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# RIAL Reports

**PosUNGASS 2016:**

Latin America and Drug  
Policy Perspectives

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The Council of International Relations of Latin America and the Caribbean (RIAL) is an independent and pluralistic institution committed to understand the current situation of the region and, from it, develop a solid basis of knowledge able to give a voice to this part of the world regarding the evolution of international relations in the 21st century.

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## Post-UNGASS 2016: Latin America and Drug Policy Perspectives

Document prepared by Juan Carlos Garzón-Vergara\* for the Council on International Relations of Latin America and the Caribbean (RIAL)

In April 2016, the third Special Session of the United Nations General Assembly on the world drug problem took place in New York (also known as UNGASS 2016). The meeting was held as an answer to the call of a group of Latin American countries – Colombia, Guatemala and Mexico – to rethink and to reorient drug policy. The mandate given to the UN and agreed upon by the countries for this session was to assess “the achievements and challenges in countering the world drug problem”. Under this framework, the UN Secretary General, Ban Ki-moon urged the countries to have “a wide-ranging and open debate that considers all options”.

Although the Special Session did not bring about great surprises or paradigmatic changes, it did make evident that the consensus around the prohibitionism - in its more repressive and hard version - has weakened. The agreement reached by the countries in UNGASS 2016, on general and wide-ranging subjects, includes a new language that moves away from the denominated “War on Drugs”; in addition, it opens the door to the flexibility to formulate and to apply drug policies in the national scope. From an historical and a Latin American perspective, these are not small changes and lay the way for progressive reforms. The main challenge to follow this path is to move from discussion and discourse towards concrete action and changes.

Through this document *the Council on International Relations of Latin America and the Caribbean* (RIAL) aims to take stock of UNGASS 2016 from the perspective of the countries of the region, identifying the lessons that this process left and offering a glimpse towards the future with concrete recommendations. The text you have in your hands is action-oriented, as a commitment to change and innovation in drug policy in the countries of the region.

### I. Drug policy after UNGASS 2016. What is the balance for Latin America?

The decision to make UNGASS in 2016 was the result of the pressure of a group of Latin American countries that, in October of 2012, made a call in the United Nations to review the approach to drug policies. The declaration presented by Colombia, Guatemala, and Mexico, expressed concern at the lack of results of the present approach, the high levels of violence associated to the illicit drug market and the negative influence of organized crime. In this context, the Secretary General decided to call for a Special Session dedicated to drugs.

In the regional level, the official debate began in the Summit of the Americas of 2012 in Cartagena (Colombia), when the presidents decided to open up the discussion on drug policy,

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entrusting the Organization of the American States (OAS) the preparation of a report that laid the foundations of the debate. Nevertheless, it is important to note that civil society organizations, academics and experts have been questioning the effectiveness of drug policy for decades, pointing out its negative consequences for the countries of the region.

From the Summit in Cartagena and as part of the preparatory process for UNGASS, the debate on drug policy pervaded regional forums. In CELAC and UNASUR, after intense negotiations, the countries of Latin America reached agreements on what they called the “new approaches” - Human Rights, Public Health and Development.

While this was happening, Bolivia was the first country in denouncing the Convention, retiring and submitting a reservation that allows the use of the coca leaf and so return to the Convention. Uruguay, on the other hand, decided to regulate the market of marijuana for recreational purposes, arguing the primacy of Human Rights over the commitments linked to drug control. In addition, it is worth mentioning that the informal regional dialogues, driven by civil society organizations had an important role in bringing the positions of the countries closer together. With this backdrop, the region seemed to arrive at UNGASS with a renewed and decided language that was expressed in different declarations and resolutions.

Nevertheless, as the process of preparation of UNGASS advanced and the discussion moved to the Commission on Narcotic Drugs in Vienna (also known as CND), the differences between Latin American and Caribbean countries became more evident. The consensus regionally reached lost force in the global scene, with diverse voices, which included from the most reformist to the most conservative positions. The role of the region became blurred, losing strength and capacity of influence. The international bureaucracy also made its part, caught in the inertia and safeguarding its own interests.

In retrospective the role of Latin America and the Caribbean could be summarized in three statements:

**The expectations about UNGASS were diverse and there was a strong dispersion in the positions.** In the process of preparation of UNGASS, particular positions were given priority over regional consensus. The range of positions of the countries was wide, going from the most revisionists to the most obstructionist; although, in the key moments of negotiation moderation prevailed. In any case, it should be mentioned that the leeway for the countries was very small. It is necessary to consider that, in the CND in Vienna, decisions are made by consensus, so any reforming attempt may be blocked by a small number of countries. To block a resolution, it is enough for Russia or China to threaten to leave the negotiation.

**The region had a good start but a modest ending.** Latin America began the process with a visible leadership, impelled by the regional consensus. However, in the natural way of building agreements, the most challenging positions against the international regime became moderated and lost strength. The initial calls for reforming the conventions and the system as a whole gave way to a calmer stance that ended up ratifying the commitments made in 2009 when the UN Plan of Action on Drugs was approved. The attempt to reform the system did not gather the necessary support, although it sowed the seeds for further discussion. Although the final document was modest – in terms of concrete changes –, it left the door open for experimentation and modernization of drug policy.



**The countries decided a score but the choir did not tune.** The regional and subregional agreements guided neither the declarations, nor the behaviors, of most of the countries in United Nations. In addition, the Latin American and Caribbean Group before the UN - also known as GRULAC - could not reach an agreement, with the strong resistance of Peru and the countries of ALBA (Bolivarian Alliance for the Peoples of our Americas) to the most reformist positions. Finally, the score decided in the OAS, UNASUR and CELAC was not followed. The region was off key, which was additionally stimulated by backdoor diplomacy that was also in charge to undermine the weak consensuses.

## II. The advances in UNGASS and the issues still pending

The assessment of UNGASS is closely connected with the expectations of the actors involved. Those who looked for a significant change or a great transformation will surely affirm that UNGASS was a missed opportunity. For those who understand the reform as a process, the Special Session is an important step in a long and rocky road. For an important group of countries that bet for modernization were left with a sensation of frustration. But, on the other hand, the proverbial prohibitionist consensus, favored by the most conservative positions, was also weakened.

From the perspective of the reform agenda, it can be said that some progress was made, while other issues remained pending. The base for the discussion to come must be to recognize what was already achieved in UNGASS. It is essential to identify unresolved issues to define the strategy to follow.

### *What were the advances in UNGASS?*

**UNGASS served to open a discussion within countries.** The preparatory process of the Special Session served as reason and pretext to open the debate in the Latin American countries, breaking the taboo that surrounded any discussion on drug policy centered in revisionism. Civil society organizations played a key role in boosting the discussion between different actors, with levels of openness that varied from country to country.

**The language of drug policy changed.** In Latin America and the Caribbean, it is increasingly difficult to find discourses that support the "War on Drugs" – although this does not mean that this approach has become obsolete. The *Outcome Document* of UNGASS represents a more balanced and comprehensive policy that includes the perspective of Human Rights, Public Health and Development. This is an important step forward, given the secrecy that has surrounded the Control Regime and the institutions that are part of it.

**The UN Agencies joined the discussion.** The participation of the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Program (UNDP), UNAIDS, UN Women and UNICEF contributed to break the isolation surrounding the Regime of Control and the Commission on Narcotic Drugs in Vienna were. Their contributions helped open the debate and to connect commitments made to respond to the drug problem with the obligations of States in the field of Human Rights and the development goals established in the 2030 Agenda.



**In UNGASS it was exposed the lack of coherence of the System.** While agencies of the United Nations presented their contributions, explicitly calling for the elimination of the death penalty, decriminalization of consumption and the inclusion of harm reduction measures, these points were overlooked in the *Outcome Document*. Thus the tension between the precepts contained in the Conventions on Drugs and the obligations of the countries with Human Rights became evident. Although this could be seen as a step backward, in fact, it constituted an opportunity to make the lack of coherence of the system visible. In this regard, it is important to mention that the UNGASS did not assume the task of providing coherence to the United Nations System through operational recommendations to ensure the compatibility and complementarity between agencies and commitments.

**It became evident that, to apply the Conventions, it is not necessary to violate Human Rights or to declare a war.** Despite the multiple evidence about the harmful effects of the severe application of drug laws, only recently this problem has begun to be discussed openly. Both United Nations Office on Drugs and Crime (UNODC) and the International Narcotics Control Board (INCB) – two pillars of the International Drug Control Regime – made explicit that the Conventions do not require a "war on drugs" and cannot be used to defend human rights violations, mandatory treatment or death penalty.

**The recognition of flexibility to interpret the conventions.** The *Outcome Document* of the UNGASS indicates that the conventions "... allow for sufficient flexibility for States parties to design and implement national drug policies according to their priorities and needs." It is important to note that there is no consensus on what "sufficient flexibility" means, a formula that could be used depending on the interpretation.

*What were the issues that are still pending?*

**The recognition of the failure of drug policy.** One of the primary targets of UNGASS 2016 was to assess the progress achieved and the identification of the pending challenges. In spite of the abundant evidence on the lack of results of the present approach, the *Outcome Document* lacks a critical look on the matter. Far from acknowledging the null progress in reducing the production and consumption, the supporters of the current regime tried to show the "containment" of the problem as a success. UNODC figures show that in the last years there has been no substantial changes and that the goal of a world free of drugs is still very distant. Under this framework, it is possible to say that drug policy has failed on its own terms.

**The legalization of the consumption, the mitigation of damages and the moratorium on death penalty.** Despite the agreement reached by a significant group of countries on these issues, the veto exercised by some powerful nations – among which are found China and Russia – along with the resistance from countries in Africa and Asia, blocked its inclusion. The argument that the drug problem is a security threat for societies went above the call for respect and guarantee of Human Rights.

**The calls for reform focused on the issue of consumption, while there was little leeway to bring up changes in the traffic and the production.** The Drug Control Regime has been applied asymmetrically. While most developed countries have greater tolerance and flexibility in interpreting the commitments, on the periphery – where transit and production of cocaine





and poppy are concentrated - the conventions have been straitjackets since they establish a one size fits all approach. This situation was reflected in the UNGASS where there was a greater interest in opening the debate about responses to consumption, while little was done to avoid the costs and impacts of drug policy to be transferred to countries with lower capacities and levels of development.

**The regulated markets of marijuana were not part of the negotiation.** During the preparatory process of UNGASS, Uruguay moved forward with the regulation of the cannabis market, just like four American States and their capital, Washington DC, in an open violation of Drug Conventions. Several countries made interventions regarding this issue, pointing out the contradictions emerging in the Drug Control Regime or by highlighting the importance of experimentation. Nevertheless, the regulation of cannabis was not part of the negotiations.

**The discussion on the limit of medical and scientific uses.** One of the objectives of the international narcotic regime is to limit the production, the commerce and the drug use to medical and scientific purposes. However, there is not a clear definition of what this means, so there is a loophole that makes it very difficult to determine whether a policy is or is not within the conventions. One option that some experts have pointed out is that this issue could be the way for experimentation with various forms of control and handling of drugs.

**The debate on the indicators and how to measure success.** The effectiveness of drug policies is directly related to the definition of its objectives and how to measure progress. Metrics related to the process (like capture, seizures or crop destruction) have occupied the central place, over outcome indicators (the impacts that State interventions have on communities and people). This perspective has generated perverse incentives favoring repressive actions and a disconnection between the drug regime, Human Rights and Development, with results that can be very positive in the field of counter-narcotics but harmful for the safety and welfare of citizens. Although this discussion was put on the table by civil society organizations and several countries, it was one of the unresolved issues of UNGASS.

### III. The lessons from UNGASS 2016 for Latin America and the Caribbean

The process of preparation of UNGASS and the development of the Special Session leaves important lessons for the countries of the region. The opening of the debate, the definition of the issues and strategies to promote them, the interaction with the international and regional system, the formation of coalitions, as well as the emergence of tensions yield valuable experiences for those who are set out to find a realistic and effective way for a reform.

From the perspective of international relations, the UNGASS reveals the difficulties cooperation faces to address new challenges. It is clear that the problem of illegal drugs cannot be solved without different countries collaborating; nevertheless, to reach global agreements is truly difficult – especially in a subject fraught with fear and prejudice.

Under these conditions, it is important to recognize the achievements of the Special Session and the opportunities it offers for the future. For this, it is necessary to ask: What can we learn? What worked well and why? What did not result as expected and what were the causes? And above all, what can we improve? Just a few months after UNGASS having taken place, it is difficult to determine its true impact. The UN Agencies, the countries and the civil society



organizations are still processing the implications of this process and deciding on the actions they will take.

In order to contribute to this discussion this document proposes ten lessons in a non-exhaustive list intended as a starting point for discussion. Surely these learnings will be enriched and validated - or discarded - through debate. The key is to find potential solutions to address each of these issues.

- 1. Concrete changes require concrete proposals.** The discourse of drug policy reform lacked concrete and operational proposals. The initiative of including the “new approaches” was very general and was limited to a declaration of principles, toothless and without strength. This, despite that the States had set themselves to draft a document for UNGASS oriented towards the “adoption of measures” to be implemented by part of the countries.
- 2. Reforms are slow and progressive.** UNGASS 2016 showed that changes will take time and they will not obey to a rupture, but to multiple transitions. The reform of drug policy should be assumed as a long-term objective, whose progress will be neither linear nor uniform. Therefore, the modernization process should be paired with a planning process that achieves early victories, but that aims towards a transformation in the long run.
- 3. The national context matters. Countries always express themselves in domestic terms.** Changes in the political agenda, the pressure exerted by citizens, electoral cycles and the immediateness that characterizes governmental administration affect the place of the countries within the international scene. In this perspective, the governments' room for maneuver is narrow and the management of their Foreign Offices and ministries is ruled by their internal climate. In order to understand the obstructionist positions, it is important to analyze what elements of the national policy prevent or facilitate change.
- 4. Pushing the reform forward requires to connect what it is said outside with what is done inside.** One of the main problems of the Latin American countries that promoted the reform was the gap between the discourse kept in multilateral forums and the real changes within those nations. While it is true that the opening of the external debate helped open spaces for discussion at a domestic level, UNGASS 2016 showed that speeches and announcements of policy change are not enough. The best international strategy is the one that reflects and is consistent with national policy.
- 5. The distrust and the tensions between countries exist and influence the construction of agreements.** Political polarization, historical mistrust and tensions between the different leaderships have an impact on building consensus. The competition for leadership on the part of some countries, added to the formation of excluding coalitions – where some compatible countries were invited and others with opposite positions were not – caused divisions and had a negative impact in the spaces for dialogue. The simplistic view of countries “akin” and “contrary” to the reform





conceals the nuances and prevents the possibility of reaching an agreement on concrete issues from a pragmatic point of view.

6. **Achieving agreements regionally does not mean to mobilize globally.** The expectation that the agreements reached at a hemispheric and subregional level worked as a base for consensus building at the UN crashed against the fragmentation and dispersion of Latin American and Caribbean countries. Organisms as the OAS and UNASUR had a modest participation in the process of UNGASS 2016 and their resolutions were mentioned briefly by some ambassadors and Heads of State. The countries that promoted the reform spent resources and time in reaching regional agreements, which could have been used more effectively in making alliances with countries in other latitudes.
7. **The cost of building consensus is to weaken dissent.** Given the impossibility of reaching a new consensus favoring the reform, one of the options that emerged in UNGASS to make visible the weakening of the global agreement was that a group of countries made clear their disagreement. This strategy demanded the formation of a significant coalition that opposed the outcome of the Special Session to be a general document, without relevant changes in drug policy. The difficulty in progressing in this direction was that as the group expanded, the countries whose positions were the most radical had to moderate them, which made them weaker.
8. **Civil society is key, but its mention in speeches is not enough.** Civil society played an important role in the process of preparing UNGASS 2016, with the creation of spaces for dialogue, the supply of inputs and recommendations. However, beyond the mention in speeches by several countries, the participation of civil society in the key areas of discussion was exposed to the sway of bureaucratic decisions and the requirements to enter the debate. This resulted in a process that has been pointed out by organizations as lacking transparency. It is also important to mention that several of the contributions of the Civil Society workgroup were not considered nor discussed in the debates.
9. **The power of the conservatives should not be underestimated.** Countries that opposed the change were very skillful in blocking the debate and defining the scope of the discussion. They closed ranks around the reform of the conventions early and defined rules that favored the major issues to be resolved at the CND in Vienna. In Latin America, an important group of countries, which had achieved regional consensus around the “new approaches”, bowed to the most conservative visions in the UN. Favored by the Control Regime's secrecy, the defenders of the status-quo did not have to make much effort to form an anti-reform coalition.
10. **Facts end up imposing over conventions.** The countries that have made the decision to move forward in the regulation of the market of cannabis, for purposes other than medicinal and scientific, have done it ignoring the conventions. In UNGASS 2016, this subject was not on the table and there were no statements against these internal reforms. On the contrary, the *Outcome Document* reaffirms the principle of sovereignty and adds flexibility in the interpretation of treaties. Given this reality, while



experimentation will gain space, the differences with the provisions of the international regime will become more profound and obvious.

#### IV. A glimpse into the future: what is coming and how to deal with it

The future of the debate on drug policy is uncertain and will depend largely on the leadership of the countries that have promoted it and the real possibility of advancing in making concrete changes within States. In regional terms, it is important to mention that the region arrived at UNGASS in a very different context from the one in 2012 – the year in which the discussion began.

From the promissory image that followed the boom of raw materials, greater political stability in many of the countries and the improvement in economic indicators, the region entered a climate of recession, with the *commodities* prices down and the contraction of foreign investment. On the other hand, in several countries there has been a change in the political orientations, which has been accompanied, in many cases, by social and political polarization, and moments of crisis. Tensions among countries have become more noticeable, which has impacted the ability to reach consensus in the international scene. Under these conditions, the reform to drug policy does not appear in the top of the agenda. This is reflected in regional and subregional organizations such as the OAS and UNASUR which are facing a difficult situation, with sharp disagreements, the weakening of their capabilities and a decrease in their budgets.

Given this reality, it will be difficult to progress in the development of the agreements reached and the possibility of promoting a new agenda to address the drug problem and to establish new policies. On the contrary, in several countries the reforms are being set back and in the region in general, in the sense that the main axis for discussion about drugs is given by the question of security. There is a serious risk that the war against organized crime may become the subject of a new crusade, which would end the debate on new alternatives.

Vienna retains control of the agenda regarding drugs and the International Drug Control Regime. Even though the consensus reached in UNGASS is fragile and surrounded by contradictions, it is expected there will be a progressive involvement of other agencies of the United Nations, but without the definition of a clear mandate, there is not much they can do – in a context of limited capabilities. As for the possibility of an upcoming UNGASS in 2019, for now it is an option that seems remote and improbable – being considered as not very strategic and opportune by a significant group of countries.

To continue the debate and move forward with the reforms, it is important to ask how to deal with seemingly adverse conditions. The recommendations listed below, which take into account the lessons learned, propose a roadmap to keep the discussion going in a realistic and pragmatic way.

- 1. To focus on fewer issues.** The countries and organizations which aim to promote the reform should focus on fewer issues, in order to concentrate their efforts and use their abilities efficiently. One of the problems of UNGASS 2016 was the “grocery lists” that included multiple topics without greater levels of depth. Within this scope, for Latin America it is key to advance the agenda for Human Rights and Development,



identifying mechanisms, new indicators and concrete reforms that allow a new direction to drug policy.

An important issue is that the coalitions of countries should revolve around specific issues (abolition of death penalty, harm reduction, decriminalization of consumption). In the process of UNGASS 2016, the opposite occurred: the necessity to form coalitions determined the topics. The result was the creation of groups without defined agendas and blocked by unfocused subjects.

2. **To put one's "house in order" first.** Countries should have one voice and be consistent in their positions. This implies to align embassies and missions (specially in New York and Vienna), as well as to articulate the work of the different institutions and ministries. It is recommended to have a specialized team in the Foreign Offices to follow this subject. In addition, each country should define the International Strategy providing objectives and actions to be used as a guide for the path to follow from now until 2019.
3. **To identify a new roadmap.** UNGASS 2016 contributed to mobilize the debate on drug policy and to define actions around a specific event. While the possibility of having a new UNGASS in 2019 has been on the table, this scenario is unlikely, so it is necessary to have a backup plan. One option could be the realization of an "International Conference on Drug Abuse and Illicit Trafficking", similar to the one organized in 1987.
4. **To define and to implement new indicators.** A particular issue to advance is the definition and implementation of new indicators to measure progress in drug policy, incorporating the perspective of public health, human rights and development. We must not forget that 2019 is the established deadline for achieving the goals set in the Plan of Action, so it will be important to make progress in its assessment. A multidimensional analysis of the results and impacts will require to advance in metrics that go beyond the view of supply and demand reduction, including the 2030 Sustainable Development Goals.
5. **To prepare for the change in regional leaderships.** An important part of the Heads of State and officials who were in UNGASS 2016 will not be for the appointment in 2019. For this reason, it is required that the momentum of reform does not depend on governments or specific wills, but that it becomes part of the agendas of relevant political and social actors. In order to guarantee this continuity, it is necessary an active civil society and the awareness and qualification of the officials who will be in charge of this issue at the international level.
6. **To use the flexibility and autonomy but to not settle for it.** Flexibility opens a valuable opportunity for experimentation and the implementation of new alternatives, but it does not solve the problems of incoherence and fragmentation in the international system – on the contrary, it can aggravate them. Therefore, it is necessary to continue promoting the debate on reforms in the International Control Regime.

An alternative is to continue promoting the creation of a consultative group of experts to improve the performance and coherence of the current system – a proposal made by some countries which, so far, has not had enough resonance. On the other hand, it is



important that the States interested in the reform put forward specific recommendations that can be adopted within the UN – such as the decriminalization of consumption, the exclusion of the coca leaf from the conventions or the abolition of the death penalty for drug offenses, among others.

7. **To welcome innovative experiences.** The reform of drug policy requires making visible the innovative experiences that show progress. The implementation of alternatives related to the regulation of drug markets, harm reduction, the differentiated application of drug laws, the decline in violence, and development strategies can yield valuable lessons and provide new evidence. A key element is the evaluation and monitoring of these initiatives, so that their real impact on people and communities can be measured. Countries should make room for responsible innovations, within the framework of an international system based on sovereign nations that can cooperate and move forward collectively.
8. **To focus on the national and the local.** The national and, especially, the local (states, municipalities and cities) are best suited for innovation and development of new approaches to meet the specific needs of each territory. It is key to involve governors and mayors in the reform of drug policy, promoting an agenda of change that allows to give answers to issues closer to citizens, such as the increased consumption and insecurity linked to the emergence of local markets. Concrete responses that incorporate an integral perspective, with assistance from the social sphere and public health, are required.
9. **To explore the possibility of agreements among countries.** One option that does not need any change in the conventions is agreements between like-minded countries. In accordance with the Vienna Convention on the Law of Treaties of 1969, two or more parties may enter into an agreement to amend the treaty only in their mutual relations. According to some experts, this would allow, for example, to advance in the legalization of the Bolivian export of coca leaves to the north of Argentina. The establishment of a common market for coca in the Andean community could be explored. In addition, there could be considered binational or multinational shared programs of harm reduction policies in the area of the demand, as well as how to make progress in the socialization of experiences being developed in the field of marijuana regulation.
10. **To establish a mechanism for monitoring and implementation of what was agreed in UNGASS 2016 and prepare for 2019.** It is a priority to define a monitoring mechanism of what was agreed at UNGASS 2016 and articulate their contents with the UN Plan of Action on Drugs. Countries should prepare for 2019 through two parallel processes: a) The evaluation of the results and impacts the Action Plan agreed in 2009 has had, b) The possible preparation of a New Political Declaration 2020 - 2030 in United Nations. The first task would have to lay the foundations for the second one, identifying the areas in which adjustments are necessary. It is important that countries interested in reforming drug policy influence United Nations to evaluate the Plan of 2009 and the possible definition of the new Plan to be conducted in a transparent and inclusive manner.



To attain real change in drug policy, it is necessary for the countries of the region, civil society and the different actors involved in the process to start preparing for 2019. As this document shows, to make real progress on the path of reform, it is required to learn the lessons of the past, act in the present by taking concrete steps and not lagging behind, paving the way for innovation.

The main message this report aims to give is that it **IS** possible to change drug policy. To do this it is necessary to move from words to practice, assuming the historical responsibility of guiding the decisions of the States towards the welfare of their citizens and communities. The region needs less rhetoric and more action.



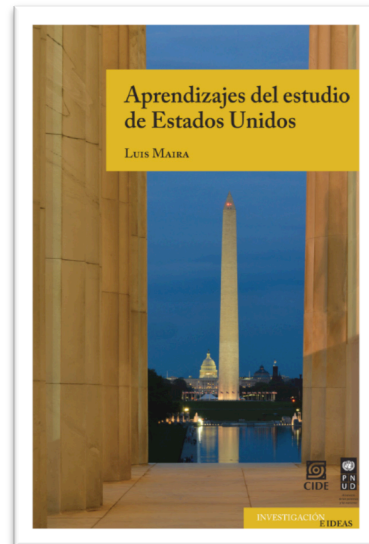
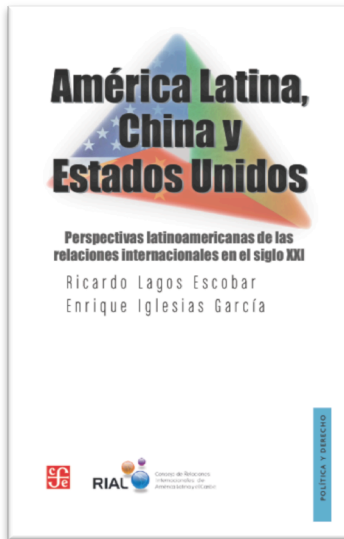
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