

6. ANALYSIS OF POLICY TO COMBAT ENVIRONMENTAL DEGRADATION, COCA, NARCOTERRORISM, AND POVERTY

It should be recognized that legal reform is based on policy decisions, which in turn are based on perceptions of the problem. In the UHV, researchers have gathered little empirical data because of violence in the region. Thus, the problem has usually been defined in a theoretical way rather than with recourse to data, which themselves, when available, are often perceived to be inaccurate.¹⁴⁶

Based on the information that is available, policymakers are debating several options: legalization, repression, purchasing all production with eradication, the ILD titling theory, and a multifaceted approach. Each is discussed and evaluated below.

LEGALIZATION OF PRODUCTION

Several authors have suggested legalization of coca and cocaine.¹⁴⁷ This approach is not now a serious consideration in US policy.

REPRESSION

The Anti-Drug Abuse Act of 1986 promotes an increased military involvement domestically and internationally to enforce US antidrug legislation.¹⁴⁸ Probably the most celebrated case involving military operations in the drug war was the case of Manuel Noriega. The US Drug Enforcement Administration (DEA) arrested Noriega on drug-trafficking indictments by the US invasion of Panama.

There is a perception of corruption among the Peruvian military, police, and judiciary.¹⁴⁹ A US Congressional staff report concluded that the corrupt judicial and penal systems in Peru made prosecuting and sentencing traffickers difficult.¹⁵⁰ "All impartial observers agree that the Peruvian Investigative Police (PIP), who are responsible for investigating all narcotics cases, is weakened by widespread corruption. This obviously limits the effectiveness of narcotics control actions in Peru."¹⁵¹

One study found that "the Peruvian military has been sent into . . . the Upper Huallaga, to control guerrilla activity. This has had the ironic effect of deterring narcotics control, for several reasons. First, while the military is occupying the area, the narcotics police (UMOPAR) has been confined to its barracks, with only occasional exceptions. Second, the military does not view narcotics control as part of its mandate. Third, there are disturb-

ing—though unconfirmed—reports that the military has actually collaborated with drug traffickers to identify guerrilla strongholds."¹⁵²

According to another author, the military's unofficial alliance with narcotraffickers was effective at removing *Sendero*, but at the cost of human rights. As human rights abuses mounted, public opinion forced the military to back off from its pursuit of *Sendero Luminoso*.¹⁵³

As the military backed off, this left the valley to the narcotraffickers. The traffickers benefited from the inaction of the military and the absence of the *Sendero* insurgents. Coca production began in full pace, leading to accelerated deforestation rates.¹⁵⁴ With increased production and no political competition, narcotraffickers then began a reign of terror to lower the prices of coca leaves, increasing the profit margins for the Colombian cartels. This initiative backfired, however, as residents sought protection from the narcotraffickers, leading to a return to favor of *Sendero Luminoso* as the people's protector. The insurgency was back.¹⁵⁵

Neither the military nor the police are willing to enter most of the UHV.¹⁵⁶ Yet, narcotraffickers are not hard to locate. They broadcast their coming and going on short-wave radios to which officials in Lima can listen.¹⁵⁷ The narcotraffickers' operations are not very clandestine. And Peru utilizes no system of radar to intercept their aircraft.

The military have been criticized for not bombing airstrips that are clearly visible. AID has also been censured for rebuilding roads that could be used by narcotraffickers as landing strips. Yet, the pilots are good enough in this region to land on short dirt strips even with pot holes.¹⁵⁸ *Sendero* and the military have tried unsuccessfully to discourage narcotraffickers with road destruction.¹⁵⁹ Annual rains which destroy roads and prevent automobile traffic have not daunted drug trafficking either. Thus, it is impossible to stop air flights into the area simply by destroying airstrips. Indeed, destruction of airports and roads, while not deterring coca traffickers, will discourage legitimate business and hurt the poor who need the transportation infrastructure. Perhaps lack of coordination between Peruvian police and military can be understood in part in the United States by examining the analogous situation of US armed forces. Federal law often imposes criminal sanctions against the use of the military for civilian law enforcement.¹⁶⁰

Constitutional safeguards in Peru have not worked effectively to guard against human rights abuses as the military and police fight the war against drugs and insurgency. This has been due mainly to "institutional failures and the abdication of civilian political, administrative, and juridical authority over the military and its counterinsurgency campaign."¹⁶¹ As a result, the counterinsurgency effort has weakened the constitutional order of Peru. This has created a state within a state where the military exercises de facto control, protected from civilian institutions or political regulation.¹⁶² We may wonder whether it is possible to fight *Sendero Luminoso* and the narcotraffickers in a military fashion while respecting human rights. Certainly this issue has been raised in the Peruvian debate.¹⁶³

Congressional spending on repression as a weapon in the drug war has been great. Section 4004 of the Anti-Drug Abuse Act of 1986 allocated \$277.5 million for drug interdiction equipment and aircraft alone for the Department of Defense. The Defense Department has received other funds as well for other aspects of the drug war. And Customs and the Justice Department received funds for aircraft of their own. In contrast, all demand reduction activities received \$214 million under Section 4002 of the Act. From 1987 to 1989, military assistance to Colombia jumped from nearly zero to close to half a billion dollars.¹⁶⁴

Assuming the crop could be eliminated in the UHV, this alone would probably not solve the problem of coca production. Growers could move to more remote areas, further damaging the environment.¹⁶⁵ When counternarcotics efforts do stifle a drug trafficker, another trafficker takes the former's place due to the high profitability of the business. Thus, repression will have limited successes in its implementation, but it, by itself, will not resolve the issue.

PURCHASING ALL PRODUCTION, WITH ERADICATION

The Front for the Defense of Coca Eradication for the Upper Huallaga, on 23 January 1991, presented a proposal to the Agency for International Development.¹⁶⁶ That proposal called for the United States and other coca-consuming countries to purchase all coca crops—guarantee a market for coca—and then destroy the coca purchased. As the coca bushes aged, they would not be replaced. This time lag would presumably allow local producers to use coca revenue to finance the changeover to legal crops, and no further coca would be planted. For each hectare eradicated, the grower would receive \$6,000. The proposal estimated that the cost of the entire project would be \$1.25 billion.

The proposal, in essence, is one of progressive eradication, with subsidies. It is not dissimilar to the system of repression, except that participation is said to be economically desired rather than imposed. This same approach was tried earlier in the 1980s with ENACO (*Empresa Nacional de Coca*, the National Coca Corporation), with unsuccessful results.¹⁶⁷ Under the ENACO scheme, coca production was regulated and registered. All production was supposed to be sold to the corporation, and no new plants were to be planted. As the old plants died, they would be replaced by alternative crops. Yet, during ENACO experiment, coca production continued to rise.

Peru was the first country to conduct a drug eradication effort (at least on a limited scale) in coordination with a development assistance program.¹⁶⁸ And the government has acted to make coca cultivation illegal.¹⁶⁹ In 1985, a Congressional report found:

Although the Peruvian eradication agency, CORAH, has eradicated some 3,000 hectares of coca this year, there are no records to indicate exactly where these fields were located or to whom they belonged, nor is there any assurance that these fields have not been replanted The eradication effort has become precarious since the

military entered the Huallaga and confined UMOPAR to its barracks. Previously, UMOPAR units accompanied CORAH workers on their eradication trips: now, CORAH personnel must face angry coca-growers, drug traffickers and guerrillas unarmed and with no such protection.¹⁷⁰

In 1989, the DEA experimented with fumigating certain limited areas with "spike" (Tebuthiron) to eradicate coca plants. Although the action was an experiment, it led to distrust of the United States in the UHV, especially among coca growers and the narco-traffickers. This fear translated into violence. Ten policemen and two civilians were killed in retaliation in March 1989.¹⁷¹ All antinarco activities then had to be suspended until the next September due to lack of security.¹⁷²

The eradication effort has also been blamed for accelerating the rate of deforestation. Attempts at elimination in the UHV began near Tingo María. This forced coca growers northward into new lands. The dynamic was repeated as the eradication program followed the coca growers north through the valley, and the cultivators have also started to invade national forest reserves.¹⁷³

Political reality also limits the effectiveness of eradication. With *Sendero Luminoso*, a group which openly defends coca growers, such efforts in the region will continue to be problematic.

Interestingly, a de facto eradication of coca is under way. A fungus, resulting from overuse and poor management of fertilizer and pesticides, has been attacking the coca bushes and killing them.¹⁷⁴ Some *campesinos* erroneously blame the Agency for International Development and the Drug Enforcement Agency for inventing the fungus, drawing on experience with "spike."¹⁷⁵

THE ILD TITLING THEORY

The ILD theory advocates property rights as the key to economic enfranchisement of the poor.¹⁷⁶ To achieve secure property rights, the ILD has created a *hipoteca popular* (popular mortgage) which includes a (1) property and possession registry, (2) right of possession and use, and (3) credit insurance.¹⁷⁷ Ambassador James H. Michel has said, "The ILD's greatest contribution has been and continues to be thinking about and finding practical ways to give effect to the role of the individual, to the entrepreneurial energy within the informal sector of the economy and to citizen participation in rulemaking and economic development."¹⁷⁸ In general, the ILD ideas are very well received.¹⁷⁹

Hernando de Soto, president of the ILD, wishes to expand the institute's rural titling program to the UHV to stop coca production.¹⁸⁰ He advocates three principles: (1) we should differentiate between common growers of coca and the narco-traffickers;¹⁸¹ (2) the Peruvian people will support efforts to stop the funding of terrorism with drug money and the

corruption of the Peruvian state;¹⁸² and (3) institutional reforms are needed in the coca-growing regions, including secure property rights.¹⁸³

More specifically, the ILD, and President Fujimori have recommended the following for the UHV:

1. **Create secure property rights** by giving farmers title to their land through the ILD-developed Rural Property Registry which can be easily extended to the coca growing areas. Fact: Only 10% of rural Peru is currently titled.
2. **Deregulate the markets for other crops** so that Peruvian farmers can produce and sell alternative crops, competitively. Fact: It takes 45 days to go through the 36 administrative steps at 7 agencies to export an alternative crop.
3. **Establish democratic institutions** to foster citizen participation in and feedback to the rulemaking process, thus allowing the law to reflect, rather than restrict, the will of the people.¹⁸⁴

Titling land, the ILD notes, will lead to decreased popularity of *Sendero Luminoso*. The ILD points out that in prior titling projects in Peru, the new landholders became conservative in their political views after becoming property owners; insurgents lost local support. "*Sendero* is fragile," the ILD asserts.¹⁸⁵ Yet, the immediate prospects for implementation of an ILD plan are bleak. The ILD will not begin any program in the UHV until the region is clear of *Sendero Luminoso*.¹⁸⁶ Thus, it is not constructive to list titling as a means to deter insurgency if the ILD will not start its plan until *Sendero* leaves.

Even if the ILD went into the UHV with its titling efforts, it is doubtful whether they would have any effect on *Sendero Luminoso*. The population in the UHV already holds property. Landowners have between 10 and 30 hectares a piece, making them an affluent and conservative group by national standards. As a result, they do not particularly support *Sendero Luminoso* in the first place: *Sendero* is there not out of popular support, but to tax coca production to finance its operations in other areas of Peru where it does have a large base of support.¹⁸⁷ In the ILD urban-titling case, "titles" were given to previously landless persons who supported the urban guerrilla group MRTA, most popular among the poor. The urban case and the UHV are incomparable.

The ILD notes that as *campesinos* get titles, they will have access to credit. This will enable them to finance crop substitutions.¹⁸⁸ This view ignores four important facts about the UHV: (1) Titles are not needed to access the Agrarian Reform Bank, only certificates of possession, which nearly all *campesinos* already have. (2) The Agrarian Reform Bank is nearly bankrupt. It has no money to lend even to those with title. With insecurity in the region, it is doubtful that any private capital will flow in either. (3) Coca production provides much easier financing than traditional credit. (4) Lack of investment is not due to lack of credit—it is driven by lack of physical security and absence of economically viable alternatives to coca.

The ILD maintains that titling does not functionally exist in the UHV. Aerial mapping will be necessary along with cadastres, it contends. The ILD suggests creating a "stream-lined" registry system which will involve far fewer bureaucratic steps and allow people to get title to land they currently possess.¹⁸⁹ Exact, fully detailed maps are not needed, according to the ILD. Rather, the registration process could be "informalized" so that only "essential" data and steps are required.¹⁹⁰

Contrary to ILD's supposition, titling, aerial photography, and mapping do exist in the UHV and are relatively up-to-date and working well. It may be true that as little as 10 percent of the rural land in Peru is titled. But **in the UHV, nearly all agricultural land is titled already.** An additional, less exact system would create legal uncertainty over which system was the correct one. It also would provide less information to the users.

The ILD "registry" in urban areas is a parallel registry—it is not the official government record book.¹⁹¹ The parallel registry is combined with a form of title insurance for the title recipient¹⁹² that often is more than adequate for the needs of an urban dweller. The ILD does not work with existing registries, which it views as cumbersome, bureaucratic, and expensive. Instead, it makes a "fresh" start with a new record book, which is not a replacement for the old, but a second, alternative registry. In the UHV, this would be a duplication of effort.

The ILD suggests that restrictions to land rights be eliminated, allowing the owner to sell and partition the land.¹⁹³ The reality of the UHV is that landowners already have at their disposal a legal system which allows for the transfer of land. With respect to the ability to partition land, the 10-hectare limitation was imposed to prevent *minifundios* (excessively small farms). Smaller parcels are viable only for coca production. Thus, partition of lands smaller than 10 hectares may encourage coca cultivation.

Even assuming that elimination of restrictions to land under the ILD hypothesis would stimulate the land market, is this desirable? The more active the land market, the more likely resources will be allocated to their most economically efficient use.¹⁹⁴ In the UHV, this means coca production. The ILD approach could be construed as one that promotes use of land for growing coca.

The ILD would not give title to *campesinos* holding land in fragile areas. Instead, it would give them title to alternative lands which are appropriate for the farming of legal crops.¹⁹⁵ This assumes that there is unclaimed, "free" land available for distribution. Unfortunately, this is not so. Data affirm that there is almost no available land in the UHV.¹⁹⁶ New land could presumably be created by parceling existing plots. But this would lead to diseconomies of scale and ever-decreasing sizes of lots, or *minifundios*.

Relocation of coca growers to valley agricultural lands also assumes that the coca growers do not already have land in the valley. This is not the case. Some coca growers may have abandoned land in the fertile valleys. They climb the hillsides in search of land

better suited to coca. If denied access to the hillside land, such growers could return to their original land and would not need additional compensation.

Relocation schemes have other undesirable effects. For example, originally some farmers in the UHV refused to produce coca. Because of insecurity in the region, lack of educational opportunities for their children, or possibly deficiency of infrastructure, the farmers moved their families to nearby towns. Consequently, they could not protect their lands. Instead, they left them fallow or simply planted a crop and returned periodically for maintenance and eventual harvest.¹⁹⁷

In the absence of some of these noncoca-producing farmers, *Sendero* has sent in an *afiliado* (associate) to occupy the land, steal the crops, and plant coca. Should we now "normalize" the tenancy, giving the land to the current occupant? This seems to violate everyone's sense of justice and would be acceptable only to *Sendero Luminoso*.

The ILD's mention of debureaucratization is well taken in Peru, where overregulation has inhibited many businesses. Yet, by noting the legal steps required to export, the ILD creates the illusion that the UHV would be capable of exporting were it not for the bureaucratic titling and regulatory processes. Yet, even if all *campesinos* had the alternative ILD title today and all export restrictions were lifted, the producers would not be able to export. They lack infrastructure, security, credit, and technology. And exporting makes little business sense when the domestic market needs servicing. Thus, the ILD-Fujimori observation on market and export overregulation would appear to have little relevance to the reality of the region.

Robert Litan, Senior Fellow at the Brookings Institution, has been critical of the ILD proposal's ability to deter coca production:

[L]et us suppose that we provide property rights and the program takes off. What do economics tell you about what will happen? All things being equal, as some people leave coca, the supply of coca will diminish and the price of coca will rise. What are conditions of entry into coca growing? I suspect there is relatively free entry, requiring a peasant only to cut down forests and plant the crop. Assuming there is a relatively limitless supply of land on which to grow coca, what would happen in a simplified world is that as some leave coca, others will enter. At the end of the day, the new equilibrium would probably involve a lot more legitimate crops being grown if we solve all the impediments de Soto has talked about, but the same amount of coca. We will have improved agriculture in Peru, which is a net plus, but the drug problem will not be solved. There are some variables, of course. If the marginal costs of going into coca go up, this will restrain entry. I suspect, though, that the only way to get people out of coca in Peru are the old remedies we all know about, i.e., making it more risky to be in that business through increased law enforcement. In summary, while it seems to me that the Fujimori initiative is good, I am skeptical it will solve the drug problem without the other measures I have mentioned.¹⁹⁸

Another strong point of ILD work in the urban areas has been its participation with so-called "base" (community) groups. This has a strong "democratic" appeal. One problem in the UHV, however, is identifying the base group: Who is it? Sometimes the base leaders represent the views of only some inhabitants, not all. Some base leaders have been accused of corruption, and in the UHV, some may be *senderistas*.¹⁹⁹

Coca growers are motivated by the high profits associated with coca production.²⁰⁰ De Soto states: "Only a very small area of the land which could be used for coca is actually cultivated. The idea is to convert the whole area to private property, but property that is controlled and where offenders can be punished."²⁰¹ Yet, they will not abandon lucrative coca production simply because "policy" has now made production of other crops a bit better. **Instead, titling of coca-producing lands, in addition to the grave environmental effects, may lend coca production a stamp of legitimacy and official recognition.**

It is unquestionable that the ILD has met success in the projects it has undertaken in urban Lima. The key to its positive reception in urban area seems to be its efforts to include the people in decision-making and to reduce the often burdensome bureaucracy. The UHV needs a more detailed, critical look. Still, with the ILD's urban experience, the institute could make important contributions in the areas of democratization and debureaucratization in the UHV. This in turn would stimulate the natural economic abilities of the valley. In this way, the ILD's strengths could be tapped while capitalizing on existing structures.

THE MULTIFACETED ECONOMIC APPROACH

A multifaceted economic approach is fundamentally the one being used today to deal with coca production. Its ultimate goal is to make coca-growing uneconomic. To do so, it incorporates incentives for alternative production (increased infrastructure, technical assistance, education, etc.) along with disincentives to growing coca (eradication, repression, illegality, etc.), and attempts to reduce demand at home ("just say no" education plans, new search and seizure laws, drug testing, etc.).

The ILD approach advocates an improvement in titling. There certainly are opportunities to improve the Peruvian property registry system. Yet, this work should be done **within** the present structure and not **outside** it. Further, it should be done because it will impact economic productivity, not because it will decrease coca production. And it will increase economic productivity only if it is one element of a broader package that addresses other bottlenecks to development. These bottlenecks include availability of credit, adequate technology and infrastructure (roads, electricity, phones), regional security, access to markets, and so on. Only then can the government protect the environment and discourage coca production.

The Department of Agriculture already has developed a new strategy for titling properties in the UHV in a faster, more efficient manner. Alas, to date, it has not been

implemented.²⁰² The ILD, with its populist and deregulatory approach, could make an invaluable contribution to modernizing the property registries in the UHV. Registration needs to be faster and simpler. It needs to be decentralized. **The ILD should work with existing law and registry systems, and the Department of Agriculture strategy, to improve the current legal framework, making the system more agile.**

Today, transport and security costs make the UHV unprofitable for agricultural production. A box of 18 papayas in the UHV costs 3,500 intis. In Lima, papaya costs 750 intis per kilo, and each papaya weighs about 2 kilos. If the UHV had a safe and open road connecting it to Lima, *campesinos* in the valley could sell their produce. What the UHV needs is a simple uninterrupted road, not a superhighway.²⁰³

By combining repression, market stimulation, infrastructure development, education, and eradication with reform of titling and land registration, coca production could be further discouraged.

Finally, in analyzing this problem it would be intellectually dishonest to disregard the driving factor involved with coca production: demand.²⁰⁴ Coca was produced for thousands of years without abuse, until the 1800s, when cocaine was introduced to Europe. Since then, coca has been in demand, and the supply has risen to meet that demand. The solutions above are designed to make alternatives to coca production less expensive and more lucrative to growers. Steps are being taken in consuming countries to discourage demand. Yet, while demand remains high, any measures are likely to prove futile.