formerly considered marginal, began taking part in the debate and some decision making processes oriented to oppose the so-called ‘War on Drugs’. Currently professionalized, the drug policy discussion has now a multiplicity of actors. These actors, beyond their personal positions regarding drug use, criticise or defend the relevance of maintaining an international control system that, far from serving its own interests, actively contributes to the strengthening of black markets and criminal activities which, in turn, generate more harm than drugs themselves.

Less asymmetric than at its origins, when all opposition was immediately disqualified and accused of being “pro-drugs”, this debate is one in which the specific positions are expressed through strong arguments that evoke the necessary evidence for its defence. International experts, such as Steve Rolles from Transform Drug Policy Foundation, have studied this discussion for over 15 years and have concluded that the current debate can be illustrated as a continuum in which the extremes are represented by the defenders of *prohibition* and the promoters of *liberalisation*. The middle ground being represented by those in favour of legal regulation.

# ACTIVITY 1

For this activity you will need **A LARGE FLIPCHART SHEET OR WHITEBOARD** where you can write and keep the results of each exercise.

With a group of **5 TO 20 PEOPLE** start a brainstorming session.

Individually, each participant will express what the following terms mean to them:

**PROHIBITION, LEGALISATION, REGULATION, LIBERALISATION, REGULARISATION, DEPENALISATION and DECRIMINALISATION.**

**TAKE NOTE** of each word or short sentence that is mentioned and avoid looking for definitions in dictionaries or online. When you're done, **GO OVER** every term that was associated with each concept and discuss the differences and similarities that you come across. Take all the time you need, until all ideas have been exhausted. **20 OR SO MINUTES SHOULD BE ENOUGH.** With this exercise, you will be able to establish **A COMMON VIEW** on what these concepts mean to each person in the group.

**DISCUSS** what seem to be most relevant points in the debate and the differences that must be dealt with.

# ON WE GO

So far we have tried to understand what the international drug policy debate is and where it comes from. We have also seen how this debate has gone from the margins to the centre of the international political agenda, mainly due to the perceived failure of the War on Drugs that has produced more negative consequences than positive outcomes at a global scale. Moreover, we have used almost all of the key terms of the debate without even questioning why they have been used.

Therefore, before delving into the usefulness of the discussion and the possible outcomes of adopting a certain policy, whether advocated by one group or another, whether they call themselves *reformers*, *prohibitionists* or *libertarians*, the following must be defined: what do we really discuss when debating drug policy?

- **PROHIBITION**

This term is often used to refer to the international drug control regime as defined by the UN conventions and treaties of 1961, 1971 and 1988. As a policy option, this regime is responsible for establishing criminal sanctions to the production, distribution, possession and use of certain psychoactive substances, although these penalties vary widely between countries. In general terms, the main objective of prohibition is to reduce drug availability and use to ultimately create drug-free societies. As a policy

option, it is important to stress that prohibition overrides all possibility of experimentation as it leaves 100% of drug markets in the hands of criminal organisations.

### PROHIBITION: POLICY OR TOOL?

It is important to differentiate here two different meanings of the same term that can often cause confusion: prohibition as a policy option and prohibition as a “tool”. As described here so far, the word prohibition has only been used to refer to a system which, properly named, should be understood as “The International Drug Control Regime”. Nevertheless, it is necessary to note that the term prohibition, in its true definition, refers to the possibility of any activity or product to be banned by the law.

Another use of the term prohibition can be identified when referring to a policy once adopted by the United States and other countries during the 1920’s and 1930’s in reference to the sale of alcohol (or better said the prohibition to sell alcohol). More contemporarily, the term is also used to refer to religious bans, for example of the consumption of alcohol in Islamic countries.

A third nuance is to be considered when, outside of the word’s use to express a policy notion with which we may or may not agree with, prohibition also exists as one of the many “tools” that can be used under legal regulation. A clear example of prohibition as a regulatory tool can be observed in the legal regimes for producing, distributing, selling and consuming alcohol and tobacco where certain activities like its sale to minors or its sale without a license remain prohibited.<sup>2</sup>

- **LEGALISATION**

Contrary to what one might think, the term legalisation only refers to the process through which the status of any given activity goes from being banned to being permitted. In the drug policy debate this term is often used to refer to the legal production,

distribution, sale and possession of previously controlled substances. Nonetheless, it is important to emphasise that the word “legalisation” only describes a process, not a policy option. Therefore, the legalisation of one or all currently controlled drugs can actually derive in the implementation of two different policies: legal regulation or free markets.<sup>3</sup>

- **REGULATION**

Refers to the legal framework under which all aspects of a given market can be controlled: products, vendors, outlets, marketing, buyers and users of a particular drug. The nature and intensity of such regulation can vary significantly depending on the type of substance, the institutional characteristics of the country or area where it’s implemented and the objectives that are to be reached. In this sense, legal regulation includes both the less strict models, as in the case of less-risky products, and the more strict models, developed to control more risky products.

Regulation, as policy option, is often confused with legalisation. Nevertheless, it is an objective of this Guideline for Debate to clarify that regulation is far more than simply legalising a product or an activity. Legal regulation of drug markets involves the establishment of strict controls over drug availability, which include:

1. Products (doses, preparation, price, packaging),
2. Retailers (licences, exceptions and requirements for training, marketing, and promotion),
3. Outlets (location, size, appearance),
4. Access (age checks, licences for buyers, membership clubs), and
5. Areas and circumstances in which the drugs may be used.<sup>4</sup>

- **LIBERALISATION**

Refers to a free-market model in which a previously controlled drug becomes a commodity. Often, liberalisation means total absence of State regulation over what's now considered to be economic activities. The term liberalisation normally refers to a type of legalization that can be implemented in libertarian, free-market oriented societies like the American. As mentioned earlier, liberalization, or "free-market" alternatives, may be policy options to be adopted after legalization.

It is important to stress here that those who advocate this approach argue that drugs, like any commodity, should be subject exclusively to the laws of supply and demand. In the same way, they support the existence of a "right" to consume, as long as it does not interfere with the welfare and rights of others. Critics of this approach argue that, since all drug use is potentially risky, it would be a mistake to leave the market with the full responsibility to regulate availability and access to psychoactive substances.

- **DEPENALISATION**

*Strictu Sensu* depenalisation refers to what we commonly understand as decriminalization, which is the non-imposition of sanctions and/or of criminal records when someone is caught in possession of illegal drugs for personal use. Depenalisation might be *de jure* or *de facto*, that is, being recognized by the law or rather a common response to an unwritten but commonly adopted practice.

According to what has been discussed, *de jure depenalisation* (or *de jure decriminalisation*) implies that personal use falls into one of the following conditions: 1) it is not considered an offense or 2) it is considered an administrative offense and punishable as such. On the other hand, *de facto depenalisation* (or *de facto decriminalisation*), as traditionally applied in many

jurisdictions, implies that the possession of drugs for personal use, while remaining registered in the catalogue of criminal offenses: 1) must not be pursued or 2) is sanctioned with alternative penalties that do not include the imprisonment of the person being prosecuted.<sup>5</sup>

## **OFTEN MISUSED TERMS**

### **DECRIMINALISATION**

From a strictly criminological point of view, decriminalization refers to the elimination of a particular activity or behaviour from the catalogue of criminal offenses that are punishable under the penal law. This means that the act or omission in question ceases to be relevant to the law and therefore may be equated with the “legalization” of an act.

In theory, decriminalization should occur when the social reaction of the majority to the stated fact is no longer repudiated and rather turns into tolerance, indifference or acceptance. However, in reality this only happens when the system itself decides that it is no longer necessary to protect any legal interest through punishment.

It is important to state here that in non-scholarly and common discussions this term tends to be confused with depenalisation, which, as we saw in the previous section, refers to the removal of such criminal punishments without this meaning that the activity in question ceases to be a crime or an administrative offense.

### **REGULARISATION**

This is a term that, although commonly used by the press and some “opinion leaders”, does not actually refer to any policy option. Strictly speaking, the word regularization refers to the normalization of something or the return to “normal”

of any situation, activity or context that had strayed. Its use has no relevance to the drug policy debate and therefore should be avoided.

## CONCLUSIONS

Regardless of individual position one choose to adopt within the drug policy debate, it is important that those who do participate in it do so in an informed, clear, and objective way. As we have seen throughout these pages language is everything and, in many cases, the incorrect use of a given term can lead to confusion or even cause problems at the institutional, political or ideological level. It is clearly not the same to advocate for the depenalisation of personal use than to advocate in favour of cocaine liberalization!

It is precisely in this regard that we must understand that taking part in this discussion, and adopting a certain position within the spectrum, involves a series of political, social, economic and international consequences which must be carefully analysed and evaluated in the light of the best available scientific evidence.

Today more than ever before, knowing and understanding the terms of the discussion is necessary, relevant and pertinent for all decision-makers. After all, our country (Mexico) is the best example of a nation where prohibition was implemented in full force, and failed.

The search for alternative policies is thus a necessity and an obligation to our governments, political parties, civil society representatives and general public. Achieving it, though, will require a meticulous understanding of the topic as only accurate information will allow us to escape from false premises and moral debates.

1. UNODC - United Nations Office on Drugs and Crime. CND - Commission on Narcotic Drugs. INCB - International Narcotics Control Board.
2. Rolles, Stephen. After the War on Drugs: Blueprint for Regulation. Transform Drug Policy Foundation, Mexico 2012, p. 44-47.
3. Scenario Team called in by the OAS under the Cartagena Mandate. Scenarios for the drug problem in the Americas 2013-2015. Organisation of American States, Washington D.C., 2013, p. 13.
4. Rolles, Stephen. *ibid*, p. 44-77
5. IDPC. Depenalising and Decriminalising Drug Possession for Personal Use. Document elaborated on the occasion of the 56 Commission on Narcotic Drugs, Vienna, Austria, March 2013.

The views expressed in the text, as well as the analyses and interpretations contained therein, have not been subjected to editorial review and are the sole responsibility of their authors. They do not necessarily reflect the views and stance of Espolea A.C.

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