

Coca in Debate: The Contradiction and Conflict Between the UN Drug Conventions and the Real World

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Introduction

The dynamic controversy around coca is definitely the best contemporary example of a psychoactive plant and its traditional uses managing to perpetuate the global drug policy debate. As evidenced by a number of events in the unfolding debate about the UN drug control conventions, the question of whether coca leaf should remain subject to international drug control mechanism or not is unresolved today, and traditional use of coca has become a symbol of the inflexibility of the global drug control system. The question of how to deal with traditional coca use has been central to more than 50 years of continuously repeated discussions.

From its alleged harmfulness to its tremendous marvels, this plant has kept the minds and hearts of policy makers, academics, and activists busy for many decades. The issue has been addressed in series of multilateral meetings and treaties and, most importantly, taken to a high level of global policy debate by governments. It has become a stated military target in the region it is cultivated in. Coca is also the only psychoactive plant whose very existence is guaranteed by a national constitution, the 2009 Constitution of the Plurinational State of Bolivia, and its traditional use is protected under a number of national laws. Most interestingly, the way coca is used in the original cultural setting of the Andean Amazon region has never ceased, but it has undergone changes that challenge the concept of the traditional claim itself. A variety of new uses of the leaf in its natural form are thriving and developing, with a variety of cultural connotations. Potentially, coca leaf use can be a useful vehicle in the debate on the validity of the need for the concept of traditional use.

This chapter will first give an overview of the history of attempts to control coca, its cultivation, and use, by looking at how it ended up in Schedule 1 of the 1961

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Single Conventions, and then tell the story of a number of fruitless efforts that were made to change coca's fate. It will then continue to examine legal situations in countries where coca is consumed on a daily basis. The variety of cultural settings of its use, and the manner in which societies have dealt with it, will be treated there. A newly emerging market for coca, outside the traditional regional and cultural setting, will be the subject of the final part of this chapter.

Coca refers to the plants that belong to the family *Erythroxylaceae*, native to the western Andean Amazon region, cultivated for at least the past 2,500 years. There are two main species of coca that are cultivated, each with two varieties: *Erythroxylum coca* (*E. coca* var. *coca* and *E. coca* var. *ipadu*) and *Erythroxylum novogranatense* (*E. novogranatense* var. *novogranatense* and *E. novogranatense* var. *truxillense*). Coca is known throughout the world for its psychoactive alkaloid, cocaine, and to a far lesser extent, for its traditional uses. One needs a considerable amount of leaves to produce cocaine, since the alkaloid content of coca leaves is negligible (varying between 0.25 and 0.75 %) and the extraction of cocaine from coca entails processing the leaves with several chemicals.

Coca in the UN Drug Control Treaties

Coca, together with cannabis and opium, became one of the main control targets of the 1961 Single Convention on Narcotic Drugs, with special restrictions on cultivation, proscribing the phasing out of traditional use within 25 years and listing the coca leaf as “a substance liable for abuse” in Schedule 1. The 1961 Convention was meant to simplify the existing drug control machinery by turning all existing treaties into a single instrument. Its main purpose was to limit the production of raw materials for drug production. According to scholars studying the history of this treaty, the Single Convention on Narcotic Drugs represents a significant break with the regulative focus of the preceding multilateral treaties; a shift towards a more prohibitive outlook that, within international relations terms, can be regarded as a change of regime rather than the straightforward codification of earlier instruments. One clear example of this was the “abolition of drug use that for centuries had been embedded in the social, cultural, and religious traditions of many non-Western states” (Bewley-Taylor and Jelsma 2012, p. 1).

The scientific evidence for its inclusion came from an Economic and Social Council (ECOSOC) mandated study, published in 1950 as the Report of the Commission of Enquiry on the Coca Leaf, that recommended suppressing “the harmful habit of chewing coca” (ECOSOC 1950, p. 54) within a few years. It was considered a pressing issue at the first sessions of the newly created Commission on Narcotic Drugs; in 1946, the issue was put on the agenda. The report and its recommendation to proscribe coca was based on a field trip, and biographically incomplete research, upon invitation of the Peruvian government, to grasp the use of the leaf in its cultural context and witness its use in practice.

It was at that time that the historic debate between defenders and opponents of coca leaf chewing again caused intense national polemic in Peru. Academia and medical professionals were deeply divided on whether coca chewing should be prohibited or tolerated, as had been the case since colonial times. At one extreme, it was considered that progress towards a modern Peru was impeded by the coca-chewing Indian part of the population, considered as backward, while those defending it claimed “the coca habit contributed significantly to successful acclimatization in Highland Peru, without causing any detrimental health problems” (Gagliano 1994, p. 170). The commission also briefly visited Bolivia after its trip in Peru.

At a time of the UN mission, advocates of a prohibitionist stance were dominant in the national debate, and may have been perceived as better allies by the representatives of the international narcotics control bureaucracy. This coincided with increased international desire to control non-medical and scientific use of the cocaine coming from Peru and other Andean countries. The coca and cocaine producing countries were requested to provide the League of Nations with figures on the extensions of coca fields with the aim to formulate proposals to limit these to levels needed for medicinal and scientific purposes as early as the 1930s.

Undoubtedly, the inquiry commission came with a predefined mindset, as became clear from a press statement from the head of delegation, Howard B. Fonda, in an interview in Lima in September 1949, before beginning his work:

We believe that the daily, inveterate use of coca leaves by chewing ... not only is thoroughly noxious and therefore detrimental, but also is the cause of racial degeneration in any centers of population, and of the decadence that visibly shows in numerous Indians—and even in some mestizos—in certain zones of Peru and Bolivia. Our studies will confirm the certainty of our assertions and we hope we can present a rational plan of action ... to attain the absolute and sure abolition of this pernicious habit. (El Comercio 1949)

Traditional use in that period of time was perceived by the local elites as a negative force, a shameful spot on the progressing of the nation, representing backwardness and a lack of cultural values. Its use was seen as a consequence of the bad living conditions of “Indians” and their general lack of modern standards and education. This was widely reflected in the UN report used for the proscription of coca, and also reflected in several reports of the UN Commission of Narcotic Drugs (CND) during the 1950s.

During these years, between the publication of the report and the emergence of the 1961 Single Convention, the issue surfaced at the World Health Organization (WHO); according to procedure, the entity entitled to establish which substances are to be included into the convention schedules for control. The WHO Expert Commission on Drugs Liable to Produce Addiction discussed the issue in two sessions, in 1952 and 1954. Confronted with the ECOSOC study that had defined coca chewing as a habit, it reviewed the question at its meeting held in 1952, and concluded:

The Report of the Commission of Enquiry on the Coca Leaf shows that coca chewing is detrimental to the individual and to society and the Committee therefore concluded that

coca chewing comes so closely to the characteristics of addiction. . . that it must be defined and treated as an addiction. (WHO 1952, p. 10)

At the second meeting, they similarly stated that:

(The Committee) had drawn to its attention evidence on the absorption of cocaine during the chewing process. It was pointed out that there is a wide variation in the amount of cocaine ingested by the coca chewers, just as there is among individuals who take pure alkaloid for non-medical purposes. The term cocainism is applicable to the latter and. . . coca chewing (cocaism) must be considered a form of cocainism. (WHO 1954, p. 10)

In the reports of the 12th session of the Commission of Narcotic Drugs (CND) in 1957, the Peruvian Minister of Health explained that:

The Indians persisted in coca chewing because their social and economic conditions were poor, and they relied on the coca leaf to make up for their inadequate diet and to provide a stimulus that would give them the energy required to work in farms and mines high in the Andes. (UN 1957, p. 4)

The proscription of coca in the 1961 Single Convention was not limited to the inclusion of the plant into the controlled substances schedules, but also had numerous articles that established how parties should control the illicit cultivation and use of the plant (i.e. non-medical and scientific purposes). But most importantly, it included an obligation to abolish coca chewing. The original ECOSOC study initially proposed a ban on chewing to be effective after 8 years, but this was perceived as unrealistic. Meant as a transitional reservation, this article 49 points at phasing out the traditional use of all plants brought under the control of this treaty, setting the number of years before this prohibition would enter into force:

A Party may, at the time of signature, ratification or accession, reserve the right to permit temporarily in any one of its territories: a) the quasi-medical use of opium; b) opium smoking; c) coca leaf chewing; d) the use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes; and e) the production and manufacture of and trade in the drugs referred to under a) to d) for the purposes mentioned therein. 2. The reservations under paragraph 1 shall be subject to the following restrictions: a) The activities mentioned in paragraph 1 may be authorized only to the extent that they were traditional in the territories in respect of which the reservation is made, and were there permitted on 1 January 1961; b) no export of the drugs referred to in paragraph 1 for the purposes mentioned therein may be permitted to a non-party or to a territory to which this Convention does not apply under article 42; c) only such persons may be permitted to smoke opium as were registered by the competent authorities to this effect on 1 January 1964; d) the quasi-medical use of opium must be abolished within 15 years from the coming into force of this Convention as provided in paragraph 1 of article 41; e) *coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41* (my emphasis); f) the use of cannabis for other than medical and scientific purposes must be discontinued as soon as possible, but in any case within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41; g) the production and manufacture of and trade in the drugs referred to in paragraph 1 for any of the uses mentioned therein must be reduced and finally abolished simultaneously with the reduction and abolition of such use. (UN 1961, p. 29)

Two formal reservations upon signing the treaty were made by Argentina and Peru, both countries where coca-chewing populations are numerous, but both withdrew these in the years after. Bolivia initially did not sign at all and only acceded to the treaty in 1976, without making a formal reservation. This has recently changed when, in July 2011, Bolivia denounced the 1961 Convention, and wanted to reenter with a reservation on traditional coca use, which we will see later in this chapter.

In plain contradiction to the Single Convention, the Convention on Psychotropic Substances, drafted a decade later, took quite a different approach to traditional use of plants from which alkaloids could be extracted. Though not relevant for coca, and for good, but never well-explained reasons, the 1971 Convention did not condemn traditional and ceremonial uses of the plants containing psychoactive ingredients that were included in its schedules. In the words of the Mexican delegate at the 1971 conference while talking about traditional use of the peyote cactus:

(The) religious rite had not so far constituted a public health problem, still less given rise to illicit traffic.... It would clearly be extremely unjust to make the members of those tribes liable to penalties of imprisonment because of a mistaken interpretation of the Convention and thus add an inhuman punishment to their poverty and destitution... (UN 1973, pp. 106–107)

The 1988 Trafficking Convention and Coca

Signals of protest to the coca proscription came later, in the 1980s. In both Peru and Bolivia, political winds blew from a somewhat different direction, and international recognition of human and indigenous rights had become politically correct. But of greater significance, the region had become a target in the US-led “War on Drugs,” aimed at reducing illicitly cultivated crops by force, using aerial herbicide spraying and the forced uprooting of coca plantations. Coca producing regions in Peru, Bolivia, and Colombia became a target in decades of military operations, where the enemy was a plant, and those who cultivated it treated as criminals. Generally, coercive policies replaced persuasive ones (Tokatlán 2009, p. 340), and foreign—US and EU—interventions in national drug policies were the rule.

During the height of this period, hundreds of farmers lost their lives as a result of the violence accompanying eradication operations, and tens of thousands of farmer families saw their livelihoods threatened. Peasant unions started to organize and a movement surfaced claiming the right to defend their livelihoods, with particular organizational strength in Bolivia and Peru. The coca leaf became a banner of their movement, defending it as a sacred plant, and as a symbol for their livelihoods. Programs known as “alternative development” were devised to replace coca with substitute crops as part of the global supply reduction strategy; most of these were doomed to failure.

In the midst of this, the 1988 Convention against Trafficking of Narcotic Drugs and Psychotropic Substances was negotiated, and reflected the hardline positions taken by governments to deal with the growing recreational drug markets and growing coca cultivation for cocaine production. This treaty added further confusion to the issue of traditional use, since it included a direct but ambiguous reference to it. The debate around it was interesting, as reflected below.

The article in question dealt with measures to eradicate illicit cultivation and to eliminate illicit demand. The article itself was an outcome of the polemic debate on the balance between the concerns of the producing, consuming, and transit countries. Here, traditional use became an issue in which a division along several lines became clear. A 12-country amendment¹ “intended to correct certain misunderstanding... with regard to traditional and legitimate uses of plants containing psychotropic or narcotic substances” (UN 1988c, para. 12, p. 297), was presented to ensure the convention was “not to penalize the licit cultivation of coca bushes and the licit traditional uses of coca leaf and its consumption.” Those opposing “felt that the notion of traditional uses should not be so expanded as to legitimize drug abuse” (UN 1988a, para. 20, p. 297), which was taken up as a request to further define traditional use. The difference between traditional opiate and coca use became more evident when, at the suggestion of the Algerian delegate to refer to “the domestic socio-economic use of licit crops in their natural state, which have not been subject to chemical processing” (UN 1988c, para. 50, p. 299), another delegate remarked that all traditional use in many countries had been subject to elimination because of the dangers involved. The Indonesian delegate even went so far as to question using the term “traditional use” at all, since “it was difficult to prevent traditional use from becoming illicit use, and it was important to be consistent in combating the illicit use of narcotics in all forms” (UN 1988c, para. 11, p. 300).

A separation between these two practices made sense from one perspective, but caused yet another problem. The Andean representatives tried very hard to negotiate an exceptional status for coca, but did not succeed. Traditional opium or cannabis use was not explicitly defended by any delegation during these negotiations, or at least not reflected in the official commentary. While for the Andean countries, the inclusion of a reference to traditional coca use was meant to be a relief valve, after the transitional reservations of article 49 of the Single Convention had closed off all roads to traditional uses of controlled substances, other members negotiated to ensure that all provisions previously agreed to would remain intact. In the words of the UK delegate, “not mentioning this would create confusion about the status of coca” (UN 1988c, para. 28, p. 302).

In the final edition, Article 14 started by saying that its provisions should not derogate any of the obligations under the previous drug control treaties, meaning the 1961 Single Convention, and mixed the legal status with the concept of

¹ Bahamas, Bolivia, Colombia, Costa Rica, Cuba, Guatemala, India, Jamaica, Mexico, Panama, Paraguay, and Peru.

tradition, weakening the final compromise. The concept of traditional illicit use created confusion and contradiction, since all licit uses under the UN drug conventions are either medicinal or scientific:

Each party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush, and cannabis plants cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment. (UN 1988b, para. 14.2)

Bolivia made a formal reservation to the 1988 Convention, emphasizing that its “legal system recognizes the ancestral nature of the licit use of the coca leaf which, for much of Bolivia’s population, dates back over centuries.” Colombia made no reservation, but declared formally upon ratification:

It is the view of Colombia that treatment under the Convention of the cultivation of the coca leaf as a criminal offense must be harmonized with a policy of alternative development, taking into account the rights of the indigenous communities involved and the protection of the environment. (Government of Colombia 1994)

Peru also reserved the right to legal cultivation, without specifying which plant is concerned: “Peru formulates an express reservation to paragraph 1 (a) (ii) of article 3, concerning offenses and sanctions; that paragraph includes cultivation among the activities established as criminal offenses, without drawing the necessary clear distinction between licit and illicit cultivation” (UN 1988c; Government of Peru 1988).

In the second part of this chapter, we will look how these countries tried to harmonize their domestic legislation with these provisions, and to what extent the reservations made reflected an already-existing legal status of traditional coca use.

The Role of the INCB

The International Narcotic Control Board (INCB), the entity of the UN drug control body that oversees and monitors the implementation of the UN drug treaties, noted the contradictions that accompanied the coca issue on a number of occasions in its annual reports during the 1990s. Confronted with the campaign for re-evaluation, led by the governments of Peru and Bolivia, the INCB stressed in its 1992 annual report:

The liberation of coca leaves and products of coca leaves from control measures and to be internationally commercialized for other (than medical and scientific) goals would require a radical change in the attitude of the international community as well as the modification of the 1961 Convention. (INCB 1992)

During the 36th session of the Commission on Narcotic Drugs (CND) in March 1993, a Bolivian representative requested lifting existing restrictions on the coca leaf under the international conventions. The request was noted but, since the CND could not undertake action in his direction, it was left there. The INCB did decide to

organize a mission to visit the Andean countries where “. . . traditional use of coca leaf was permitted by national legislation, which was contrary to the provisions of the 1961 Convention.” The mission reported that:

Research and multidisciplinary studies were being carried out in one of the countries to assess the potential value of the coca leaf for nutritional and health purposes, and would be presented in time in accordance with the procedure established by the treaties. (INCB 1993)

In its 1994 report, it stressed that:

The conflict between the provisions of the 1961 Convention and the views and legislation of countries where the use of the coca leaf is legal should be solved. There is a need to undertake a scientific review to assess the coca-chewing habit and the drinking of coca tea. (INCB 1994a)

A supplement to the 1994 report dedicated one section to “Coca Leaf: A Need to Clarify Ambiguities,” calling for “a need to examine the situation regarding state parties to the 1961 Convention that have made reservations under article 49 of that Convention. A true assessment of the habit of coca leaf chewing is urgently called for” (INCB 1994b, para. 46).

This rather propositional tone of the board and its openness to hear different perspectives on the issue changed dramatically in the 2000s, as we will see later. There seems to have been a genuine intention to clarify the confusion around coca, and an historical opportunity to change its fate. The call for a true assessment of the chewing habit was never properly followed up, but coca chewing did become part of a study on cocaine that the WHO undertook in collaboration with the United Nations International Crime and Justice Research Institute (UNICRI) in the first years of the 1990s.

The Role of the WHO

As noted above, the WHO played quite an important role in sealing coca’s legal fate in the UN conventions. The health experts reviewed “the problem of coca chewing” in two of its sessions, accepting the conclusion that “coca leaf chewing is detrimental to the individual and society” (ECOSOC 1950, p. 10) of the Report of the Commission of Enquiry on the Coca Leaf without questioning it. At its first and second meeting, it declared coca chewing a form of cocaine, since it was brought to the Commission’s attention that cocaine was absorbed during the chewing process. It took 40 years before this hot potato returned to their plate again.

At the 1992 meeting of the WHO Expert Committee on Drug Dependence (ECDD), coca leaf reappeared on the agenda at the request of the Bolivian government, and was added by the WHO secretariat to a list of ten substances to be considered by the Committee for a critical pre-review. During this ECDD meeting, it was noted “coca chewing was still prevalent. . . and that the dependence-producing properties of chewed leaf, its social role, and the health consequences of its use should be studied.” Still, and quite contradictorily, it concluded that, “the

coca leaf is appropriately scheduled under the Single Convention on Narcotic Drugs, 1961, since cocaine is readily extractable from the leaf. The Committee did not recommend coca leaf for critical review” (WHO 1993, p. 11). The pre-review stage, however, appears to have been used to prevent a more thorough review of the scientific evidence. This defensiveness on the part of the WHO Expert Committee on Drug Dependence is perhaps understandable: An examination of the original rulings which supported the 1961 Single Convention would show that little or nothing was made of the extractability argument at the time, and the arguments which were then used—coca’s links with malnutrition, or its potential to cause addiction—today have limited scientific credibility. In other words, the grounds for maintaining coca leaf in Schedule 1 of the Single Convention have been changed, but—and this is the important point—without a critical review on the part of the WHO Expert Committee on Drug Dependence. Here, as argued by some analysts (Henman and Metaal 2009, p. 8), their defensiveness verges on dishonesty, and even implies a degree of professional misconduct: the failure to fulfill a scientific role entrusted in good faith to the WHO by the international community.

This process took place almost simultaneously with the “Cocaine Project,” an extensive study by WHO and the United Nations Interregional Crime and Justice Research Institute (UNICRI) on the variety of cocaine uses around the world, carried out between 1991 and 1995, with case studies of 22 cities in 19 countries on five continents performed by 45 expert researchers. It also included the use of coca leaf by chewing in three case studies, since there exists no scientific doubt that this form of ingestion involves the absorption of trace amounts of natural cocaine present in the leaves.

The WHO/UNICRI Cocaine Project underscored that the traditional use of coca appears to have no negative health effects and that it serves positive therapeutic, sacred, and social functions among indigenous groups in the Andean region.

The scientists who participated in the WHO/ UNICRI study made the following recommendations:

- Although there is a possibility that use of the coca leaf may be linked to certain health problems that have not yet been detected, this is unlikely. It would be much more interesting to determine whether chewing coca could have positive health effects.
- The WHO should investigate the impact that drug control legislation and measures have on individuals and specific populations.
- The WHO should investigate the therapeutic benefits of the coca leaf and whether these effects could be transferred from traditional contexts to other countries and cultures.

On March 14, 1995, the WHO announced the publication of the WHO/UNICRI Cocaine Initiative to the international press. Shortly thereafter, on May 9, 1995, in Commission B of the 48th World Health Assembly in Geneva, the US representative said he was:

surprised to note that the package seemed to make a case for the positive uses of cocaine, claiming that use of the coca leaf did not lead to noticeable damage to mental or physical health, that the positive health effects of coca leaf chewing might be transferable from traditional settings to other countries and cultures, and that coca production provided financial benefits to peasants. (WHA 1995, p. 229)

He added that his government would suspend financial support if the WHO did not dissociate itself from the study's conclusions and if it adopted a position justifying coca production. In response, the WHO secretariat said that the study was an extensive, objective analysis of data gathered from many countries, and that it had been carried out by international experts, while its conclusions did not reflect the position of the WHO. The US representative replied that the study was not extensive or objective, and that it should be subjected to peer review in accordance with the WHO's own strict guidelines. It was in this peer review procedure the Cocaine Project died a quiet death, and was never published.²

Recent Attempts at Change Within the UN Drug Control Framework

In the past 5 years, the Bolivian government has presented two initiatives to reconcile its international treaty obligations with the traditional use of coca, and to harmonize its domestic legal instruments. These attempts to get traditional use recognized by the UN drug treaties were necessary, since in the past decade a number of legal instruments and political declarations have appeared firmly embedding indigenous peoples' rights into national and international law.³

The 2007 UN Declaration on the Rights of Indigenous Peoples states, "Indigenous peoples have the right to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions" (UN 2007, p. 11). In April 2010, the Permanent Forum on Indigenous Issues, an advisory body to the UN Economic and Social Council (ECOSOC), welcomed Bolivia's amendment on the traditional use of the coca leaf. "The Forum recommends that Member States support this initiative" (UN Permanent Forum on Indigenous Issues 2010, para 35). In May 2009, the Forum stated that it "recognizes the cultural and medical importance of coca in the Andean region and other indigenous regions of South America" and recommended:

The amendment or abolishment of the sections of the Convention relating to the custom of chewing coca leaf that are inconsistent with indigenous people's rights to maintain their traditional practices in health and culture enshrined in Articles 11, 24, and 31 of the Declaration. (UN Permanent Forum on Indigenous Issues 2009, para. 89)

² Much of the material produced can be consulted at: <http://www.tni.org/article/who-cocaine-project>.

³ See for a more detailed discussion on the contradictions around the legal UN framework on human and indigenous rights, see Boiteux et al. (in this volume).

With the August 2009 Presidential Declaration of Quito, all South American nations expressed support for the Bolivian proposal, requesting that the international community respect the ancestral cultural practice of coca leaf chewing. Many other declarations followed; the latest from the 2012 Ibero American Summit celebrated in November 2012 in Cadiz, Spain. Still, the UN drug control treaties lagged behind, and the first attempt to get into sync with reality was made in 2009, when Bolivia requested an amendment to the 1961 Single Convention article 49, paragraphs 1 c) and 2 e) of the Single Convention on Narcotic Drugs of 1961, as modified by the Protocol of 1972. In their own words:

The objective of the Bolivian proposal of amendment to the Single Convention is to eliminate the obligation to prohibit the chewing of coca leaf in order to enable countries where there is evidence of this ancient, cultural, and religious tradition to preserve its own millenarian indigenous cultural practice; based on grounds that it does not cause any harm to people's health nor any kind of disorder or addiction. (UN 2012, p. 1)

Interestingly enough, in this *Aide Memoir* Bolivia sent to the Secretary General of the UN, they also acknowledged the fact that coca use was no longer an exclusively indigenous practice:

The inclusion of coca into the 1961 convention. . .

was a failure easily explained and justified since the consumption of coca leaf is a deeply rooted and necessary cultural practice in the Andes. Moreover, chewing and drinking coca leaf have extended not only to non-Andean indigenous peoples, but also to non-indigenous sectors of the region. (Plurinational State of Bolivia 2010)

The UN procedure establishes an 18-month period in which all parties to the treaty can express their nonconformity or disagreement to such a requested amendment. A total of 18 countries formally notified the UN Secretary General that they could not accept the proposed amendment: the United States, the United Kingdom, Sweden, Canada, Denmark, Germany, the Russian Federation, Japan, Singapore, Slovakia, Estonia, France, Italy, Bulgaria, Latvia, Malaysia, Mexico, and Ukraine. The U.S. convened a group of "friends of the convention" to rally against what they perceived to be an undermining of the "integrity" of the treaty and its guiding principle to limit the trade and use of narcotic drugs exclusively to medical and scientific purposes.

The second initiative followed after this failure, when Bolivia decided to denounce the 1961 Single Convention in June 2011, and presented its renewed adherence to the treaty, this time with a formal reservation, deposited to the UN on January 10th of 2012, that reads:

The Plurinational State of Bolivia reserves the right to allow in its territory: traditional coca leaf chewing; the consumption and use of the coca leaf in its natural state for cultural and medicinal purposes; its use in infusions; and also the cultivation, trade, and possession of the coca leaf to the extent necessary for these licit purposes.

Again, with this much criticized move, Bolivia tried to find an appropriate balance between multiple concurrent and conflicting international legal obligations. A reservation on the 1961 Single Convention was the most reasonable and proportionate way to address this conflict (Barrett 2011, p. 1).

The clearest sign of disapproval came from the INCB, who had taken a stronger stand on the issue of traditional coca use in their annual reports from 2005 onward. In the preface of the INCB's report for 2011, board president Hamid Ghodse expresses his regrets on Bolivia's "unprecedented step" and calls it "contrary to the fundamental object and spirit of the Convention." Mr. Ghodse even contended that "the integrity of the international drug control system would be undermined and the achievements of the past 100 years in drug control would be compromised" (INCB 2012) if denunciation and re-accession with reservations were to become a mechanism used by other state parties.

The fate of Bolivia's reservation and re-entering into the treaty was decided upon on January 10, 2013, one year after the official request. If more than one-third of all parties to the convention would have opposed the reservation, it would not have been accepted. As it turned out, only 15 countries presented a formal objection to the entrance of Bolivia with this reservation, all basing their argument around the procedure Bolivia used: denunciation and re-adherence with a reservation, allegedly creating a precedent other countries could follow. Some countries used other arguments, and just one country, Sweden, made a clear reference to the traditional use itself:

The United Nations' drug control conventions are the cornerstones of the international legal framework for the fight against drugs. An exemption for coca leaf chewing and the growing of coca plants for this purpose risks to undermine this system and to weaken the control over cocaine production. Furthermore, the ambition expressed in the convention is the successive prohibition also of traditional uses of drugs; the chewing of coca leaves being explicitly mentioned. (UN 2012)

The small victory Bolivia has achieved, having acquired acceptance of their reservation, can be hailed as just a tiny step towards UN Convention reform.

As reflected in this chapter, the history of the legal status of coca within the UN drug control mechanisms and institutions is a conflicted one, filled with contradictions that reveal the ugly face of international drug control. In the Andean Amazon region though, coca chewing and coca tea drinking have continued to be widespread habits, inextricably linked to the identity of its inhabitants, and the cultural and medicinal practices of daily life. Moreover, domestic laws acknowledge and guarantee these expressions in a number of ways we will look into now.

Domestic Laws and Traditional Coca Use

All countries in the Andean-Amazon region have signed and ratified the UN drug conventions, and several have made reservations concerning traditional coca use, though in some cases these were withdrawn afterwards. Their domestic legislation

on drugs is modeled after these conventions, containing all the provisions that proscribe the activities surrounding the controlled substance. There are four countries in the region (Argentina, Bolivia, Colombia, and Peru) that have explicitly dedicated domestic legislative articles on cultivation, use, and possession of coca for traditional use, three of which (except Argentina) are involved in the production and export of cocaine. Furthermore, a few other countries in the region (Ecuador and Chile) tolerate generally traditional uses, in all cases for a specific defined part of the population; namely, indigenous people.

Of course, in all three coca-growing countries, the coca destined for the traditional market and those leaves that end up in a maceration pit for the extraction of their main alkaloid, cocaine, come from the same plant. Legislative distinctions are made by setting geographical limitations, or restricting the number of plants or area that can be planted, or linking its use to a certain part of the population.

In Peru, coca cultivation itself is not proscribed, but when the harvest is due, all revenue becomes illicit if farmers fail to deliver it to a state agent that directs the output to licit uses. A system of licensing is used to permit cultivation and sale, regulated exclusively through the state agency *Empresa Nacional de la Coca* (ENACO). In this case, although it formally constitutes no criminal offense to grow coca, growers without a license can lose all their crops. Peru has always maintained a legal coca market under its domestic law and, in 2005, declared coca chewing as cultural patrimony.

In 2003, a national survey (INEI-DEVIDA 2004) was done to estimate the amount of coca needed for the national licit market in Peru. The amount established was 9,000 Metric Tons (MT), and this same amount is still used to indicate the approximate volume of the licit market. The UNODC crop monitor report of 2012 mentions this same number. In the National Drug Strategy 2012–2016, a new study will estimate the volume of coca needed to meet national demand for traditional and other licit needs. Interestingly, targets set for ENACO in the National Drug Strategy from year to year include the 9,000 MT figure in their distribution network, showing that its “monopoly” has not worked: Less than one-third of the legal coca market is part of their distribution network, leaving no doubt about the size of the current gray market for coca leaf, which most probably is increasing, as we will see later.

Coca is widely available and consumed by large shares of the populace as an infusion, while an estimated three million people practice the chewing of coca leaves, mainly in rural and mountainous parts of the country. Most of the urban elites and middle class dwellers consider chewing a backward Indian practice, something due to disappear once a certain level of economic and cultural wellbeing is reached. This “modernization thesis” is still the position defended by Peruvian elites. Unlike neighboring Bolivia, it is uncommon to meet people on the streets of Lima or other coastal towns chewing coca.

In the case of Colombia, only officially registered indigenous territories are allowed to grow and market coca, and coca users themselves are identified as indigenous people. Much of the long history of coca chewing in Colombia has

been subject to the efforts by Colombian governments to link the coca leaf to cocaine, and by doing so, not just ignoring the reality of coca use in its territory, but worse, giving coca a bad name. In domestic law, the recognition of the relationship between indigenous traditions and the coca leaf is found in article 7 of Law 30 of 1986, which indicates that: “The National Narcotics Board will regulate the cultivation of plants used for the production of narcotic drugs and the consumption of these by the indigenous population according to the uses and practices derived from their culture and traditions.” Through this disposition the government had to call off its public campaign called “*la mata que mata*”: “The leaf that kills.”

Based on various articles of the national constitution that protect the ethnic and cultural identity of indigenous communities, there have been a number of favorable rulings in the 2000s by the Supreme Court against restrictions imposed by the national drug control agencies designed to curb the sale of natural coca products in the whole country. A number of these rulings have used Art.14 b of the 1988 Convention as an indication of international recognition of traditional use. This jurisprudence came at the same time that an increase was seen in the sale of coca tea and other coca products in the country. Still, the number of people using coca in the traditional way, by chewing, is currently estimated at only 100,000.

Domestic legislation in Bolivia defined certain regions in its territory as coca producing areas and established a limit on the total area under cultivation, calculated on the basis of the amount necessary to meet local demand for traditional use. The designation of these areas has been influenced both by historical evidence of coca production from colonial times, and by internal political dynamics. The legislation makes the curious distinction between coca and coca *iter criminis*, as to refer to coca used for the production of cocaine, defined as a crime. The amount needed to satisfy the local market—plus the north of Argentina where the growing conditions are insufficient—was estimated at 12,000 hectares in 1986. Currently, a new survey long due should provide for new measurements that will help separate the licit from the illicit market. A reform of national law is currently in progress, and it will separate all coca leaf production and distribution.

Coca was taken up as a national flag for the indigenous cause by the Bolivian government in 2005. Bolivia is definitely the country with the largest share of its population consuming coca in a traditional manner, and coca tea drinking is a common daily practice. The earlier described efforts in the international arena to get traditional use recognized, and “repair the historical error” made by including coca as a controlled drug, reflect this change, although previous non-“indigenous” governments had made similar efforts. The 2009 Constitution states that: “The State protects the original and ancestral coca leaf as part of the cultural heritage, renewable natural resource of Bolivia’s biodiversity, and as a factor of social cohesion. In its natural state, it is not considered a drug” (Plurinational State of Bolivia 2009, Art. 384).

Argentina decriminalized coca leaf in 1989 by inserting the following exemption article in its own law: “The possession and consumption of the coca leaf in its natural state, destined for the practice of ‘coqueo’ or chewing, or its use as an infusion, will not be considered as possession or consumption of narcotics.” Argentina is a special case: It is the only country without coca cultivation history and a relatively recent history of popular use. In addition to the considerable migrant communities in Buenos Aires, locals from all social classes, though mainly masculine, have practiced coca chewing in the northern provinces of Salta and Jujuy for more than half a century. This accounts for a fascinating example of how a predominantly indigenous and poor mans’ habit was internalized by the middle and upper classes, offered for sale, and practiced in public spaces, to an extent unknown in some of the places from which it originates (Abduca 2010). All coca consumed in northern Argentina comes from Bolivia, and is a pending legal loophole, since no exportation is allowed under the international conventions.

Argentina has been among the countries targeted by the INCB as being “in breach with the international conventions” in a number of its annual reports, for allowing coca chewing in its national territory. The use of coca is both traditional in its form, and non traditional in its users’ profile. It challenges many concepts around its use, and the way it has been defended as an indigenous issue. The government of Argentina has defended coca use, but has not been very proactive in resolving the issue at the international level.

Parts of the Chilean north have a coca-consuming Aymara population, estimated to be around ten thousand people. Coca here is not visibly part of the culture. Chilean law does not formally allow coca to be traded or sold, but in practice will not prosecute Aymara people who are in possession of coca leaves. It is not difficult to find coca as an infusion. It is significant though, that in April 2003, a law was proposed that would establish a legal allowance to possess, carry, and consume coca leaf and alcohol for religious celebrations in diverse cultural contexts. Indigenous organizations have been trying to get some kind of legal exemption; so far, without success.

In Ecuador, the country where evidence of coca consumption dates back at least 2,500 years, the habit has almost completely disappeared since the seventeenth century, when the Spanish Inquisition prohibited its use. Nowadays, some indigenous groups use it as a traditional medicine, not sanctioned by law, within a traditional use context. Small areas with coca plantations are regularly found in the regions bordering Colombia, resulting from a spillover effect of coca cultivation for cocaine production.

In the Brazilian eastern Amazon, coca leaf is known as Ypadú, and is cultivated by indigenous people of the Tukano family along the Vaupés River on the border with Colombia, and by a mestizo population in Tefé, between the Peruvian border and Manaus (Metaal et al. 2006, p. 18). The plant is naturally occurring in the jungle and has been used by different indigenous groups as a medicine and natural stimulant for centuries, remaining within that cultural context. The plants growing

in the lower Amazon Basin have lesser quantities of the naturally occurring cocaine alkaloids, making it unattractive for cocaine production. Some toast and grind the leaves to flour, thus obtaining a larger amount to be “chewed,” and mix this with plant ashes to facilitate the extraction of the active substances.

As this overview shows, coca leaf consumption is widespread in several South American countries and is reflected in their domestic legislation and legal practice. This situation has caused conflicts within the international legal framework designed to counter the cocaine trade by continuing to define coca and its traditional use as a practice that needs to be abolished. Many of these countries have seen the emergence of a market for novel forms of coca use, which we will look into now. A global market for coca leaf is developing, despite the global prohibitionist regime.

New Interpretations and Uses of Coca in the Global Markets

Before the emergence of a global prohibitionist regime on coca, the plant already had a history of industrial uses in products other than cocaine. A famous first use emerged in France at the second half of the nineteenth century when, during the “Belle Époque,” a Corsican pharmacist Angelo Mariani (1838–1914) produced a wine containing a coca leaf extract, known as *Vin Mariani*. During his research he read an essay on the virtues of coca by the Italian medical anthropologist Paolo Mantegazza, published in 1859 after his return from Peru and Argentina where he had practiced medicine. Mantegazza referred in his work to coca not only as a medicine, but also as an item of food. The Indians, he wrote, enjoy coca as a nutriment and a restorative. *Vin Mariani* became extremely popular, and many poets, painters, and popes attributed extreme benefits to this “Elixir of Life” (Windsant 2007, p. 12).

In 1885, John Smyth Pemberton prepared his first coca beverage in the United States. He called it “French Wine Coca,” and it quickly became popular, particularly among those enraged about alcoholic beverages. He changed his “ideal tonic” into a temperance drink by adding an extract of kola nut to his coca brew and by replacing the wine with a sweet syrup; Coca Cola was born one year later. Pemberton was said to use up to five ounces of coca leaf per gallon of syrup: quite a significant dose. This changed quickly under the influence of local, national, and international pressure, based on alleged abuse and health problems. The company started to use “spent” leaves, containing only trace amounts of cocaine, and still does so today. Allegedly, Coca Cola played a pivotal role in advocating the inclusion of one article in the 1961 Convention that provides for the use of coca containing no alkaloids as a flavoring agent.⁴ Recent data on the legal import of coca leaves shows that the US is by far the leading country: Of the total 140.000 kg of coca leaf used for medicinal and scientific purposes in 2011, under which its

⁴ See Cortés (2012).

industrial use as a flavoring agent is listed, only 7 kg of coca leaf are accounted for by other countries.⁵ It is known that these leaves, with their alkaloid content suppressed, are used for the production of Coca Cola. An Italian liquor that is still sold in liquor stores today, called *Coca Buton*, is another famous example of European coca leaf use dating back to the nineteenth century. The recipe was adapted as to fit the international standard when coca became proscribed, and a decocainized extract is allegedly still used to produce it.

After the proscription of coca by the 1961 Single Convention, most classic traditional use has managed to survive in the places it was practiced before. From the 1980s onward, a rich variety of coca leaf products entered the market, but only in the past decade has it taken a significant turn to an extended market, with the Internet as one of its main propagators. This process, known as the “industrialization of coca,” was made into public policy by both the Peruvian and Bolivian governments. Coca tea is the best-known example, and although proscribed, it is quite easy to find and order by mail. A simple search will show dozens of hits for websites that offer coca tea for sale, finding its market niche as a health product with an increasing variety of other coca products also becoming available.

The promotion of coca on the modern global market as a health product is based upon long-standing claims for its therapeutic properties as described in modern times in full detail by many authors, with the study of American doctor William Golden Mortimer ranking as the most impressive account of the medical virtues of coca.⁶ More recently, it has been declared a useful treatment for various gastrointestinal ailments, motion sickness, laryngeal fatigue, as a useful aid in programs of weight reduction and physical fitness, and coca may work as a fast-acting antidepressant (Weil 1981, p. 367–376).

Its value in treating dependence on cocaine or other stronger stimulants also has several defenders, but is hardly developed scientifically. Some research (Hurtado-Gumucio 2000; Llosa 1994) shows there may be a case for therapeutic uses, and exploring the options in this sense would be interesting, especially since there exists a well-acknowledged deficit in treatment options for problematic stimulant users. The taboo on using controlled drugs for treatment, such as natural coca extract, was broken recently by a study on the sporadic use of amphetamines to treat cocaine dependence. The existing “biases against using controlled substances as a treatment for cocaine dependence should be challenged, much in the way the use of antagonist treatment transformed the treatment of opioid dependence despite initial resistance from the field” (Mariani and Levin 2012). A case could be made for using coca, with no known adverse side effects, as a natural, weaker variant of a similar substance.

A popular, relatively new, form of use is coca leaf flour: ground leaves used as a food supplement. Historically, traditional coca leaf use never replaced proper nourishment, though such an accusation, i.e. that it was a cause for malnutrition,

⁵ From the INCB (2011), p. 92.

⁶ Mortimer (1901).

surfaced in the 1950s in the aforementioned ECOSOC report. Particularly in urban Peru, this product is absorbing increasing parts of the illicit coca crop harvests, and is abundantly available in the markets. At the Lima airport, one can purchase fancy packaged coca flour to bring along as a local regional curiosity, and locally the consumption of the flour has taken a huge flight. Anecdotally, prices paid for the leaves by local companies to coca farmers or intermediaries are said to be higher than the prices paid by the drugs traffickers who buy leaves at the farm gate for cocaine production. Coca flour is also one of the products on sale at the dozens of Internet shops, responding to the global demand for health products.

One of the many myths that surround the coca leaf—myths ranging between the two extremes of “intoxicating” and a “panacea for world hunger”—is that this product could play a significant role as a nutritional supplement, useful to many different population groups and many diverse diets (Henman and Metaal 2009). However, it cannot be stated too often that the principle benefits enjoyed by coca consumers are those of its well-documented, historically attested applications as a stimulant and herbal medicine.

In conclusion, it is irrefutable that traditional leaf chewing is also in the process of transplanting into new cultural contexts, and has the potential to be accepted as a natural and healthy alternative to cocaine consumption in Western cultures. Its known stimulating properties have already caused this kind of transformation in the Andean Amazon region itself, where previously the chewing habit was predominantly practiced in rural areas, linked to labor activities such as mining and agriculture for its stimulant and energy-enhancing effects, and linked to indigenous communities, religious rituals, and celebrations such as weddings and funerals or applied as a medicine. Today, urban populations such as students and professional drivers use chewing of coca to enhance their energy output, using coca as an alternative to coffee and tea. The recent developments of new groups using coca as a natural stimulant can be considered the first step in bridging the gap between traditional use and modern forms of use. The traditional technique of Ypadú use, as described earlier, has been employed by some pioneers to develop a modern variation, using coca with higher alkaloid content, and increasing its accessibility to modern users, thus making a case for a “re-education of demand,” meant to divert cocaine use towards coca use (Metaal et al. 2006, p.16). By allowing the use of coca as a natural stimulant, and by lifting the restrictions on it in the global markets, the use of cocaine and other potentially hazardous stimulants could be reduced, causing a probable shift that is beneficial for public health. In order to make this possible, the UN drug control treaties will need to be challenged and changed, since they are currently reflecting outdated and erroneous conceptions.

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