

Coca, Cocaine and the International Conventions

Few plants are the subject of such controversy as the coca leaf – in legal and political circuits, as well as in the academic medical and anthropological worlds. Whether the coca leaf should or should not be considered a narcotic drug requiring international control has been hotly contested since before its inclusion in the number one list of the Single Convention on Narcotic Drugs of 1961. Irreconcilable positions have resulted. In 1961, a deadline of 25 years was set by which traditional consumption of coca leaves should cease.¹ In reality, however, the tradition is still very much alive, protected by national law in some countries, thereby contradicting the validity of the international legislation. The issue has been regularly raised in sessions of the Commission on Narcotic Drugs (CND) by member states with ancestral traditions of chewing coca leaf, particularly Bolivia and Peru, which have rejected the persecution of the tradition and requested formal revision of the conventions. These efforts have left openings which were never fully used.

Confronted with the campaign for re-evaluation led by the governments of Peru and Bolivia, the International Narcotics Control Board (INCB) stressed in its 1992 annual report that *"the liberation of coca leaves and products of coca leaves from control measures and to be internationally commercialised 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."*²

In the same year, the World Health Organisation (WHO) Expert Committee on Drug Dependence (ECDD) discussed the coca leaf as one of ten psychoactive substances to be considered for a critical review procedure. In terms of this procedure, if the request for the review was initiated by the WHO then a preliminary review was required. The WHO secretariat would have to compile all relevant information about the substances in a pre-view document, on the basis of which the Committee would make a decision about a critical review. During the ECDD meeting, it was agreed that a *"pre-review would be unnecessary if the substance was officially notified by a party to the international conventions or if such a review was explicitly requested by the UN Commission on Narcotic Drugs."*³ That is, the exact form the review procedure will take depends on whether the WHO or a country (referred to as a 'party' in UN jargon) requests the review.

In any case, on the basis of the UN report of the Commission of Enquiry on the Coca Leaf of 1950, the 1992 ECDD report stated that: *"the chewing of coca leaves was reviewed at the third and fourth meetings of the Committee, which concluded that it was a form of 'addiction' ... Since then, there has been no official evaluation of coca leaf chewing by WHO"*. The report 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."*⁵

1. 1961 Single Convention on Narcotic Drugs, article 49, paragraph 2e

2. INCB Report 1992

3. WHO Expert Committee on Drug Dependence, Twenty Eight Report, 836 Technical Report Series, p.37

4. Idem, p.38

5. Idem, p.39

The Committee threw the ball back to the court of the WHO without having resolved anything. During the thirty-sixth session of the CND in March 1993, the Bolivian representative formally requested lifting existing restrictions on the coca leaf under the international conventions.⁶ At the end of that year the INCB organised 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."*⁷ 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."*⁸

The Peruvian National Coca Enterprise (ENACO) gathered all relevant medical and historical anthropological evidence, as well as details of earlier studies, delivering these to the Peruvian government for presentation to the appropriate UN authorities. One of the reasons for organising the 1993 mission was an intervention of the Peruvian representative during a session on drug trafficking of the Social and Economic Council in Geneva on 16 July: *"Mister President, the disqualification that rests upon the coca leaf cannot be maintained on the basis of legal international obligations that are sustained by partial information and without the new scientific base to which we now have access. This forces us to make a thorough scientific review of the concepts that underpin the disqualification. While requesting this revision, we also ask for major cooperation for the scientific research and the industrialisation processes for nutritional and medicinal purposes."*⁹

The INCB 1994 report repeated 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."*¹⁰ Apparently no use was made of the studies nor all the information resulting from the 1993 mission to the Andean region.

During the 1990s, much doubt surfaced about the effectiveness of the drugs conventions. As an answer to these thorny questions, the INCB issued a report entitled 'Coca leaf: a need to clarify ambiguities', which referred to previous interventions and concluded that: *"there is a need to examine the situation regarding State parties to the 1961 Convention that have made reservations under article 49 of that Convention. Traditional drug use that had been temporarily permitted under the 1961 Convention should be assessed, with a view to making a decision on what the approach of the international drug control system should be to that problem. A true assessment of the habit of coca leaf chewing is urgently called for."*¹¹

As a result of a formal request from the Bolivian government, the INCB recommended in 1995 the WHO not to *"limit its study to the clarification of the alleged medicinal value of coca leaves but should clearly define its opinion in respect of the abuse potential of coca leaves and the public health consequences of the different forms of coca leaf consumption"*.¹²

These references to existing gaps between opinions and practices in the producing and consuming countries, on the one hand, and those between the provisions of the 1961 Convention and the annual reports of the INCB, on the other, suggest that a re-evaluation of the status of the coca leaf is still possible. Curiously, at the same time, the WHO's Programme on Substance Abuse (PSA) finalised a two-year research programme on this topic, which was never taken into account.

6. CND, Thirty-Sixth session, 6th meeting UNIS/ NAR/ 453, 31 March 1993

7. Commission on Narcotic Drugs, Report on the Thirty-Seventh Session (13-22 April 1994), ECOSOC Official Records, 1994, Supplement No.10

8. Idem. P. 41

9. From Bulletin Acción Andina, September 1993, La Paz, Bolivia, p.22.

10. Report of the INCB for 1994, 21(c), p.4

11. In "Effectiveness of the International Drug Control Treaties", supplement to the Report of the INCB for 1994, United Nations, New York, 1995, p.11, paragraph 46.

12. Annual Report INCB 1995, page 43, paragraph 236.

The Initiative on Cocaine of the WHO

In March 1995, the WHO and UNICRI (United Nations Interregional Institute of Crime Investigation) announced the publication of the results of a global study on cocaine. Information had been collected in 22 cities and 19 countries about the use of the coca leaf and its derivatives, its effects on consumers and the community as a whole, and the answers of the governments concerned to the cocaine problem.¹³ Preparations for the research began in 1991. Over more than two years, three sub-projects were developed which *“proposed to collect up-to-date information about cocaine at regional and national levels.”*¹⁴ The study was never published despite being *“the largest study ever on cocaine use.”*¹⁵

The Director of the PSA, Hans Emblad, sent a copy of the Briefing Kit to the United Nations Drugs Control Programme (UNDCP), where it caused a sensation. Two months later, on 9 May 1995 in Commission B of the forty-eighth General Health Assembly, the destiny of these years of labour was determined by the intervention of the representative of the United States of America, Mr Boyer. He expressed his government's concern with the results of this study: *“which seem 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 provides financial benefits to peasants”*.¹⁶

The representative said that his government considered suspending funds to WHO research if *“activities related to drugs failed to reinforce proven drug control approaches.”* In reply, the representative of the Director General defended the study claiming it was *“an important and objective analyses done by the experts”*, which *“represented the views of the experts, and did not represent the stated policy position of the WHO, and WHO's continuing policy, which was to uphold the scheduling under the convention.”* It was not the intention to publish the study in its current form, the representative explained as it might lead to *“misunderstanding”* The debate concluded with agreement on a peer review by *“genuine experts.”*

Peer review is a fundamental part of every scientific study, including those of the WHO. The timeline set for the peer review procedure was programmed in the terms of reference as to be concluded by 30 September 1997.¹⁷ In fact, from March 1995, names of potential researchers were listed and, in accordance with procedure, sent to the US National Institute of Drug Abuse (NIDA) in charge of selecting the candidates. Over the course of almost two years, an intensive fax exchange took place whereby the PSA proposed names and NIDA answered by refusing each and every one of them

There has been no formal end to this 'Cocaine Initiative'. The majority of the participating scientists never heard what was done with their work. Some of them published part of the work in their own countries.¹⁸

Traditional consumption of coca leaves, in spite of the conventions agreeing upon its 'gradual suppression' by the international community, did not disappear, nor is it likely to. The 'Commission of Inquiry on the Coca Leaf' elaborated the scientific basis for its classification, which was published in May 1950. This report is important to 'dust off' for several reasons, not least to re-examine many of its considerations and assumptions in the light of subsequent developments. For example, would it still be true that *“in the exercise of certain aspects of medicine morality is much more important, than knowledge and convictions brought about by scientific*

13. Press Release WHO/20- 14 de March 1995.

14. WHO/PSA/92/8, Meeting of project advisors, 24-28 August 1992.

15. Briefing Kit, WHO/ UNICRI, 1995

16. WHA, Forty-eight World Health Assembly, Summary Records and Reports of Committees, Geneva, 1 -12 May 1995, p.229.

17. Peer review of WHO/UNICRI Cocaine Project, Terms of Reference, s: \tac\andrew\cocarev.tor

18. Bert Bieleman in The Netherlands, Aurelio Diaz in Spain.

research", in the words of a Peruvian pharmacologist, one of the main sources of the original UN study.¹⁹

The contradiction between one scientific study on the coca leaf and another, and the use of one to legitimate the prohibitionist regime, is worrying. The Board notes the efforts of the Peruvian and Bolivian governments to *"have the medicinal and other properties of the coca leaf investigated by various research institutions; it hopes that well-documented, comprehensive scientific results will help to settle the controversy over this issue."*²⁰ There are no signs of initiatives, however, to re-evaluate the 1950 study that forms the basis of current international legislation, in light of all the scientific evidence that was never considered in the first place, as well as the serious and valuable studies undertaken over the following fifty years. The governments of Peru and Bolivia are currently both in the process of elaborating national studies on the extent of traditional consumption, but are having to do so within an international framework subject to pressures that condition and demand adherence to the current regime.

In the case of cocaine, traditional consumption of the coca leaf aside, one could also argue that the scientific evidence produced inside UN bodies and within academic circles internationally, should be recognised and should cocaine be deemed deserving of the stigma of a 'devil drug', there should still be an open debate about the doubts raised regarding the scope and viability of current policies. As the experts from the Cocaine Project concluded, it is simply impossible to describe a average cocaine user. There is an enormous variety among the persons that consume; the amount, frequency and intensity of consumption; as well as the reasons for using cocaine, and every problem related to it.²¹

The merits of the coca leaf, caught between morality and reality

Polemics continue between opponents of the consumption of coca leaf and its derivatives, those who do not distinguish between the plant and its extracts, and those who defend the leaf as a medicinal natural good, an integral part of Andean/Amazonic culture, as well as being an important source of income for its producers. To progress beyond this polarised debate which has raged for more than half a century now, it needs to be acknowledged that both positions have validity and do not necessarily have to be mutually exclusive.

On the one hand, the fundamental right of indigenous people to traditional consumption has been recognised to some extent in the United Nations Convention of 1988 through its article 14, that stipulates that *"the measures adopted should respect fundamental human rights and will duly take into account traditional licit uses, where historical evidence exists, as the protection of the environment."*²² This provision might be the exception to the rule, apart from being ambiguous. In practice it does not work this way, a contradiction acknowledged by the INCB in its 1995 annual report. The paragraph was added, modifying the original text, as a result of the efforts of the Bolivian and Peruvian delegations, which opposed the classification of the use, consumption, possession, acquisition and cultivation of the coca leaf for personal consumption as a crime.²³ Only Bolivia made a formal reservation upon ratifying the Convention.

On the other hand, one of the fundamental problems is the definitions used. For example, the definition of traditional consumption, does it refer to an essentially cultural and/or medicinal practice? If proven that the leaf has medicinal properties, why restrain its use by those people who discovered it thousands years ago? If a mere cultural use is meant, why was this not specified in the 1950 report? What would be the implications if this concept was applied to other drugs currently under control?

19. Gutiérrez-Noriega: in "El habito de la coca en el Perú" América Indígena, IX, 2, p. 143- 154.

20. Annual Report INCB 1993, 211, p.38.

21. Briefing Kit, 1995, The Cocaine Project

22. United Nations Convention against Illicit Drug Trafficking and Psychoactive Substances, 1988, article 14, par.2

23. Reservations made by Bolivia upon ratification of the Convention explain in detail their motives, see: Reservations to the Convention against Drug Trafficking of Narcotic Drugs and Psychoactive Substances of 1988.

Another difficulty to be resolved is the definition of 'addiction', which is an important value and supposition underlying the classification of the coca leaf as a narcotic drug. The 1950 Report ruled that the 'acullico'²⁴ could not be considered an addiction, but as a habit: *"In its general use, the term corresponds to an innocuous custom acquired by the repetition of acts of the same sort."*²⁵ If the difference between habit and addiction consists basically in the latter resulting in progressively increasing doses, then it is highly improbable that traditional users are addicted,²⁶ something the Commission did not take into account.

It is important to stress the relation between the coca leaf chewing habit and the general living conditions of chewers, explicitly referred to in the 1950 report, *"Considering that the chewing of coca leaves is no isolated phenomena, but the consequence of a series of unfavourable social and economic living conditions, the solution to this problem involves two parallel aspects: the first one being the need to improve the living conditions of the population where the chewing habit is generalized, and two: the need to come into force at the same time in both countries (Peru and Bolivia) of policies to limit production, regulate distribution and suppress coca chewing."*²⁷

The Commission started from the principle that chewing was a habit, which could be modified with 'education and reason', and by improving general living conditions. Indeed, the Commission recommended a gradual suppression because it recognised the need to improve the economic conditions of the chewers.

The recognition, albeit ambiguous, that licit forms of consumption do exist, implies a need for coherence within the set of rules and regulations that control the production, traffic and consumption of coca leaves such that account is taken of the different factors involved. In terms of the 1961 Convention, each country was left to decide for itself whether to criminalise cultivation. This changed definitively with the 1988 Convention, which introduced an escape clause for traditional consumption, but left unresolved the question of production and commercialisation.

In referring to the phenomenon of drug trafficking, those who defend the coca leaf argue that the problem has two sides: one is medical and health related; while the other is socio-economic. They argue that there is an unbalanced approach to the two sides of the same coin: coca leaf consumption may be declared licit, but cultivation remains prohibited. According to the INCB, in order to reduce demand it is necessary to *"take into account not just the persons involved, but also their socio-cultural environment and economic means"* and *"the programmes have to be adapted to the societies involved"*.²⁸ Although there exists recognition that demand reduction requires a balanced approach, there is no such consideration in relation to supply reduction, though the above quotation applies equally to coca peasants.

It may seem obvious that no joint Andean strategy was elaborated defending the coca leaf: Colombia knows hardly any traditional consumption. And there are peasants that grow coca leaf exclusively for the production of cocaine, for drug trafficking purposes. Nevertheless, the conflicts in the region today all have roots in struggles over control of natural resources and the defence of an income source by an impoverished part of the rural population. In this sense, drug control policies aimed at the supply side of the equation should take into account the socio-economic conditions of all producers in the region, and should be aimed at reducing the harm inflicted by the current drug control policy. The legitimate questions raised in this regard represents a great challenge for the UN institution involved in drug control.

24. Traditional consumption by "chewing" the coca leaf.

25. ONU, 1950, Commission of Inquiry on the Coca Leaf.

26. See Aurelio Díaz, "Hoja, pasta, roca y polvo: el consumo de los derivados de la hoja de coca, Spain 1998. Universidad Autónoma de Barcelona.

27. ONU 1950, p.100

28. INCB Report 1994, paragraph 24

Conclusions and Recommendations

There exists an intrinsic contradiction between the drug control conventions on the one hand, and the practice of cultivation and consumption on the other. In terms of the conventions, the traditional habit of coca leaf consumption should have disappeared by now, while it remains a deeply rooted part of Andean culture. There are also inconsistencies in the set of conventions as regards treatment of demand and of supply. If there is a tendency towards recognition of licit traditional consumption, it would be in plain contradiction to the disposition as regards cultivation of these plants. Simply put, there is currently no such thing as licit cultivation. A rescheduling of the coca leaf to a lower classification in terms of the 1961 Convention would not resolve the problem, since there would need to be adaptations as regards cultivation too.

The scientific basis for the classification of the coca leaf, the Report of 1950, deserves a re-evaluation by the institutions of the United Nations. Not only does the report not represent all the scientific studies relevant at the time, but in the half century since new evidence and knowledge has emerged in regard to traditional uses of coca, including beneficial medicinal applications. There already exists a basic disposition towards such an evaluation within the UN. The Expert Committee of the WHO, for example, as early as 1992 *“recommended studies looking at possible changes in the provisions of international control referring to these traditional uses.”*²⁹

The supply side drug control policies for the coca bush, currently defined as a narcotic drug, need to be reformed urgently. The social and political conflict caused by forced eradication across the Andean region is acute and profound, incurring unacceptable costs in human life, socio-economic impacts and disastrous consequences for the environment. A major obstacle is the lack of space for manoeuvre by the governments of coca-producing countries in the international context, which impedes even national consensus being reached on this issue. A continuation of the application of current policies in the international conventions, will not only not resolve these problems but will exacerbate them.

There is an urgent need for a more pragmatic and less moralistic attitude towards the consumption of the coca leaf and its derivatives, mainly cocaine. Despite the concerted control efforts of the international community, consumption not only persists but increases. The WHO study of 1995, seminal in terms of geography and methodology, was never published, unfortunately. The prevalence of political interests over scientific evidence demonstrated here is very worrisome.

We recommend:

- That an independent expert study takes place to revise the competence of existing definitions in the drug control conventions, with particular reference to the coca leaf and its different derivatives. This implies a re-evaluation of the UN 1950 study.
- Equal treatment on the demand and supply sides, securing equal latitude for both and permitting a differentiation in national policies for both sides of the spectrum.

For more information on the UN Drugs Control and possible reforms, see TNI's website on United Nations Drug Control at: <http://www.tni.org/drugs/ungass/unpolicy.htm>

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29. WHO, 1993:20