

Sending the wrong message

The INCB and the un-scheduling of the coca leaf

The 2006 International Narcotics Control Board (INCB) report emitted a clear signal to the governments of Bolivia, Peru and Argentina that growing and using coca leaf is in conflict with international treaties, particularly the 1961 Single Convention. That was nothing new. Several previous INCB reports have remarked upon the contradictions between practices and treaties, but less explicitly and insistently than was done this year. All of the countries mentioned are asked to adapt their national legislation and change their perceived permissiveness back in line with the conventions. The Bolivian national policy, in particular, is targeted in this year's report, with the argument repeated in three different sections. The "Special Topics" section dedicates its first part to this, while another section "urges the Governments concerned to ensure the full implementation of the provisions of the 1961 Convention as amended by the 1972 Protocol concerning the production of coca leaf, its industrial uses and international trade. The Board is concerned that that action could serve as a precedent and may send the wrong message to the public if it is allowed to stand".¹ The report does not explain why the proposed use of coca leaf is wrong, but this is surely due to the fact that the treaty still considers the leaf itself to be a narcotic drug.

The 2005 INCB report already reminded the parties of the fact that "the transitional measures regarding the licit cultivation of coca bush and consumption of coca leaf under the 1961 Convention ended a long time ago".² It seems to interpret licit consumption and cultivation for traditional consumption as a sign of reduced efforts caused by "perceived difficulties in fighting illicit crops". The board will continue to ignore the existence of millions of coca leaf consumers for as long as the international legal framework is based on the false assumption that harm is inflicted upon people's health when consuming the coca leaf. Moreover, the INCB seems to be unaware of the existence of article 14 of the 1988 Trafficking Convention, which

COCA LEAF UN-SCHEDULING

- The INCB, rather than making harsh judgements based on a selective choice of outdated treaty articles, should use its mandate more constructively and help draw attention to the inherent contradictions in the current treaty system with regard to how plants, plant-based raw materials and traditional uses are treated.
- It should suggest recommendations to address these inconsistencies, as it did in the now long-forgotten 1994 supplement in which the INCB pointed out that the drinking of coca tea "which is considered harmless and legal in several countries in South America, is an illegal activity under the provisions of both the 1961 Convention and the 1988 Convention, though that was not the intention of the plenipotentiary conferences that adopted those conventions". The Board expressed its confidence "that the Commission on Narcotic Drugs, on the basis of scientific evaluation, will resolve such long-standing ambiguities".¹³
- A logical first step to take is to request an expert advice from the WHO, which is mandated to recommend changes in the scope of control of substances.
- The coca leaf itself can by no means be regarded as a narcotic drug with addiction-producing properties and cannot be kept in Schedule I under that false pretext. A comparison with opiates and with plants whose active ingredients are controlled by the 1971 and 1988 conventions should lead to the conclusion that the fact that cocaine can be extracted from the leaf is also not sufficient justification for its inclusion in Schedule I, because the "extracts that are actually abused are already controlled under the 1961 Convention".
- There is a strong case to make for withdrawing the coca leaf from the 1961 schedules.

explicitly allows traditional coca leaf consumption in those places where historical evidence exists.

An example of the ignorance of the INCB was shown during the press conference held for the presentation of the annual report, when the Board's president Mr Emafo expressed an opinion that coca leaf chewing is a major cause of malnutrition. This old prejudice can also be found in the 1950 ECOSOC study on the coca leaf but, as we have shown elsewhere, the scientific basis for defining the coca leaf as a dependency-producing substance can no longer be upheld.³

These latest signs again show the urgent need to revise the status of the coca leaf in the Conventions. The Bolivian government's request for an evidenced-based review of the WHO Expert Committee on Drug Dependence, announced at the 49th session of the CND in 2006, still stands. The "Bolivian Strategy against Drugs Trafficking 2007-2010" was formally presented on 18 December, clearly distinguishing between the coca leaf and its cultivation, on the one hand, and the act of cocaine extraction, trafficking and consumption on the other. Bolivian law permits a certain amount of coca bush cultivation to satisfy demand for traditional uses. Affiliated members to coca peasant unions are allowed to grow a small plot, known as a "cato" (0.16 hectare), to sustain their livelihood. This policy has pacified the coca-growing region, which was formerly overshadowed by violent confrontations and human right abuses.

The option of exporting the integral leaf produce to other nations, providing an income for peasants from a sustainable and licit source, has received both criticism and support from other states. US-drugs assistance was "readjusted" to two-thirds of the amount given last year as a reaction to the production increase from 12,000 to 20,000 hectares for licit uses. Washington is currently discussing the option of threatening to include Bolivia in the US State Department's black list, or to certify it as a non-cooperative nation.

The rationale behind the production increase is to supply traditional and new coca consumption markets beyond Bolivia's borders. Two new industrial plants are under construction and, although it is not yet totally clear what they will produce, coca tea and coca flour will surely be the most important products. This could further support impoverished peasant communities and help pacify the country.

The main argument used against this new strategy, as expressed in the INCB report and on numerous occasions by the US government, is that coca leaf is used to produce cocaine, and therefore needs to be eradicated. Although even the US ambassador in La Paz has acknowledged traditional uses, a potential international demand for these (industrialised) coca products seems to cause incredulity.⁴ Based on the current industrial uses of coca leaf, mainly for Coca Cola, the market is not believed to be able to absorb this additional legal production.

Maybe this scepticism is not deserved, however. If coca leaf production could officially be used to satisfy the regional demand for traditional uses, as for example in Northern provinces of Argentina and Chile, and new markets can be found for the variety of products currently being developed, these worries could be overcome. But this would require the un-scheduling of coca leaf.

THE INCLUSION OF COCA LEAF IN SCHEDULE I OF THE 1961 SINGLE CONVENTION

The inclusion of the coca leaf in Schedule I of the 1961 Single Convention on Narcotic Drugs had a dual purpose: to phase out coca chewing and to prevent the manufacture of cocaine. The ECOSOC Commission of Enquiry on the Coca Leaf concluded in 1950 that the effects of chewing coca leaves were negative, even though it "does not at present appear that the chewing of the coca leaf can be regarded as a drug addiction in the medical sense".

The revision of that original ruling, which defined coca consumption as a habit instead of an addiction, came in March 1952, when the WHO Expert Committee on Drug Dependence concluded that "coca chewing comes so closely to the characteristics of addiction ... that it must be defined and treated as an addiction."⁵ Two years later, the Expert Committee discussed the matter again and concluded that "coca chewing must be considered a form of cocaineism".⁶

That led to the inclusion of the coca leaf in Schedule I. In 1974, ECOSOC resolved "to intensify measures designed to reduce coca cultivation, to eliminate the clandestine manufacture of and the illicit traffic in cocaine and, in accordance with the Single Convention on Narcotic Drugs, 1961, to abolish coca-leaf chewing, if possible before the expiry of the twenty-five year period provided for in article 49 of the Convention" (ie. by December 1989).⁷

In 1992, the WHO Expert Committee on Drug Dependence undertook a pre-review of the coca leaf to define whether it should be critically reviewed but ruled against this. Significantly, however, its report points out that traditional coca consumption is still widespread but makes no new mention of its supposed addictive properties or the need to abolish coca chewing. “The Committee was of the opinion that the coca leaf is appropriately scheduled ... since cocaine is readily extractable from the leaf.”⁸ Only the extractability argument is used to justify its current illegal status. Implicitly, the Expert Committee exonerated coca leaf from the claim that it has cocaine-like effects or addictive properties.

According to the guidelines for WHO review, “The Expert Committee, when deciding whether to recommend international control after completion of its discussions, first decides, with regard to the 1961 Convention, whether the substance has morphine-like, cocaine-like, or cannabis-like effects or is convertible into a scheduled substance having such effects. If so, it then determines, in accordance with Article 3, paragraph 3(iii) of that Convention, if the substance: (1) is liable to similar abuse and productive of similar ill-effects as the substances in Schedule I or Schedule II; or (2) is convertible into a substance already in Schedule I or Schedule II.”⁹

‘Convertible’ would in fact not be the right term in the case of coca leaf, since the concentration/extraction of the cocaine content requires no conversion process. There is no doubt that cocaine can be extracted from the coca leaf. The question is whether that is sufficient justification for the strict levels of control attached to Schedule I.

ANALOGY WITH OPIATES – THE WHO POPPY STRAW DECISION

Coca leaf, being the part of the coca bush from which ecgonine and cocaine (both included in Schedule I) can be extracted, could be regarded as a ‘convertible’ substance that therefore requires similar control. A comparison with the scheduling logic the WHO applied to opiates leads to another conclusion, however.

It is relevant to refer here to the pre-review of poppy straw undertaken in 2001 by the 32nd WHO Expert Committee, which decided not to recommend critical review for poppy straw. The INCB had argued that poppy straw could be

readily converted into “concentrate of poppy straw” and subsequently into thebaine, codeine and morphine, but the Committee “noted that the poppy straw extracts that are actually abused are already controlled under the 1961 Convention”. Poppy straw thus remained unscheduled. Applying a similar logic to the coca leaf would mean that the ‘convertibility’ of coca leaf into cocaine would not be sufficient justification for putting coca leaf under such strict control.

Coca leaf is still one step beyond where the current control logic ends in the case of opiates. “Concentrate of poppy straw”, included in Schedule I, would be more equivalent to coca paste, representing the first step in a “process for the concentration of its alkaloids” as the definition in the Yellow list says for concentrate of poppy straw. Coca leaf would be equivalent to poppy straw, capsules or the opium poppy plant itself, none of which are included in the 1961 Schedules. Coca paste now falls under the control of Schedule I only indirectly, since it is included as a synonym for cocaine in the Yellow List’s “names and trade names of known preparations of narcotic drugs listed in the schedules of the 1961 convention”.¹⁰ To avoid any uncertainty that cocaine production would remain under strict control, it would be sufficient to include “concentrate of coca leaf” (as a generic term for coca paste or cocaine base) in Schedule I instead of coca leaf.

Coca leaf itself is not a substance that constitutes a step in the process of concentration of its alkaloids. If coca leaf would no longer be scheduled for having addiction-producing properties, for being a narcotic drug itself, it would be consistent that only coca-based materials that are part of the process of concentration of its alkaloids would be scheduled on the basis of ‘convertibility’. Otherwise the consistency of the convention logic as applied to opiates would be in jeopardy. And to a certain extent opiates are the model-examples for the 1961 convention, setting the standard for non-opiate substances.

DISCREPANCIES WITH THE 1971 AND 1988 TREATIES

A proposed additional scheduling guideline could be summarised as: “not extending the extraction/conversion logic to the plant of origin when the plant itself is not liable to abuse”. This logic would bring more consistency to the treaty system as a whole, since neither the 1971

Psychotropic Convention nor the 1988 Trafficking Convention so far extends control to the plants of origin.

During the negotiations for the 1971 Psychotropic Convention about the control of plants containing psychotropic substances, the Mexican and US delegations objected to the inclusion of peyotl or mescal buttons (containing mescaline). Consequently, they were left out from the scope of control and the Conference decided to leave out completely control measures for the cultivation of plants containing psychotropic substances. As a consequence of this decision, cultivation of *Psilocybe* fungi is a legal activity.¹¹

As for the 1988 Convention, parallels can be drawn with plant-based precursors for methamphetamines and ecstasy included in the 1988 tables.¹² Ephedrine and pseudoephedrine are included as the most important precursors for methamphetamine. Even though those substances can be synthesized, the market is still dominated to a large extent by products extracted from the ephedra plant (*Ephedra sinica*), a natural stimulant and medicine widely cultivated and used in China under the name of Ma huang. In the case of ecstasy, a key precursor is saffrole, extracted from the root-bark of the sassafras tree that grows in South-east Asia, and from a variety of other plants. So far, neither ephedra branches nor sassafras bark have been included in the tables, and even if they were included this would not mean that those plants and the cultivation of them would become prohibited; it would only mean a more strict monitoring of international trade.

The control of plant-based raw materials with limited psychoactive effects that are 'precursors' for more powerful derivatives is blurred within the current conventions. Relatively harmless substances such as coca and ephedra are not only 'precursors', but also have their own traditional, medicinal, performance enhancing or recreative uses that might be regarded as less harmful alternatives to their more powerful derivatives. Mild natural stimulants are pushed out of the market because they contain very low percentages of alkaloids which may only be hazardous in their concentrated form – coca contains less than 1 per cent cocaine and ephedra contains less than 3 per cent (pseudo)ephedrine. With the increase of control measures in the different conventions and other international regulations these aspects of plant-based drugs are getting lost. A re-assessment of international

control mechanisms on these substances is urgently needed. The challenge is to design a more consistent treaty logic that differentiates more clearly between control mechanisms for a wide variety of milder and stronger psychoactive plants and their natural uses (including traditional medicinal uses), plant-based raw materials used for the extraction of alkaloids, and plant-based 'precursors' that are convertible into psychoactive drugs.

NOTES

1. INCB report 2006, paragraph 361
2. INCB report 2005, paragraph 393
3. Emafo declared that personally he thinks that "it is no good" chewing coca leaf for "the people that work", since taking away their hunger impedes "appropriate nutrition, part of human rights" *La Razon* 1 March 2007. For counter-evidence, see *Coca Yes, Cocaine no?* TNI Drugs & Conflict briefing series nr. 15, May 2006.
4. *Los Tiempos*, 21 December, 2006
5. WHO, Technical Report Series 57, March 1952, Section 6.2, p. 10.
6. WHO, Technical Report Series 76, March 1954, Section 6, p. 10.
7. E/RES/1974/1846(LVI), *Cultivation and chewing of the coca leaf: clandestine manufacture of and illicit traffic in cocaine*, Economic and Social Council, 1896th Plenary Meeting, 15 May 1974.
8. WHO, *Technical Report Series 836*, 1993, Section 10.2.3, p. 38.
9. WHO/EDM/QSM/2000.5, *Guidelines for the WHO review of dependence-producing psychoactive substances for international control*, Geneva 2000, par. 33, p. 6.
10. Confusingly, coca base in the same list is included as a synonym for coca leaf. Coca paste and coca base are the intermediate products between coca leaf and cocaine hydrochloride. More often in English the terms coca paste and cocaine base are used to refer to two steps in the process.
11. István Bayer, *Development of the Convention on Psychotropic Substances, 1971*; Unpublished manuscript, 1989 Budapest, Hungary. The author was joint secretary of the Technical Committee of the Plenipotentiary Conference.
12. INCB, *List of precursors and chemicals frequently used in the illicit manufacture of narcotic drugs and psychotropic substances under international control*, Tenth Edition, January 2006.
13. E/INCB/1994/1/Supp.1. *Effectiveness of the international drug control treaties. Supplement to the Report of the International Narcotics Control Board for 1994*, United Nations, New York 1995.

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